

THE ZR_p BRIEF



The pupils of ZUL RAFIQUE & partners



A BRIEF NOTE...

by Dato' Zulkifly Rafique

On gratitude and appreciation...

In the current climate, we have been hearing whispers of retrenchments and hiring freezes. The topic of most of the conversations amongst Malaysians revolved around inflation, unemployment and the increasing prices of basic amenities. The rising number of unemployed graduates is also making headlines in the local dailies, with statistics predicted to increase by year-end.

Given such situation, we should take a moment to be grateful for what we have, including our family, friends, health, and jobs, amongst other things. Gratitude means thankfulness, to count our blessings and acknowledging those blessings. Let us shift our focus from the things we lack in life to the abundance of what life has offered or has to offer.

As aptly put by Oprah Winfrey, "Be thankful for what you have, you'll end up having more. If you concentrate on what you don't have, you will never, ever have enough."

On that note, I would like to take this opportunity to thank everyone, including our clients, friends, and acquaintances for their support throughout the years. We hope that this encouragement will continue.

I wish you all a promising, productive and fulfilling year ahead.

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- *Guidelines/Rules/Circulars/Directives and Practice Notes issued between January and March 2016 by Bank Negara Malaysia and Bursa Malaysia*

- **MANDATORY CPD SCHEME** The motion on the compulsory Continuing Professional Development Scheme ("the CPD Scheme") for lawyers and pupils was passed at the 70th Annual General Meeting of the Malaysian Bar. The CPD Scheme will apply to lawyers whose first practising certificate was issued on or after 1 July 2011, and to pupils who commence their pupillage on or after 1 July 2016. Lawyers are required to obtain at least 16 points, while the pupils are required to collect a total of eight points during the 24-month cycle which takes effect from 1 July 2016. Fines between MYR100 and MYR500 will be imposed for those who fail to comply with the CPD Scheme.
- **MAS AND AIRASIA FINE OVERTURNED** The Competition Appeal Tribunal has set aside the MYR10 million fine imposed on airline carriers, Malaysian Airline System Bhd ("MAS") and AirAsia Bhd ("AirAsia"). It has also ordered the Malaysia Competition Commission ("MyCC") to refund the amount to the two airline carriers respectively. MyCC previously ruled that MAS and AirAsia had violated paragraph (b) of subsection 4(2) of the Competition Act 2010, which prohibits market-sharing agreements.
- **MOTION TO PARTICIPATE IN TPPA PASSED** The Trans-Pacific Partnership Agreement ("TPPA") is a free trade agreement amongst 12 Pacific-Rim nations which seeks to liberalise trade and investment. The TPPA consists of 30 chapters addressing both trade and non-trade related issues. The motion for Malaysia to participate in the TPPA was passed by the Malaysian Parliament, with the signing ceremony held in Auckland, New Zealand, on 4 February 2016.
- **ONLY MUSLIM LAWYERS IN THE SYARIAH COURTS** The Federal Court, in a 3-2 majority, has decided that only Muslim lawyers are eligible to practise in the Syariah Courts. This ruling stems from the application made in 2011 by a non-Muslim lawyer to be admitted as a *Syariah* lawyer in the Federal Territories.
- **PROPOSED AMENDMENTS TO SAFEGUARD CONSUMERS** A memorandum recommending amendments to several consumer-related laws will be submitted by the National Consumer

Complaint Centre to the relevant government ministries. The proposed amendments will address the complex nature of e-commerce and further strengthen and safeguard the interests of e-consumers in Malaysia.

- **TPPA: LABOUR LAWS TO BE AMENDED** Several labour laws will have to be amended to comply with the obligations set in the Trans-Pacific Partnership Agreement ("TPPA"), namely the Trade Unions Act 1959, Industrial Relations Act 1967, Employment Act 1955, Sabah Labour Ordinance (Chapter 67), Sarawak Labour Ordinance (Chapter 76), Private Employment Agencies Act 1981, Workers' Minimum Standards of Housing and Amenities Act 1990, and the Children and Young Persons (Employment) Act 1966.
- **WITNESS STATEMENTS TO SC PRIVILEGED** The Federal Court, in *Suruhanjaya Sekuriti v Datuk Ishak bin Ismail*, has ruled that statements provided to the Securities Commission (SC) by its witnesses are protected from disclosure in both civil and criminal proceedings. It was also held that section 134 of the Securities Commission Act 1993 has to be read subject to the rules of privilege and public policy.

AROUND THE WORLD... IN BRIEF

- **BRAZIL: LEGALISING ABORTION?** In light of the outbreak of the disease caused by the *Zika* virus, the Supreme Court of Brazil has been urged to allow abortion for women who have been infected. Abortions are currently illegal in Brazil, except in cases of rape, health emergencies, and another brain condition known as anencephaly.
- **EUROPE: EMPLOYERS MAY READ EMPLOYEES' PRIVATE MESSAGES** The European Court of Human Rights, in *Barbulescu v Romania* has ruled that employers are allowed to read private messages sent by an employee, via chat software and webmail accounts, during working hours. However, the judges have also cautioned that such rules must protect workers against snooping.

- **INDIA: GAY SEX CASE REVISITED** The Indian Supreme Court will re-examine a 2013 ruling which upheld the law criminalising gay sex. A larger bench of judges compared to the previous bench consisting of three judges, will revisit the law, codified in section 377 of the Indian Penal Code which criminalises the act of same-sex relationship as an “unnatural offence”.
- **INDIA: LAW FOR JUVENILE CRIMES TOUGHENED** The Juvenile Justice Act (“the Act”) which took effect from 15 January 2016, enables juveniles aged between 16 and 18 to be tried as adults in serious crimes cases, such as murder and rape. The Act has altered the previous position where juvenile offenders may only be sentenced to a maximum period of three years in a reform facility.
- **INDONESIA: IKEA DENIED TRADEMARK** Swedish furniture giant, IKEA, has lost the right to use its own brand name in Indonesia, after a legal battle with a local organisation. The right to use the “IKEA” brand name, however, was granted to *PT Ratania Khatulistiwa*, a company which also sells furniture with the acronym “IKEA”, which stands for *Intan Khatulistiwa Esa Abadi*. IKEA now has the option of filing an appeal, or changing its name, or paying royalty fees to the Indonesian company.
- **POLAND: CONSTITUTIONAL COURT REFORM SIGNED** A controversial reform of the Polish Constitutional Court (“the Constitutional Court”) has been signed into law, despite protests from various stakeholders. The new law raises the bar for rulings of the Constitutional Court from a simple majority to a two-thirds majority, while requiring 13 judges out of 15 to be present on the Bench, instead of the previous nine.
- **SINGAPORE: MENTAL CAPACITY ACT AMENDED** The Singaporean Parliament has passed the Mental Capacity (Amendment) Bill 2016. Individuals who do not have family or close friends, mainly the elderly, may now appoint paid professionals as donees and deputies, to act as their proxy decision makers, in the event they lose their mental capacity. The regulatory framework for such professionals will be finalised after the consultation with its stakeholders is completed.
- **SINGAPORE: NO REGISTRATION FOR DRONES** The Civil Aviation Authority of Singapore (“CAAS”) has announced that there is no need for recreational drones to be registered before flying in Singapore. The decision came following a year-long review of the regulatory framework for drones by the Singapore Ministry of Transport, CAAS and other government ministries and agencies.
- **UK: ABUSIVE BEHAVIOUR AND SEXUAL HARM BILL** The Holyrood Justice Committee supports the general principles of the Abusive Behavior and Sexual Harm Bill (“the Bill”). The Bill introduces a jail term of up to five years for the publishing of intimate images or videos without consent, a rule for the prosecution of Scots committing child sexual offences in England and Wales to be conducted in Scotland, and making it an offence for a person to disclose or threaten to disclose a photo or film showing or appearing to show a person in an intimate situation even if such material is yet to be disclosed to the public.
- **UK: GLEE LOSES TRADEMARK APPEAL** The English Court of Appeal has ruled that the producers of American television series, “Glee” are liable for infringing the trademark of London-based *Glee Club*, owned by umbrella organisation, *Comic Enterprises*, which had used the trademark for more than a decade before the series aired in 2009.
- **VENEZUELA: NATIONAL ASSEMBLY DECLARED VOID** The Supreme Court of Venezuela has ruled that all actions by the current National Assembly, including the actions that have been done or the acts that will be taken, are void until the suspended members are removed from office.

TRADE

THE TRANS-PACIFIC PARTNERSHIP

AGREEMENT... SOME HIGHLIGHTS The Trans-Pacific Partnership Agreement ("TPPA") is a multilateral free trade agreement which aims to further liberalise the economies of the Asia-Pacific region.

Although the TPPA has been widely and extensively discussed over the past few years, many are still in the dark regarding what it actually entails. In this article, we examine the general features as well as some highlights of the TPPA.

INTRODUCTION The Trans-Pacific Partnership Agreement ("TPPA") was finalised on 5 October 2015, after several years of negotiations. It contains 30 chapters, addressing both trade and trade-related issues.

There are twelve participating countries to the TPPA, namely, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam ("the TPP members").

The Malaysian Parliament approved the motion for Malaysia to participate in the TPPA, and the signing ceremony was held on 4 February 2016 in Auckland, New Zealand. The domestic ratification process in Malaysia involves 26 amendments to 17 laws which may be finalised by the end of 2016.

THE OBJECTIVES The objectives of the TPPA are to continue the trade and investment liberalisation efforts undertaken through the World Trade Organisation and Free Trade Agreement initiatives of each TPP member country in the region, to develop transparent and predictable rules and disciplines with adequate recourse in the event of any dispute, as well as to develop a more transparent and inclusive regulatory environment which allows all relevant parties to engage in a meaningful and constructive manner on matters of significant economic impact.

THE FEATURES The TPPA has five defining features, namely, (a) comprehensive market access; (b) regional approach to commitments;

(c) addressing new trade challenges; (d) trade-inclusive; and (e) creation of a platform for regional integration.

THE HIGHLIGHTS The following are several highlights of the TPPA:

Labour Laws The signatory to the TPPA will adhere to the rights stated in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998), which is reflected in article 19.3.1 of the TPPA. This commitment envisages the incorporation and recognition of freedom of association and right to collective bargaining, abolition of all forms of forced labour including child labour, and the elimination of employment discrimination.

Several labour-related laws will have to be amended to conform to such commitment, and these include the Trade Unions Act 1959, Industrial Relations Act 1967, Employment Act 1955, Sabah Labour Ordinance (Chapter 67), Sarawak Labour Ordinance (Chapter 76), Private Employment Agencies Act 1981, Workers' Minimum Standards of Housing and Amenities Act 1990, and the Children and Young Persons (Employment) Act 1966.

A notable change in the TPPA is the allowance of the formation of trade unions for workers that may lead to an increase in industrial action due to the wider scope of union memberships and the removal of current restrictions imposed on collective bargaining. Limitation on the rights to strike is also only imposed on nine essential services under the TPPA compared to the 18 activities currently listed in the First Schedule to the Industrial Relations Act 1967. An issue however is the extension of labour rights to foreign workers and their right to hold office in a union.

ISDS The Investor-State Dispute Settlement ("ISDS") allows investors to pursue international arbitration against a host country for violating its obligations upon a breach of investor protections where an amicable settlement cannot be reached. The fear of the ISDS is that it may empower foreign corporations to ignore and override Malaysia's judicial, legal, and parliamentary systems, its Federal Constitution, and historical federal-state division of powers that Malaysia has developed over the decades.


However, the ISDS is not foreign to Malaysia as such provisions may be found in various Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) signed by Malaysia. In fact, there are carve-outs on government policies relating to public health, safety and environmental pollution in relation to ISDS under the TPPA. The Central Bank of Malaysia also retains complete autonomy in dealings with the Malaysian ringgit, foreign exchange reserves and capital controls.

Intellectual Property The Intellectual Property Chapter of the TPPA provides protection to patents, trademarks, copyrights, industrial designs, geographical indications and other forms of intellectual property based on international agreement practices.

In contrast to Malaysian laws which provide for copyright protection for up to 50 years after the author's death, the TPPA provides a longer copyright protection term which is the life of the author and 70 years after the author's death.

Data exclusivity One of the issues raised under the TPPA is the duration of data and marketing exclusivity. Presently, data exclusivity granted in Malaysia for new drug products containing a new chemical entity is five years, whilst the period of data exclusivity for a registered drug product is three years. However, this is given only to data concerning a second indication of a registered drug product. There is no exclusivity period granted to other types of drugs or drugs-related products.

Under the TPPA, exclusivity is extended to both data and marketing exclusivity. The TPPA has also identified various classes of products and each class is granted different protection periods. For new pharmaceutical products, the period of data and marketing exclusivity is at least five years. For new biologics, the data exclusivity period shall be at least eight years while the marketing exclusivity shall be a minimum of five years. The provisions on data and marketing exclusivity may affect the availability of generic drugs as well as marketing costs which may compromise the interest and benefit of the consumers.

CONCLUSION While the TPPA remains controversial in the eyes of many who claim that the agenda is to promote only the United States whilst disenfranchising China, others swear that it will benefit even the developing countries. Only time will tell, one way or another, as the TPPA was signed only on 4 February 2016. 

BANKING & FINANCE

FINANCIAL OMBUDSMAN SCHEME The Financial Ombudsman Service is not novel in the shores of Australia, Ireland, United Kingdom and Singapore. The Central Bank of Malaysia or *Bank Negara Malaysia* (BNM), on 29 October 2015, announced that the very first Financial Ombudsman Scheme will kick start in Malaysia in 2016.

In this article, we examine the structure and workings of a Financial Ombudsman Scheme approved by BNM.

THE BACKGROUND The Financial Ombudsman Scheme ("the Scheme") was proposed by BNM as part of its efforts to enhance dispute resolution arrangements for financial consumers. The Scheme is basically an independent and alternate avenue for the handling of dispute resolution between financial consumers and financial service providers ("FSPs") in respect of financial services or products. The Scheme is approved by BNM under the Financial Services Act 2013 as well as the Islamic Financial Services Act 2013 ("the Acts"). The Acts, for the purposes of ensuring effective and fair handling of complaints and dispute resolution, allows regulations to be made on FSPs including the requirement of membership and its terms. The Regulations¹ governing matters on the operation of the Scheme came into force on 14 September 2015.

THE STRUCTURE The Scheme, operated by a corporate body ("the Operator"), is funded by financial institutions who are members of the Scheme. The Scheme will be governed by a Board of Directors ("the Board") consisting of between seven and 11 individuals, the majority of whom comprise of independent directors who are not in active employment or service, and who have no significant interest in any member of the FSPs. The Chairman of the Board shall also be an independent director.

¹ Financial Services (Financial Ombudsman Scheme) Regulations 2015; Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015.

The Regulations require the Operator to report to BNM, within three months after the end of each financial year, on the activities and matters relating to the operation of the Scheme. The Operator is also under a mandate to notify BNM of any non-compliance by a member FSP of the terms of membership and statutory duties.

THE COMPLAINTS The Scheme may consider only disputes referred to it from eligible complainants, comprising financial consumers, who have used any financial product or service for personal, domestic, household or business purposes, as well as relevant third parties.

THE DISPUTES The Scheme may consider only disputes against member FSPs for direct financial loss, and provided they are within the prescribed monetary limit and was not expressly excluded from the financial contract.

The prescribed monetary limits are as follows:

- (a) MYR250,000 for disputes on banking and insurance or *takaful* products or services;
- (b) MYR10,000 for disputes on motor third party property damage; and
- (c) MYR25,000 for disputes on unauthorised transactions involving payment instruments and payment channel, or cheque.

Disputes above the monetary limit of the Scheme may still be considered, subject to the mutual agreement of both the complainant and member FSP. Disputes may still be considered, regardless of whether the FSP was a member at the time of the act or omission. The same dispute shall not be lodged with the Tribunal for Consumer Claims.

THE RESOLUTION PROCESS An eligible complainant must first refer his complaint for resolution through the concerned member FSP's own existing complaints channel before directing it to the Scheme.

If the above fails, upon confirmation of an eligible dispute, a case management aimed at facilitating the resolution of disputes through negotiation, mediation or a conciliation process will be held.


If the disputing parties fail to reach an amicable settlement, a recommendation shall be made by the case manager. In the event that such recommendation is rejected by any of the disputing parties, the dispute will proceed to be reviewed by an ombudsman, who will then issue a final decision.

The disputing parties are free to pursue the matter through the courts if an amicable settlement cannot be achieved via the adjudication.

THE AWARD The ombudsman may make or grant monetary awards against the member FSP, direct the member FSP to take certain steps for the resolution of dispute, order the reimbursement of costs and order interest payable under the monetary award. Member FSPs are under a statutory obligation to comply with the awards granted, failing which, action may be taken by BNM for non-compliance.

CONFIDENTIALITY Members of the Board, and officers of the Operator, including the ombudsman, who have access to any document or information relating to any of the dispute referred under the Scheme, shall have a duty of confidentiality, unless consent has been obtained by the eligible complainant or member FSP, or if required or permitted under the law.

INDEPENDENT REVIEW A review on the performance of the Scheme shall be conducted by an independent party three years from the commencement date of the Scheme's operation, and every five years thereafter, or at any other interval as directed by BNM.

CONCLUSION The Scheme is indeed a significant step on the part of BNM in its efforts to protect financial consumers. It is hoped that the Scheme would boost the confidence of financial consumers towards the financial products and services offered by both the conventional and Islamic financial services industry in Malaysia. 

EVIDENCE – Privileged document – Investigative Due Diligence Report – Application for discovery, inspection and production of the Report – Whether the Report was privileged – Evidence Act 1950, sections 126 and 129

YEOH ENG KONG V GOH BAK MING & ORS [2015] 7 CLJ 138, High Court

FACTS The plaintiff initiated a civil action against the defendants for conspiracy to injure him. An application for discovery, inspection and production of an Investigative Due Diligence Report ("the Report") against the 15th defendant ("the defendant") was filed by the plaintiff, who was the former director of the defendant. The Report was prepared by a firm of Advocates and Solicitors appointed by the defendant. When the plaintiff asked for a copy of the Report, the defendant requested for the plaintiff to furnish an indemnity. Nevertheless, the plaintiff as a director was allowed to view the report and took his own notes without giving the required indemnity. The current application was made on the basis that the Report was relevant to the issues at the civil action and it also strengthened the plaintiff's case substantially. The defendant argued that the Report was a privileged document under the Evidence Act ("the Act").

ISSUES The issues to be considered were (i) whether the Report was a privileged document; and (ii) whether the acts of the defendant amounted to a waiver of the privilege.

HELD It was held, amongst others, that part of the report which contained a legal opinion was subject to legal profession privilege under section 129 of the Act, as it was a confidential solicitor-client communication produced by a firm of Advocates and Solicitors instructed by the defendant. Disclosure of a privileged document by a client was protected under section 129 of the Act and that the disclosure may be made only if express consent was given by the client before trial, or when the client volunteered it as evidence in a court of law as a witness. Permission to view the document and request to furnish indemnity by the defendant did not constitute an express consent of disclosure.

SECURITIES LAW – Securities Commission – Statements recorded by investigating officers of Securities Commission – Whether such statements privileged – Whether public interest would suffer by the disclosure of statements – Securities Commission Act 1993, section 134

SURUHANJAYA SEKURITI V DATUK ISHAK BIN ISMAIL [2016] 1 MLJ 733, Federal Court

FACTS The appellant was a statutory body established under the Securities Commission Act 1993 ("the SCA") while the respondent was a shareholder of a company ("the Company"). The appellant claimed that the respondent had breached securities laws as he had made false statements relating to the Company's operation and profitability. The appellant commenced an investigation on the respondent which involved interviewing 38 individuals and recording their statements pursuant to section 134 of the SCA² ("the Statements"). The appellant then sued the respondent at the High Court and a dispute arose when the respondent's discovery application was allowed. The High Court allowed the disclosure of various documents including the Statements and the investigation papers with other supporting documents. The Court of Appeal had affirmed the decision of the High Court upon appeal, hence, the present appeal.

ISSUE The issue was whether the privilege under section 124 of the Evidence Act 1950 ("EA")³ applies to the statements recorded pursuant to section 134 of the SCA.

HELD In allowing the appeal, it was held that section 134 of the SCA must be read subject to the rules of privilege and prohibition on the grounds of public policy in both civil and criminal proceedings. In this case, the Statements were subject to section 124 of EA. As the Statements were made to the investigation officer in the course of his official duties in official confidence, and that the investigation officer had deposed that the disclosure of the Statements would prejudice the appellant's ability to carry out future investigations, the disclosure was thus disallowed.

² Power to call for examination.

³ Official communications.

LAND LAW – Sale and Purchase Agreement – Loan agreement *cum* assignment – Subsequent transfer registered – Whether the title of a *bona fide* registered owner without notice may be defeated by a non-registered equitable interest of an assignee or lender – National Land Code 1965, section 340

**SAMUEL NAIK SIANG TING V PUBLIC BANK
BHD** [2015] 6 MLJ 1, Federal Court

FACTS Sometime in 2002, the proprietor of the land and the developer executed a sale and purchase agreement in favour of a purchaser ("the earlier purchaser"), who had borrowed a loan from the respondent to finance the purchase, through a loan agreement *cum* assignment. Although the title to that land was issued in 2003, it was not delivered to the respondent. Instead, sometime between March 2004 and January 2005, the proprietor of the land executed a sale and purchase agreement with the appellant regarding the same piece of land. The dispute began when the respondent discovered that the lot was sold and the title was registered in the appellant's name. Meanwhile, the respondent obtained a judgment against the earlier purchaser upon default in repayment. The High Court decided in favour of the respondent. The appellant's appeal to the Court of Appeal was dismissed. Hence, the current appeal.

ISSUE The issue was whether the title of a *bona fide* registered owner without notice under the National Land Code (NLC) could be defeated by a non-registered equitable interest of an assignee or lender under an earlier sale and purchase agreement and deed of assignment in respect of the same piece of land.

HELD In dismissing the appeal, the court held that a valid equitable interest of an assignee over the land which was not registered, under a prior sale and purchase agreement in respect of the same piece of land with another purchaser, takes precedence over the subsequent registered title of a purchaser, although he was a *bona fide* immediate purchaser without notice. The respondent was entitled to deal with the lot beneficially and absolutely by virtue of the deed of assignment. The subsequent transfer to the appellant was void, as the land proprietor became a bare trustee when the sale and purchase agreement was signed and the full purchase price was paid. ☺☺

COMPANY LAW – Offshore companies – Disclosure of information – Application for leave to disclose – Whether application for disclosure may be made – Labuan Companies Act 1990, section 149

**PORTCULLIS TRUSTNET (SINGAPORE) PTE
LTD & ORS V CARDIFF LTD & ANOR**
[2015] 6 CLJ 10, Court of Appeal

FACTS The first and second appellants were part of a group of companies founded by the third appellant. The first appellant was incorporated in Singapore while the second appellant was incorporated under the Labuan Companies Act 1990 ("the Act"). The third appellant was the director of both the first and second appellant. The first respondent was an offshore company incorporated in Labuan with the entire share capital registered in the name of the second appellant. The appellants were sued in the High Court of Singapore where an application for production and inspection of documents relating to the first respondent was filed against them. The appellants subsequently applied to the High Court of Sabah and Sarawak, under section 149(4)(a) and (6) of the Act, for an order allowing them to disclose information pertaining to the affairs of the second appellant and the first respondent in the pending suit at the High Court of Singapore. The application was refused, hence, the present appeal.

ISSUE The issue for consideration was whether leave to disclose information concerning affairs of both offshore companies, the second appellant and first respondent, may be granted under subsections 149(4)(a) and 149(6) of the Act.

HELD In dismissing the appeal, it was held that the word "court" in section 149 can only mean High Court of Malaya or the High Court of Sabah and Sarawak. Subsection 149(4)(a) cannot be relied on to obtain leave from the court for disclosure of confidential information in connection to the affairs of an offshore company. An application for such disclosure may only be made pursuant to subsection 149(6) to a High Court of Sabah and Sarawak or to a High Court of Malaya if proceedings were pending before the High Court in question, and where the production was necessary due to the relevancy of the documents in the proceedings. ☺☺

ACTS

MALAYSIAN AVIATION COMMISSION ACT 2015

National Language

Akta Suruhanjaya Penerbangan Malaysia 2015

No
771

Date of coming into operation
1 March 2016

Notes

This is an Act to establish the Malaysian Aviation Commission to regulate economic matters relating to the civil aviation industry and to provide for its functions, powers and related matters.

AMENDMENT ACTS

CONSUMER PROTECTION (AMENDMENT) ACT 2015

National Language

Akta Perlindungan Pengguna (Pindaan) 2015

No
A1498

Date of coming into operation
1 March 2016

Notes

The highlight of the amending Act is the insertion of a new paragraph (ca) to section 99 of the Consumer Protection Act 1999, which provides that the Consumer Protection Tribunal does not have jurisdiction over claims relating to aviation service as defined in the Malaysian Aviation Commission Act 2015.

DEVELOPMENT FINANCIAL INSTITUTIONS (AMENDMENT) ACT 2015

National Language

Akta Institusi Kewangan Pembangunan (Pindaan) 2015

No
A1502

Date of coming into operation
31 January 2016

Notes

The highlight of the amending Act includes the introduction of sections 72A and 86A. Section 72A provides that secrecy does not apply to the documents and information relating to the customer's accounts, which are disclosed by an auditor to the Audit Oversight Board under the Securities Commission Act 1993 and its officers or authorised persons. New section 86A imposes a duty of non-disclosure on information or document produced by the Central Bank of Malaysia or *Bank Negara Malaysia* ("BNM") resulting from the administration of the Development Financial Institutions Act 2002 ("the Act") and other laws administered by BNM, on the prescribed institutions and its director, officer, auditor as well as a member of the Shariah Committee, unless such disclosure is permitted by BNM. The other changes include introduction of a new Part IIIA to deal with Islamic Financial Business, and a new Part IVA on standards of business conduct and consumer protection. BNM is allowed to take action against any person who has contravened provisions of the Act by virtue of new Part VIIIA and Part VIIIB.

CIVIL AVIATION (AMENDMENT) ACT 2015

National Language

Akta Penerbangan Awam (Pindaan) 2015

No
A1497

Date of coming into operation

1 March 2016

Notes

The highlight of the amending Act includes the substitution of section 5A and the introduction of Part VIII B. Section 5A allows the Minister to authorise the establishment, maintenance and operation of an aerodrome in Malaysia. Part VIII B, on the other hand, provides enforcement and investigation powers to the authorised officers of the Department of Civil Aviation.

QUANTITY SURVEYORS (AMENDMENT) ACT 2015

National Language

Akta Juruukur Bahan (Pindaan) 2015

No

A1481

Date of coming into operation

30 January 2016

Notes

The highlight of the amending Act includes the addition of Part III A providing for the establishment of a Disciplinary Committee and a Dispute Resolution Panel. Section 10A has been substituted which provides for the registration of a Quantity Surveying Technologist.

ELECTRICITY SUPPLY (AMENDMENT) ACT 2015

National Language

Akta Bekalan Elektrik (Pindaan) 2015

No

A1501

Date of coming into operation

1 January 2016

Notes

The highlight of the amending Act includes the introduction of new sections 23D and 26. Section 23D requires for the registration of a person providing service in relation to efficient use of electricity, while section 26 has been substituted with a new provision which empowers the Commission to fix tariffs and charges. New section 28B has been inserted in which a supply agreement must be entered between a licensee and a consumer for the supply of electricity in the approved form by the Commission. New Part VII A provides for the safety of installation and equipment and Part IX A provides for the establishment of a fund known as the "Electricity Industry Fund".

GUIDELINES/RULES/CIRCULARS/ DIRECTIVES AND PRACTICE NOTES ISSUED BETWEEN JANUARY 2016 AND MARCH 2016 BY BANK NEGARA MALAYSIA AND BURSA MALAYSIA

BANK NEGARA MALAYSIA (BNM)

- Concept Paper on Shareholder Suitability –
Date issued: 18 March 2016
- Manual Rujukan Institusi Kewangan Islam kepada Majlis Penasihat Syariah – *Date issued: 15 March 2016*
- Concept Paper on Corporate Governance –
Date issued: 11 March 2016
- Guidelines on Financial Reporting for Islamic Banking Institutions – *Date issued: 5 February 2016*
- Guidelines on Statutory Reserve Requirement –
Date issued: 26 January 2016
- Concept Paper on Hibah – *Date issued: 22 January 2016*
- Concept Paper on Qard – *Date issued: 21 January 2016*
- Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets) – *Effective date: 1 January 2016*

- Capital Adequacy Framework for Islamic Banks (Capital Components) – *Effective date: 1 January 2016*
- Capital Adequacy Framework (Capital Components) – *Effective date: 1 January 2016*
- Capital Adequacy Framework (Basel II - Risk-Weighted Assets) – *Effective date: 1 January 2016*

BURSA MALAYSIA

- Consolidated Rules of Bursa Malaysia Securities Berhad – *As at: 22 February 2016*
- Amendments to the Rules of Bursa Malaysia Securities Berhad and Directives in relation to the deletion of section 94 of the Capital Markets and Services Act 2007 – *As at: 22 February 2016*
- Directive on the List of Approved Securities – *Effective date: 22 January 2016*
- Consolidated Main Market Listing Requirements – *Date issued: 31 December 2015*
- Consolidated ACE Market Listing Requirements – *Date issued: 31 December 2015*
- Main Market Practice Note 31: Stapled Securities – *Date issued: 31 December 2015*

WORD OF THE BRIEF...

Ipsa facto:

It is a Latin phrase which means 'by the fact itself' or 'by that very fact'.

Examples of ipso facto in a sentence:

- *You cannot assume that a competent user of the English language is ipso facto qualified to teach English.*
- *A blind person, ipso facto, is not entitled to a driving license.*

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