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A BRIEF NOTE...

by Dato' Zulkifly Rafique

On managing millennials...

Many of us have discussed, debated and deliberated upon the generation known as the "Millennials". Broadly speaking, Millennials are those born from 1982 to 1995, also known as Gen-Y (Generation Y), who grew up in the age of internet, smart phones and social media, and who are identified as technologically adept.

With the evolution of legal services, law firms are now populated by Millennials, all of whom with different working styles and ethics. Thus, it is important for law firms to take certain measures in order to bridge that generational gap and manage the working force in the best possible way.

We, at **ZUL RAFIQUE & partners**, acknowledge that a law firm's best asset is talent. We, therefore, strive to adapt to the requirements of the driving workforce by introducing various training programmes on soft skills and legal skills. This we do by periodically promoting continuous professional developments, as well as creating work-life integration by organising games, sports events, and other leisure activities, through our ZRp Sports Club.

As said by Warren Bennis, "*Success in management requires learning as fast as the world is changing.*"

With that said, we hope you enjoy the BriefCase of this quarter, and a very *Happy Diwali* to all our readers.

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- *Guidelines/Rules/Circulars/Directives and Practice Notes issued between July and September 2017 by Bank Negara Malaysia, Bursa Malaysia, and Securities Commission Malaysia*

- **ADVOCATES ORDINANCE SABAH AMENDED** The Advocates Ordinance (Sabah) (Amendment) Act 2017, an Act amending the Advocates Ordinance Sabah, has come into force on 1 July 2017.
- **ANIMAL WELFARE ACT ENFORCED** The Animal Welfare Act 2015 ("the Act"), which aims to stop animal cruelty and promote responsible pet ownership, has been enforced on 1 July 2017. Besides the establishment of an Animal Welfare Board, the Act introduces heavier punishment for animal abusers, namely, a fine of between MYR20,000 and MYR100,000, or a maximum jail term of three years, or both.
- **COURT OF APPEAL RULING ON 'RIGHT' TO TRAVEL** The Court of Appeal in *Pua Kiam Wee v Ketua Pengarah Imigresen Malaysia & Anor* has unanimously held that the right of Malaysian citizens to travel overseas is a 'privilege' and not a 'right', as there is no express provision on such 'right' in the Federal Constitution.
- **LANDMARK RULING ON ISLAMIC FAMILY LAW** The Court of Appeal, in *A Child & 2 lagi v Jabatan Pendaftaran Negara & 2 lagi*, ruled that a Muslim child who is conceived out of wedlock may assume his or her father's name. The National Registration Department has filed an appeal against the ruling and will continue the current practice of registering the surname of a Muslim child who is born less than six months from the date of the parents' marriage, as "*binti/bin Abdullah*".
- **LEAP MARKET LISTING REQUIREMENTS ISSUED** Bursa Malaysia has issued the listing requirements for its third market, namely, the *Leading Entrepreneur Accelerator Platform* (LEAP) Market for small and medium enterprises (SMEs). Eligible SMEs will be allowed to list on the LEAP Market, except when it concerns chain listing. The listing requirements and amended rules came into force on 16 June 2017.
- **MAYBANK: FINTECH SANDBOX LAUNCHED** *Malayan Banking Berhad* (Maybank) has launched a regional collaborative financial technology (fintech) sandbox ("the Sandbox"). The Sandbox aims to promote the development of fintech in the region by providing an avenue for start-ups and innovators to develop and test new ideas.
- **PEDRA BRANCA DISPUTE** Malaysia has applied to the International Court of Justice to interpret two aspects of its judgment on 23 May 2008 over the sovereignty of *Pedra Branca* or *Pulau Batu Puteh*, *Middle Rocks*, and *South Ledge*.
- **SELF-EMPLOYMENT SOCIAL SECURITY ACT ENFORCED** Both the Self-Employment Social Security Act 2017 and the Self-Employment Social Security (Rates of Contribution for Taxi Driver) Regulations 2017 came into effect on 13 June 2017. Taxi drivers as well as e-hailing drivers are now required to contribute to the Self-Employment Social Security Scheme, administered by the Social Security Organisation (SOCSO).
- **SEXUAL OFFENCES AGAINST CHILDREN ACT 2017** The Sexual Offences against Children Act 2017 has come into force on 10 July 2017. A special court ("the Court") dedicated to sexual crimes against children has been established to hear cases concerning child pornography, child grooming, and child sexual assault. The Court is the first of its kind in Southeast Asia.
- **SHARIAH-COMPLIANT SECURITIES LIST UPDATED** The Securities Commission Malaysia (SC) has announced an updated list of Shariah-compliant securities approved by its Shariah Advisory Council. The updated list, which came into effect on 26 May 2017, includes 23 newly-classified Shariah-compliant securities and excludes 13 from the list issued in November 2016.
- **TOURISM TAX FROM 1 SEPTEMBER** The Tourism Tax Act 2017 ("the Act") will be fully enforced from 1 September 2017. Under the Act, foreign tourists boarding at accommodation premises, hotels, inns, and rest houses are required to pay tourism tax at a flat rate of MYR10 per room per night. Malaysians and permanent residents are exempted from paying tourism tax.
- **UNCONSTITUTIONAL: SECTION 62 OF THE MACC ACT** The Court of Appeal in *Lim Guan Eng & Ors v PP* held that section 62 of the Malaysian Anti-Corruption Commission Act 2009, which requires accused persons to disclose their defence statements to the prosecution before the trial commences, is *ultra vires* Articles 5(1) and 8(1) of the Federal Constitution.

AROUND THE WORLD... IN-BRIEF

- **CHINA: CYBER SECURITY LAW ENFORCED**

The controversial Cyber Security Law ("the Law") has come into force on 1 June 2017. The Law, among others, requires for personal information and important data collected and generated by critical information infrastructure operators in China to be stored domestically. Furthermore, the transfer of data and information overseas for business requirements is subjected to a security assessment by the authorities. International business groups have appealed against the implementation of the Law, claiming that it would lead to uncertainties and compliance risks.

- **COLOMBIA: THREE-MAN MARRIAGE RECOGNISED**

Since the legalisation of same-sex marriages by the Constitutional Court in April 2016, three men have successfully established a polyamorous family unit. This is the first legally recognised three-man marriage in the country.

- **EGYPT: NEW NGO LAW** The President has approved a widely criticised law ("the Law") governing Non-Governmental Organisations (NGO). An agency, namely the *National Authority for the Regulation of Foreign Non-Governmental Organisation* will be established to monitor whether the spending of all organisations receiving foreign funds or aids is in accordance with approved manners. Any non-compliance with the Law will warrant imprisonment for a period of one to five years and fine between EGP50,000 and EGP1 million.

- **EUROPEAN UNION: RULING ON PRIVATE MESSAGING AT WORK** The European Court of Human Rights (ECHR) in *Bărbulescu v Romania*, has ruled in favour of a Romanian employee who was dismissed by his employer over private messaging at work. This decision modifies the previous ruling which stated that "it was not unreasonable that an employer would want to verify that employees were completing their professional tasks during working hours".

- **GERMANY: "NO" TO ACCESSING**

FACEBOOK ACCOUNT An appeals court ("the Court") has ruled that the parents of a dead teenage girl have no right to access her Facebook account. The Court said that a contract existed between Facebook, a social media company, and the deceased girl, and that such contract had ended with her death. Her parents believe that she had committed suicide as a result of being bullied, and sought access to her chat history and posts.

- **HONG KONG: HKCCA JOINS ACC**

The *Hong Kong Corporate Counsel Association* (HKCCA) which represents over 800 in-house lawyers in Hong Kong has formed an alliance with the *Association of Corporate Council* (ACC), a global bar association promoting common professional and business interests of in-house counsel. HKCCA members will become members of the newly branded ACC Hong Kong from 1 September 2017.

- **INDIA: MOTHER TERESA'S UNIFORM TRADEMARKED**

The blue-bordered white saree of *Mother Teresa* has been trademarked by the Indian Trade Marks Registry to prevent unlawful commercial exploitation. The saree has been recognised as an intellectual property of the *Missionaries of Charity* on 4 September 2016.

- **JAPAN: ABDICATION BILL PASSED** A law ("the Law") which allows 83-year-old *Emperor Akihito* to abdicate has come into force on 9 June 2017. The Law states that on abdication, *Crown Prince Naruhito* will immediately succeed the Chrysanthemum Throne. Although a date for the abdication is yet to be fixed by the Government, it is stated that the abdication has to take place within three years from the effective date of the newly passed law.

- **SINGAPORE: ICC COURT SETS UP CASE MANAGEMENT OFFICE**

The *International Chamber of Commerce* (ICC) Court headquartered in Paris, will set up a case management office in Singapore. The new office, which is located at *Maxwell Chambers*, is expected to begin its operation in the first quarter of 2018. This is the fourth ICC Court overseas case management office after Hong Kong, New York, and Brazil.

- SINGAPORE: “MI PAD” V “IPAD”** *Xiaomi*, a Chinese smartphone maker, is allowed to register its trademark, “MI PAD” in Singapore for its computer tablet products, after a Singapore registrar overruled the objections from *Apple* to protect its “IPAD” mark. On the issue of similarity, the registrar found that the “MI PAD” mark is only marginally similar to the “IPAD” mark.
- SWITZERLAND: MAN FINED OVER “LIKING” FACEBOOK COMMENTS** A man who “liked” comments posted on *Facebook* accusing another person of being anti-Semitic and racist, has been fined by a Zurich district court (“the Court”) for defamation. The Court held that by liking the comments, the defendant “clearly endorsed the unseemly content and made it his own”.
- THAILAND: 10-YEAR VISA FOR RETIREES** The Government has introduced a new 10-year visa (“the Visa”) in mid-August. The Visa is aimed at foreign retirees above 50 years, who possess THB3 million in a Thai bank account or has proof of a monthly income from abroad of THB100,000. Other requirements imposed include medical insurance of at least USD10,000 coverage from a Thai insurer and a police clearance certificate from the home country of the retiree.
- UK: NEW LORD CHIEF JUSTICE APPOINTED** Lord Justice Burnett has been appointed to take over as Lord Chief Justice of England and Wales with effect from 2 October 2017, on the retirement of Lord Thomas of Cwmgiedd. At 59, Lord Justice Burnett is the youngest Lord Chief Justice since the appointment of Lord Parker of Waddington in 1958.
- US: LEXISNEXIS ACQUIRES RAVEL LAW** *LexisNexis*, a leading legal, regulatory, and business information provider, has acquired *Ravel Law*, a legal research, analytics, and visualisation platform. The combined technology of *Ravel Law* and *LexisNexis* will enable litigation practitioners to build judge-specific arguments for their respective cases.

ARBITRATION

KLRCA ARBITRATION RULES... AN UPDATE

In June 2017, the *Kuala Lumpur Regional Centre for Arbitration* (“KLRCA”) updated its rules, published as *KLRCA Revised Arbitration Rules 2017* (“the new Rules”). The new Rules have since been enforced on 1 June 2017, effectively replacing the *KLRCA Arbitration Rules 2013* (“the previous Rules”).

In this article, we attempt to highlight some key features of the new Rules.

BACKGROUND The KLRCA Arbitration Rules provides for the procedure of arbitration and they apply to all arbitration where an arbitration agreement (“the Agreement”) refers to the KLRCA Arbitration Rules. As the nature of arbitration is flexible and emphasises the will of the parties, there may be instances where the KLRCA Arbitration Rules do not apply or are applied only partially. For instance, when the Agreement states that parties agree to be bound by other arbitration rules or to exclude the application of certain procedures in the KLRCA Arbitration Rules.

JOINER OF PARTIES Previously, an arbitral tribunal may, at the request of any party, allow a third party, to be joined to the arbitral proceedings¹. The new Rules now contain more stringent provisions for joinder of parties. It allows any party to an arbitration to request for such third party to be joined to the arbitral proceedings, subject to the consent of all parties including the third party which is sought to be joined, or when the Agreement shows that such third party is *prima facie* bound by the Agreement². The request for joinder will be determined by the arbitral tribunal or by the Director of KLRCA (“the Director”) before the constitution of the arbitral tribunal.

CONSOLIDATION OF PROCEEDINGS

Previously, the condition for consolidation of arbitration proceedings is based on the agreement of the parties³. The new Rules now allow consolidation of arbitration proceedings to be done either upon the request of any party to the arbitration or when the Director deems the consolidation appropriate. Two or more arbitration

¹ Article 17(5) of the UNCITRAL Arbitral Rules.

² Rule 9 of the new Rules.

³ Rule 8 of the previous Rules.

proceedings may be consolidated into one arbitration by the Director if:

- (a) the parties have agreed to the consolidation;
- (b) all claims in the arbitration are made pursuant to the same Agreement; or
- (c) the claims are made pursuant to more than one Agreement, the dispute arises in connection with the same legal relationships, and the Director deems the Agreement compatible⁴.

These new procedures for joinder of parties and consolidation of proceedings are beneficial to all parties as they optimise time and cost efficiency of arbitration in KLRCA.

TECHNICAL REVIEW AND AWARDS A new process has been introduced in the new Rules, where the Director is empowered to carry out a technical review of the draft of the final award and is allowed to direct the attention of the arbitral tribunal to any perceived irregularity to the form of the award, and any error in relation to the calculation of interest and costs, without affecting the arbitral tribunal's liberty of decision⁵.

The new Rules, however, do not indicate if the arbitrators are compelled to amend the award according to the direction of the Director or if they may refuse to amend the award. It would be interesting to see the application of the new Rules, as parties to arbitration may be concerned with the extent of the Director's power pertaining to the making of the award.

POWERS OF THE ARBITRAL TRIBUNAL⁶ The new Rules have incorporated a list consisting of the powers of an arbitral tribunal in conducting the arbitration. The powers include the following, namely, (a) to limit or extend the time available for each party to present its case; (b) to conduct such enquiries as may appear to the arbitral tribunal to be necessary or expedient; (c) to conduct enquiries by inviting parties to make their respective submissions on such issues; (d) to order the parties to make any property items, goods or sites in their possession or control available for inspection;

(e) to order any party to produce or supply any document related to the case that is in its possession or control; and (f) to decide whether to apply any rule of evidence as to the admissibility, relevancy or weight of any material tendered.

SIMPLIFIED FEE SCHEDULE The fee schedules ("the Schedules") which have been revised in a unified table, now set out both the arbitrator's fees and the KLRCA administrative fees according to the amount in dispute. This amendment renders an easier reading of the Schedules. Further, it is noted that the arbitrators' fees and the KLRCA administrative fees for domestic arbitrations have been increased in the new Rules. Fees for international arbitrations, on the other hand, remain the same. This suggests that KLRCA seeks to attract more international arbitrations.

MODEL ARBITRATION CLAUSE AND SUBMISSION AGREEMENT A model arbitration clause as well as a model submission agreement clause, have been inserted in the new Rules, to serve as examples that parties may opt to include in their Agreement. The new model arbitration clause now recommends provisions for the parties to seek an amicable settlement of a dispute by mediation in accordance with the KLRCA Mediation Rules. This would promote the KLRCA as a center for alternative dispute resolution that is not confined to arbitration proceedings only.

CHALLENGE TO ARBITRATOR In the previous Rules, there was no requirement for the Director to provide reasons on his decision in deciding a challenge to the arbitrator⁷. Under the new Rules, the Director, in deciding a challenge to the arbitrator, must state his decision and reasons for his decision in writing⁸. This is encouraging as it excludes the possibility of the Director in removing an arbitrator arbitrarily.

CONCLUSION The changes made to the KLRCA Arbitration Rules are consistent with the current international practices. It is evident that the new Rules strive to position KLRCA as a competitive hub for international arbitration proceedings. ✨

⁴ Rule 10 of the new Rules.

⁵ Rule 12 of the new Rules.

⁶ Rule 6 of the new Rules.

⁷ Rule 5 of the previous Rules.

⁸ Rule 5 of the new Rules.

CORPORATE

MALAYSIAN CODE ON CORPORATE GOVERNANCE 2017

The Malaysian Code on Corporate Governance has been revised by the Securities Commission Malaysia ("the 2017 Code"). The revision, which came into force on 26 April 2017, supersedes the Malaysian Code on Corporate Governance 2012 ("the 2012 Code").

In this article, we update our readers on the changes of the Malaysian Code on Corporate Governance.

BACKGROUND The 2017 Code is founded on three key principles, namely (i) board leadership and effectiveness, (ii) effective audit and risk management, and (iii) integrity in corporate reporting and meaningful relationship with the stakeholders. The 2017 Code applies to public listed companies, nevertheless non-listed entities are encouraged to embrace the 2017 Code in their corporate governance practices.

APPROACH The 2017 Code adopts a new approach, "Comprehend, Apply and Report" (CARE), a shift from "comply or explain" to "apply or explain an alternative". Under CARE, in addition to providing an explanation for the departure, companies are required to provide an alternative and explain how the application of such practice will achieve the intended outcome, if the practices under the 2017 Code are not adhered to. It is insufficient for companies to merely explain their non-compliances. This will involve a mindset and culture change, moving away from a box ticking approach to corporate governance.

BOARD LEADERSHIP & EFFECTIVENESS

Composition Previously, the 2012 Code recommended that where the Chairman of the Board of Directors ("the Board") is not an independent director, the Board must comprise a majority of independent directors. The 2017 Code now, as a general practice, expects at least half of the members of the Board to be independent directors, irrespective of whether the Chairman is an independent director. For Large Companies⁹, the Board must comprise a majority of independent directors.

⁹ Large companies are (i) companies on the FTSE Bursa Malaysia Top 100 Index; or (ii) companies with market capitalisation of MYR2 billion and above, at the start of the companies' financial year.

Tenure of independent director The 2012 Code recommended that the tenure of an independent director shall not exceed a cumulative term of 9 years, where such director may continue to serve on the Board upon completion of the 9 years, subject to re-designation as a non-independent director. Similarly, the 2017 Code expects that an independent director should not serve more than 9 years cumulatively, unless with the shareholders' approval annually. With respect to retaining an independent director who has served for more than 12 years cumulatively, the annual shareholders' approval through a two-tier voting process is needed.

However, the 2017 Code stated that Large Companies are not encouraged to retain an independent director for more than 12 years cumulatively. The 2017 Code also encourages the Board to enact a policy limiting the tenure of its independent director to 9 years.

Diversity The Board of Large Companies is expected to consist of at least 30 per cent female directors.

Disclosure of remuneration Both the 2012 and 2017 Codes recommend companies to adopt formal and transparent policies and procedures ("the Policies") on directors' remuneration. In respect of the disclosure requirements, the 2012 Code merely required the Policies to be disclosed in its annual report, whereas the 2017 Code requires the Policies to be disclosed on the company's website. In addition, the 2017 Code requires a detailed disclosure on a named basis for remuneration of individual directors¹⁰. The top five senior management are also subject to similar disclosure requirement for their remuneration components in bands of MYR50,000¹¹.

The rationale is to allow shareholders (i) to make an informed decision when voting on the approval of directors' remuneration and (ii) to consider appropriate remuneration package that commensurate with the responsibilities of the directors. This is also in line with section 230 of the Companies Act 2016 whereby shareholders' approval is required for all fees and benefits payable to directors of a public company.

¹⁰ Breakdown of remuneration components include fees, salary, bonus, benefits in-kind and other emoluments.

¹¹ The breakdown of the remuneration components include salary, bonus, benefits in-kind and other emoluments in the band of MYR50,000.

EFFECTIVE AUDIT & RISK MANAGEMENT

Audit Committee The 2017 Code expects that the Chairman of the Board shall not be the Chairman of the Audit Committee in order to preserve objectivity of the Audit Committee. The Board is encouraged to appoint independent directors only to the Audit Committee.

The Audit Committee is also expected to incorporate a policy requiring a former key audit partner to observe at least two years cooling-off period, before being appointed as a member of the Audit Committee. The cooling-off period is essential in safeguarding the impartiality and independence of the audit.

Risk Management Committee The 2012 Code recommended that the Board should establish a sound risk management framework and internal controls system. The 2017 Code, while retaining such practices, encourages the Board to establish a Risk Management Committee comprising a majority of independent directors to oversee the company's risk management framework and policies.

CORPORATE REPORTING & RELATIONSHIP WITH STAKEHOLDERS

Integrated reporting Large Companies are encouraged to adopt an integrated reporting, which is concise communication containing information in relation to the strategy, performance, governance, and prospects of a company, to enhance the quality of information to investors and promote greater transparency and accountability. Integrated reporting requires integrated thinking of the relationship between its various operating and functional units, thus breaking down internal silos and reducing duplication.

General meeting Notice of an annual general meeting is to be circulated to the shareholders at least 28 days prior to the meeting. All directors have to attend the general meeting and the Chairman of each Board Committees has to provide meaningful responses to questions raised during the meeting. Utilisation of technology to facilitate the voting exercise and remote shareholders' participation is necessary, where the companies have a large number of shareholders or when the venue of the meeting is located at remote locations. ☁️

CORPORATE

TAKING THE LEAP! A new market, known as the *Leading Entrepreneur Accelerator Platform* (LEAP) Market, has been introduced in Malaysia. The LEAP Market is the third market in addition to the existing Main and ACE Markets. It offers lower entry requirements for the small and medium-sized enterprises (SMEs) in Malaysia.

In this article, we highlight the salient features of the LEAP Market Listing Requirements.

INTRODUCTION Currently, the financing sources for approximately 19,000 SMEs are made up of 96 per cent of the banking sector and only 4 per cent of the financial market. The introduction of the LEAP Market, therefore, serves as a new fundraising avenue for SMEs. LEAP Market is a qualified market that is designed for Sophisticated Investors¹². The LEAP Market Listing Requirements ("the LEAP LR"), issued by Bursa Malaysia Securities Berhad ("Exchange"), came into effect on 16 June 2017.

ADVISERS The LEAP Market is an adviser driven framework. Qualified individuals may apply to the Exchange to be an adviser. An adviser is required to comply with the requirements and obligations stipulated under the LEAP LR at all times. The Exchange may authorise an adviser to act as either an Approved Adviser or a Continuing Adviser. An Approved Adviser may undertake work concerning both initial listing and post-listing activities, while a Continuing Adviser may undertake post-listing activities only.

ADMISSION A corporation applying to admit to the LEAP Market ("the Applicant") must be a public company incorporated in Malaysia with an identifiable core business. However, the Applicant is deemed unsuitable if it is (i) a subsidiary or holding company of a corporation currently listed on the Main or ACE Markets; (ii) an investment holding corporation with no immediate or prospective business operations within its group; or (iii) a business incubator, including a technology incubator that may apply for admission to the Main Market only. The Applicant must ensure that at least 10 per cent of the total number of ordinary shares for which listing is sought are in the hands of public shareholders at admission.

¹² Part 1 of Schedule 6 or Part 1 of Schedule 7 of the Capital Market and Services Act 2007.

Directors of the Applicant are also required to furnish an undertaking to comply with the LEAP LR to the Exchange. Although the approval of the Securities Commission Malaysia ("SC") is no longer required, the Applicant is still required to deposit the information memorandum with the SC. An admission application to LEAP Market has to be done through an Approved Adviser, who must continue to act as the Applicant's Adviser for at least 1 full financial year, following the admission.

METHOD OF OFFERINGS The Applicant may issue and list its ordinary shares, preference shares, and convertible shares on the LEAP Market, subject to the requirements of the LEAP LR. The Applicant may issue new securities by excluded issue through public offer, placement, book building, or a combination of any of these methods. The Applicant may also list its existing securities by way of introduction.

TRANSACTIONS The LEAP LR states that any transaction involving percentage ratios of 10 per cent or more must be announced by the listed corporation to the Exchange, unless the consideration value is less than MYR250,000. Similar announcement is also required to be made to the Exchange for any transaction involving percentage ratios of 25 per cent or more. In addition, the listed corporation must issue a circular to its shareholders and convene a general meeting to obtain the shareholders' approval for such transaction.

For related party transactions involving percentage ratios of 5 per cent or more, the listed corporation is required to inform the Exchange, unless the consideration value is below MYR250,000. However, when the percentage ratios exceed 10 per cent, the listed corporation has to issue a circular to its shareholders and convene a general meeting to obtain the shareholders' approval.

Announcement to the Exchange is also necessary when a transaction would result in a significant change in the business direction or policy of the listed corporation.

CONTINUING LISTING OBLIGATIONS A listed corporation must engage a Continuing Adviser in accordance with the LEAP LR. If such requirement is not acceded to, the Exchange will suspend the trading in the securities of a listed corporation and may delist the listed corporation.

A listed corporation must also disclose to the public, any material information that may affect (i) the price, value or market activity of any of its securities, or (ii) the decision of a securities holder or investor in determining his choice of action. These material information include information which (i) concerns the listed corporation's assets and liabilities, business, financial condition or prospects, (ii) relates to dealings with employees, suppliers, customers and others; or (iii) relates to any event affecting the present or potential dilution of the rights or interests of the listed corporation's securities.

Besides that, a listed corporation must announce its semi-annual financial statements, annual audited financial statements, together with other necessary information, within the stipulated period. Any non-compliance may render the listed corporation to be delisted.

"It is designed to address the funding gap for SMEs and make it easier for them to take their businesses to the next level through raising funds in the capital market. It also provides investors with a new investable asset class. The availability of such a platform would further aid the development of SMEs and support broader economic activities." – Datuk Seri Tajuddin Atan (Bursa Malaysia Bhd CEO)

CONCLUSION The World Bank observed that SMEs could energise and propel the Malaysian economy to new heights. The LEAP Market has enabled the SMEs to have greater access to the capital market. Some key players noted that the LEAP Market serves as an intermediary market where a corporation can be provided with all the necessary capital access before a corporation can be listed in the Main Market and ACE Market.

商法

LEAP 市场简介 近日，马来西亚交易所（后称“大马交易所”）推出了一个名为“领先企业家增速平台”的市场，即 Leading Entrepreneur Accelerator Platform (LEAP) Market（后称“LEAP市场”）。继主要市场¹³和创业市场¹⁴后，LEAP市场将会是马来西亚第三市场，并为国内的中小型企业提供较为宽松的上市条件。

我们将在这篇文章介绍 LEAP 市场上市条规（后称“LEAP条规”）的要点。

序言 现今，国内将近一万九千家中小型企业的资金来源，96巴仙的资金来自银行，而剩余的4巴仙则来自资本市场。因此，LEAP市场的推出将为中小型企业提供一个全新的融资管道。虽然如此，LEAP市场仅开放予资深投资者¹⁵，是一个非全面公开的交易市场。大马交易所发出的LEAP条规于2017年6月16日生效。

顾问 在LEAP市场中，顾问在整体架构上扮演着主导性的角色。符合资格的人士可向大马交易所申请成为顾问¹⁶。LEAP条规阐明，顾问在每时每刻都得遵守LEAP条规所拟定的要求以及责任。大马交易所可授权予一名顾问为核准顾问¹⁷或持续顾问¹⁸。核准顾问可承办有关初步上市和企业上市后的事务，而持续顾问则只能承办企业上市后的事务。

上市申请 凡有意在LEAP市场申请上市的企业（后称“申请者”）必须是在马来西亚注册成立的公众公司¹⁹，并且该申请者须有明朗的核心业务。以下申请者将不适于LEAP市场上市：（一）目前在主要市场或创业市场上市企业的子公司或控股公司；（二）在其公司集团里无即时或潜在业务的投资控股公司；（三）只能在主要市场上市的企业孵化器，包括科技企业孵化器。在申请上市时，申请者得确保有关企业的公众股东持有至少十巴仙的普通股。

申请者的董事们也得呈交一份承诺遵守LEAP条规的担保书予大马交易所。虽然大马证券委员会²⁰（后称“证委会”）的批准已被豁免，然而申请者还须呈交一份资讯备忘录予证委会。此外，LEAP市场的上市申请必须由一名核准顾问办理。在申请者上市后，该核准顾问须继续担任其顾问，为期至少一年。

招股方式 申请者能依据LEAP条规将其普通股、优先股及可转换债券在LEAP市场发行和挂牌。申请者可通过特许发行的模式²¹进行公开发售、配售、询价圈购或任何这些方法的组合来发行新证券。申请者也能透过介绍的方式将其现有的证券挂牌。

交易 LEAP条规阐明上市企业必须向大马交易所公布任何涉及百分比率²²十巴仙或以上的交易，除非该交易的总值低于马币25万。当某个交易涉及百分比率25巴仙或以上时，该上市企业除了得向大马交易所公布该交易的事宜，也得发通知单²³予股东们并召开股东大会以获得股东们对该交易的批准。

当关联人士交易²⁴涉及百分比率五巴仙或以上时，上市企业得向大马交易所公布相关交易的事宜，除非该交易总值低于马币25万。但是，当关联人士交易涉及百分比率超过十巴仙时，该上市企业必须要发通知单予股东们并召开股东大会以获得股东们对该交易的批准。

此外，当某个交易将对该上市企业的业务方针或政策带来重大改变时，该上市企业得向大马交易所公布有关交易的事宜。

持续上市责任 上市企业得依据LEAP条规的要求聘任一名持续顾问。若违规，大马交易所能暂停该上市企业证券的交易以及将该上市企业除牌。

LEAP条规也列明了持续披露²⁵的要求。上市企业必须向大众透露重要资讯，当中包括：（一）任何影响证券价格、价值或其市场交易活动的资讯或（二）任何影响证券持有人或投资者决定的资讯。这些重要资讯将涵盖以下事宜：（一）上市企业的资产、债务、业务、财务表现和前景；（二）员工、供应商、顾客及他人的交易；（三）任何影响现有或潜在摊薄上市企业的股权或利益。除此之外，上市企业也必须在期限内公布其半年度财务报表、年度经审计财务报表及其它必要的信息。若违反规定，该上市企业将被除牌。

总结 世界银行表示中小型企业能帮助马来西亚的经济再创新高，而LEAP市场为中小型企业提供了进入资本市场的途径。数位关键的市场人物也认为LEAP市场能给予中小型企业所需的资本，为企业往后跃升主要市场和创业市场设下基础。

¹³ Main Market.

¹⁴ ACE Market.

¹⁵ 2007年资本市场与服务法令第一部分第6和7附表。

¹⁶ 请参阅LEAP条规第4章之B部分。

¹⁷ Approved adviser.

¹⁸ Continuing adviser.

¹⁹ Public company.

²⁰ Securities Commission Malaysia.

²¹ Excluded Issue.

²² Percentage ratios.

²³ Circular.

²⁴ Related party transaction.

²⁵ Continuing disclosure.

CONSTITUTIONAL LAW – Interpretation – Prime Minister – Minister – Public officer – Public office – Public services – Whether defendant public officer in public office – Interpretation Acts 1948 and 1967, sections 3 and 8(2) – Federal Constitution, Articles 132 and 160

**TUN DR MAHATHIR BIN MOHAMAD & ORS
V DATUK SERI MOHD NAJIB BIN TUN HJ
ABDUL RAZAK** [2017] 9 MLJ 1, High Court

FACTS The first plaintiff is the former Prime Minister of Malaysia while the second and third plaintiffs are former members of the United Malays National Organisation ("UMNO"), the main political party in the coalition, Barisan Nasional ("BN") forming the present government. The defendant is the current Prime Minister of Malaysia and the President of UMNO and Chairman of BN. The plaintiffs brought a claim against the defendant for the tort of misfeasance in public office and/or tort of breach of fiduciary duties in public office, for the alleged financial improprieties in a company wholly owned by the Government of Malaysia, 1Malaysia Development Berhad (1MDB). The defendant sought to strike out the suit.

ISSUE The main issue was whether the defendant is a public officer in public office.

HELD In striking out the suit, the Court held that in order to prove the tort of misfeasance in public office and breach of fiduciary duties in public office, the first ingredient that must be proven is that the defendant is a "public officer" in public office. Based on the definitions and references made to sections 3 and 8(2) of the Interpretations Act 1948 and 1967, a "public officer" refers to a person in the office of any public service, which extends to a Prime Minister. However, it was concluded that, since Articles 132(3)(a) and 160(2) of the Federal Constitution exclude a Prime Minister from public services, the defendant is held to not be a "public officer" and does not hold public office. ❄️

UNDANG-UNDANG PERLEMBAGAAN – Interpretasi – Perdana Menteri – Menteri – Pegawai awam – Pejabat awam – Perkhidmatan awam – Sama ada defendan adalah pegawai awam di pejabat awam – Akta Tafsiran 1948 dan 1967, seksyen-seksyen 3 dan 8(2) – Perlembagaan Persekutuan, Artikel-artikel 132 dan 160

**TUN DR MAHATHIR BIN MOHAMAD &
LAIN-LAIN LWN DATUK SERI MOHD NAJIB
BIN TUN HJ ABDUL RAZAK** [2017] 9 MLJ 1,
Mahkamah Tinggi

FAKTA-FAKTA Plaintiff pertama adalah bekas Perdana Menteri Malaysia sementara plaintiff-plaintiff kedua dan ketiga adalah bekas ahli Pertubuhan Kebangsaan Melayu Bersatu ("UMNO"), parti politik utama dalam pakatan Barisan Nasional ("BN") yang membentuk kerajaan semasa. Defendan adalah Perdana Menteri Malaysia semasa dan Presiden UMNO serta Pengerusi BN. Pihak plaintiff telah membuat tuntutan terhadap defendan untuk tort misfeasans di pejabat awam dan/atau tort pelanggaran tugas fidusiar di pejabat awam, untuk penyalahgunaan kewangan dalam syarikat milik penuh oleh Kerajaan Malaysia, 1Malaysia Development Berhad (1MDB). Defendan ingin membatalkan tindakan tersebut.

ISU Isu utama adalah sama ada defendan merupakan seorang pegawai awam di pejabat awam.


DIPUTUSKAN Dalam membatalkan tindakan tersebut, Mahkamah memutuskan bahawa untuk membuktikan tort misfeasans di pejabat awam dan pelanggaran tugas fidusiar di pejabat awam, unsur pertama yang mesti dibuktikan adalah bahawa defendan merupakan seorang "pegawai awam" di pejabat awam. Berdasarkan definisi-definisi dan rujukan-rujukan yang dibuat kepada seksyen-seksyen 3 dan 8(2) Akta Tafsiran 1948 dan 1967, seorang "pegawai awam" merujuk kepada seseorang dalam mana-mana jabatan perkhidmatan awam, dan ini termasuk Perdana Menteri. Walaubagaimanapun, telah disimpulkan bahawa oleh sebab Artikel-artikel 132(3)(a) dan 160(2) Perlembagaan Persekutuan mengecualikan Perdana Menteri dari perkhidmatan awam, defendan dikatakan bukannya seorang "pegawai awam" dan tidak memegang jawatan awam. ❄️

CONSTITUTIONAL LAW – Land acquisition – Award of compensation – Whether adequate – Determination by assessors – Whether judicial power usurped – Whether section 40D Land Acquisition Act *ultra vires* Article 121 Federal Constitution – Land Acquisition Act 1960, section 40D – Federal Constitution, Article 121

SEMENYIH JAYA SDN BHD V PENTADBIR TANAH DAERAH HULU LANGAT & ANOTHER CASE [2017] 3 MLJ 561, Federal Court

FACTS The appellant was the registered proprietor of a piece of land which was acquired for the construction of the Kajang-Seremban Highway, while the respondent was the Hulu Langat District Land Administrator ("Land Administrator"). The Land Administrator fixed the compensation at MYR20 million but the appellant objected, claiming it was inadequate. The matter was referred to the High Court which held that the appellant was entitled to receive compensation for severance and injurious affection in the sum of about MYR1.16 million. Other claims however were dismissed. An appeal to the Court of Appeal was dismissed. The appellant appealed to the Federal Court and argued that the power to award compensation in land reference proceedings is a judicial power that is vested in the judge only, while the respondent argued that the appointment of court appointed assessors was basically to ensure that compensation is made accurately, quickly and fairly to reflect the true value of the land.

ISSUE The main issue was whether section 40D of the Land Acquisition Act 1960 ("the Act") was *ultra vires* Article 121 of the Federal Constitution.


HELD In allowing the appeal and ordering the case to be remitted to the High Court for compensation, the Federal Court held that section 40D of the Act was *ultra vires* Article 121 of the Federal Constitution as it ignores the role of Judges as defenders of the Constitution and renders the constitutional guarantee of adequate compensation illusory since judges 'abdicate' their constitutional role, as the guarantee of adequate compensation was in the hands of two lay assessors. Hence, the power to award compensation in land reference proceedings is a judicial power that should rightly be exercised only by a judge. 

UNDANG-UNDANG PERLEMBAGAAN – Pengambilan tanah – Award pampasan – Sama ada mencukupi – Penentuan oleh pentaksir-pentaksir – Sama ada kuasa kehakiman dirampas – Sama ada seksyen 40D Akta Pengambilan Tanah *ultra vires* Artikel 121 Perlembagaan Persekutuan – Akta Pengambilan Tanah 1960, seksyen 40D – Perlembagaan Persekutuan, Artikel 121

SEMENYIH JAYA SDN BHD LWN PENTADBIR TANAH DAERAH HULU LANGAT & SATU LAGI KES [2017] 3 MLJ 561, Mahkamah Persekutuan

FAKTA-FAKTA Pihak perayu adalah pemilik berdaftar sebidang tanah yang telah diambil bagi pembinaan Lebuhraya Kajang-Seremban, sementara pihak responden adalah Pentadbir Tanah Daerah Hulu Langat ("Pentadbir Tanah"). Pentadbir Tanah telah menentukan jumlah pampasan sebanyak MYR20 juta tetapi pihak perayu membantah sambil mendakwa bahawa jumlah tersebut adalah tidak mencukupi. Perkara tersebut telah dirujuk ke Mahkamah Tinggi di mana ia memutuskan bahawa pihak perayu berhak menerima pampasan untuk pengasingan dan kesan mudarat tanah bernilai MYR1.16 juta. Walaubagaimanapun, tuntutan-tuntutan lain telah ditolak. Seterusnya, rayuan ke Mahkamah Rayuan juga ditolak. Pihak perayu merayu ke Mahkamah Persekutuan dan mempertikaikan bahawa kuasa untuk mengawardkan pampasan dalam prosiding rujukan tanah adalah kuasa kehakiman yang terletak pada hakim sahaja, manakala responden berhujah bahawa perlantikan pentaksir-pentaksir oleh mahkamah adalah untuk memastikan bahawa pampasan dikira dengan tepat, cepat dan adil untuk mencerminkan nilai tanah yang sebenar.

ISU Isu utama adalah sama ada seksyen 40D Akta Pengambilan Tanah 1960 ("Akta tersebut") adalah *ultra vires* Artikel 121 Perlembagaan Persekutuan.

DIPUTUSKAN Dalam membenarkan rayuan ini dan mengarahkan kes dirujuk balik ke Mahkamah Tinggi untuk menentukan pampasan, Mahkamah Persekutuan telah memutuskan bahawa seksyen 40D Akta tersebut adalah *ultra vires* Artikel 121 Perlembagaan Persekutuan sebab ia mengabaikan peranan hakim-hakim sebagai pembela Perlembagaan dan menjadikan jaminan perlembagaan untuk pampasan yang mencukupi suatu ilusi sahaja. Ini adalah kerana hakim telah mengabaikan peranan keperlembagaan mereka, sebab jaminan untuk pampasan yang mencukupi terletak pada dua orang pentaksir yang merupakan orang biasa. Oleh kerana itu, kuasa mengawardkan pampasan dalam prosiding rujukan tanah adalah suatu kuasa kehakiman yang patut dilaksanakan oleh seorang hakim sahaja. 

CIVIL PROCEDURE – Solicitor-client privilege – Confidential information – Whether there was breach of confidentiality – Whether legal profession privilege could form cause of action – Evidence Act 1950, section 126

YEOH TAI CHUAN & ANOR V TAN CHONG KEAN [2016] 4 MLJ 769, Court of Appeal

FACTS The appellants, as solicitors, assisted their client, the respondent, in preparing a trust deed that was required by the respondent in their dealings with a property development company. The development company subsequently brought an action against the appellants, in a separate suit at the Sessions Court. In that suit, the trust deed was exhibited by the appellants. The respondent commenced an action against the appellants for breach of confidentiality. The High Court ruled in favour of the respondent. Hence, this appeal.

ISSUE The issue was whether there was a breach of confidentiality pursuant to section 126 of the Evidence Act 1950.

HELD In allowing the appeal, the Court of Appeal held that there could not be a cause of action for breach of confidential information as the appellants and respondent were not parties to the trust deed. It was also held that section 126 of the Evidence Act 1950 does not entitle the respondent to anchor a cause of action. However, if a solicitor breached solicitor-client privileges without the consent of the clients, it can be a subject matter of complaint to the advocates' disciplinary board. ✂

Evidence Act: Section 126

(1) 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.

PROSEDUR SIVIL – Kerahsiaan di antara peguam dan anak guam – Maklumat sulit – Sama ada terdapat kemungkiran kerahsiaan – Sama ada hak keistimewaan profesion undang-undang boleh membentuk kausa tindakan – Akta Keterangan 1950, seksyen 126

YEOH TAI CHUAN & YANG LAIN LWN TAN CHONG KEAN [2016] 4 MLJ 769, Mahkamah Rayuan

FAKTA-FAKTA Pihak perayu, selaku peguamcara, telah membantu anak guam mereka, iaitu responden, untuk menyediakan suatu surat ikatan amanah yang diperlukan oleh responden dalam urusan dengan suatu syarikat pembangunan hartanah. Syarikat pembangunan tersebut kemudiannya telah mengambil tindakan terhadap pihak perayu dalam suatu prosiding yang berasingan di Mahkamah Sesyen. Dalam tindakan tersebut, surat ikatan amanah telah diekshibitkan oleh pihak perayu. Pihak responden memulakan tindakan terhadap pihak perayu untuk kemungkiran kerahsiaan. Keputusan Mahkamah Tinggi adalah memihak pihak responden. Maka, rayuan ini.

ISU Isu adalah sama ada terdapatnya kemungkiran kerahsiaan mengikut seksyen 126 Akta Keterangan 1950.

DIPUTUSKAN Dalam membenarkan rayuan ini, Mahkamah Rayuan telah memutuskan bahawa suatu kausa tindakan untuk kemungkiran maklumat sulit tidak wujud sebab pihak perayu dan responden bukannya pihak-pihak kepada surat ikatan amanah tersebut. Ianya juga diputuskan bahawa seksyen 126 Akta Keterangan 1950 tidak membenarkan responden memulakan suatu kausa tindakan. Walaubagaimanapun, jikalau seorang peguamcara telah memungkir kerahsiaan di antara peguamcara dan anak guam tanpa kebenaran anak guam, kemungkiran tersebut boleh dijadikan suatu dasar aduan kepada lembaga tatatertib peguam. ✂

ACTS

TOURISM TAX ACT 2017

National Language


Akta Cukai Pelancongan 2017

No
791

Date of coming into operation

1 August 2017 for **Parts I, II, IV, X, sections 8** and **9**;
1 September 2017 for **Parts V, VI, VII, VIII, IX, sections 6** and **7**

Notes

This is an Act to provide for the imposition and collection of tourism tax and for matters connected thereto. 

COURTS (MODES OF COMMENCEMENT OF CIVIL ACTIONS) ACT 2017


National Language

Akta Mahkamah (Kaedah-Kaedah Pemulaan Tindakan Sivil) 2017

No
790

Date of coming into operation
15 July 2017

Notes

This is an Act to provide for the treatment and standardisation of modes of commencement of civil actions, consequential revision, and reprint of relevant written laws and for related matters. 

SEXUAL OFFENCES AGAINST CHILDREN ACT 2017


National Language

Akta Kesalahan-Kesalahan Seksual terhadap Kanak-Kanak 2017

No
792

Date of coming into operation
10 July 2017

Notes

This is an Act to provide for certain sexual offences against children and the relevant punishment, and in relation to the administration of justice for children, and connected matters. 

ANIMAL WELFARE ACT 2015


National Language

Akta Kebajikan Haiwan 2015

No
772

Date of coming into operation
1 July 2017

Notes

This is an Act to provide for the establishment of the Animal Welfare Board, to set out the functions of the Board, to promote the welfare and responsible ownership of animals, and for related matters. 

SELF-EMPLOYMENT SOCIAL SECURITY ACT 2017


National Language

Akta Keselamatan Sosial Pekerjaan Sendiri 2017

No
789

Date of coming into operation
13 June 2017

Notes

This is an Act to provide for the social security for self-employed persons and for matters connected thereto. 

AMENDMENT ACT

ADVOCATES ORDINANCE (SABAH) (AMENDMENT) ACT 2017

National Language

Akta Ordinan Peguam Bela (Sabah) (Pindaan) 2017


No

A1528

Date of coming into operation

1 July 2017

Notes

The highlights of the Amendment Act include the introduction of new provisions pertaining to, amongst others, the admission of advocates, establishment of Sabah Law Society, and disciplinary proceedings against advocates. The Amendment Act has also introduced Part VII governing international partnerships, qualified foreign law firms, and registration of foreign lawyers. 

MEDICAL (AMENDMENT) ACT 2012

National Language

Akta Perubatan (Pindaan) 2012


No

A1443

Date of coming into operation

1 July 2017

Notes

The highlights of the Amendment Act include the establishment of Malaysian Medical Council ("the Council") and other incidental matters, pertaining to its composition, functions, powers, and tenure of the office bearers. The Amendment Act also provides for the registration of specialist and other regulation relating to medical practitioners and medical practice. 

SUBSIDIARY LEGISLATION

- PU(A) 228/2017: Tourism Tax Regulations 2017 – Effective Date: 1 August 2017
- PU(A) 204/2017: Moneylenders (Amendment of First Schedule) Order 2017 – Effective Date: 1 August 2017
- PU(A) 201/2017: National Land Code (Amendment of First Schedule) Order 2017 – Effective Date: 21 July 2017
- PU(A) 197/2017: Legal Profession (Disciplinary Proceedings) Rules 2017 – Effective Date: 14 July 2017
- PU(A) 191/2017: Competition (Block Exemption for Vessel Sharing Agreements and Voluntary Discussion Agreements in respect of Liner Shipping Services)(Amendment) Order 2017 – Effective Date: 7 July 2017
- PU(A) 188/2017: Medical Regulations 2017 – Effective Date: 1 July 2017, except paragraphs 28(2)(a) and (b) effective 1 January 2019
- PU(A) 173/2017: Goods and Services Tax (Provision of Information) Regulations 2017 – Effective Date: 1 July 2017
- PU(B) 305/2017: Electronic Land Administration System of Strata Titles – Effective Date: 19 June 2017
- PU(B) 304/2017: Electronic Land Administration System – Effective Date: 19 June 2017, except subparagraph 7(7) and paragraph 12 of Sixteenth Schedule
- PU(A) 170/2017: Self-Employment Social Security (Rates of Contribution for Taxi Driver) Regulations 2017 – Effective Date: 13 June 2017

**GUIDELINES / RULES / CIRCULARS /
DIRECTIVES AND PRACTICE NOTES ISSUED
BETWEEN
JULY AND SEPTEMBER 2017
BY BANK NEGARA MALAYSIA,
BURSA MALAYSIA AND
SECURITIES COMMISSION MALAYSIA**

BANK NEGARA MALAYSIA (BNM)

- BNM Policy Document on Direct Distribution Channels for Pure Protection Products – *Effective date: 1 July 2017*

BURSA MALAYSIA

- Consolidated Rules of Bursa Malaysia Derivatives Bhd – *Effective date: 23 August 2017*
- Consolidated Rules of Bursa Malaysia Derivatives Clearing Bhd – *Effective date: 23 August 2017*
- Consolidated Rules of Bursa Malaysia Bonds Sdn Bhd – *Effective date: 10 July 2017*
- Consolidated Rules of Bursa Malaysia Securities Bhd – *Effective date: 23 June 2017*
- Consolidated Listing Requirements of LEAP Market – *Effective date: 16 June 2017*
- Consolidated Rules of Bursa Malaysia Securities Clearing Sdn Bhd – *Effective date: 16 June 2017*
- Consolidated Rules of Bursa Malaysia Depository Sdn Bhd – *Effective date: 16 June 2017*

SECURITIES COMMISSION MALAYSIA

- SC Guidelines on Marketing and Distribution of Unit Trust Funds – *Effective date: 1 August 2017*
- SC Guidelines on Online Transactions and Activities in relation to Unit Trusts – *Effective date: 1 August 2017*
- SC Guidelines on Private Retirement Schemes – *Effective date: 1 August 2017*
- SC Guidelines on Licensing Handbook – *Effective date: 23 June 2017*
- SC Guidelines for Marketing Representative – *Effective date: 23 June 2017*

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