



Shearn Delamore & co.

Legal Updates

FEBRUARY 2021

Shearn Delamore & Co

7th Floor

Wisma Hamzah Kwong-Hing,

No 1, Leboh Ampang

50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

E: info@shearndelamore.com

W: www.shearndelamore.com

IN THIS ISSUE

Financial Services

BNM announces new funds for SMEs

Amendments to permitted disclosures of customer documents and information

Intellectual Property

The Patents (Waiver of Fee) Regulations 2020 Comes into Force

Tax and revenue

Income tax

Service tax

Follow us on:



www.shearndelamore.com



www.linkedin.com/company/94702

To subscribe to our legal updates, email us:



km@shearndelamore.com

Financial Services

BNM announces new funds for SMEs

On 5 February 2021, Bank Negara Malaysia ("BNM") announced:

- an additional RM2 billion for the Targeted Relief and Recovery Facility ("TRRF");
- the establishment of a RM200 million Disaster Relief Facility ("DRF") 2021.

TRRF

The TRRF was a facility announced in the Budget 2021, established to assist eligible SMEs in the services sector. With the additional RM2 billion injection, the total allocation of the TRRF increases to RM4 billion. The TRRF will be available until 31 December 2021 or until full utilisation, whichever is earlier.

Additionally, BNM has announced that SMEs that are recipients of the Special Relief Facility and PENJANA SME Financing are now eligible to apply for TRRF, subject to a total financing limit not exceeding RM500,000. This represents a shift from BNM's previous position when the fund initially launched, when recipients of the Special Relief Fund and PENJANA SME Financing were not eligible for the TRRF.

DRF 2021

The DRF 2021, with an allocation of RM200 million, is established to ease the financial burden and assist in the resumption of business operations of SMEs affected by the recent floods in districts identified by Agensi Pengurusan Bencana Negara as flood disaster areas.

DRF 2021 aims to assist SMEs cover the costs of repairs and replacements of damaged assets for business use. Available to Malaysian SMEs, including microenterprises, the maximum amount of financing is RM500,000 per SME and up to RM75,000 per micro enterprise. The tenure of the financing is up to five years and includes a moratorium period of six months on both principal and interest payments. The financing rate is up to 3.50% per annum, inclusive of guarantee fee.

The facility will be available until 31 July 2021 or until full utilisation, whichever is earlier.

The full announcement is available [here](#).

Amendments to permitted disclosures of customer documents and information

The list of permitted disclosures that a financial institution is permitted to make in relation to the affairs or account of its customers has been expanded by several amendments to the relevant legislation by:

1. [Financial Services \(Amendment of Schedule 11\) Order 2021](#);
2. [Islamic Financial Services \(Amendment of Schedule 11\) Order 2021](#); and
3. [Development Financial Institutions \(Amendment of Fourth Schedule\) Order 2021](#),

(collectively "Amendment Orders").

The Amendment Orders amend the relevant schedules in the following ways:

- Financial institutions are now permitted to disclose documents and information to all persons to whom that disclosure is required to be made under a *hiwalah order*. Previously this only covered disclosures to persons who have obtained a garnishee order;
- Financial institutions are now permitted to comply with a court order made by a court not lower than “a *Syariah Subordinate Court, a Syariah High Court, or a Syariah Appeal Court*” in addition to the Sessions Court;
- The scope of documents and information which is permitted to be disclosed to the Inland Revenue Board of Malaysia for the purposes of facilitating exchange of information pursuant to taxation arrangements or agreements under the **Income Tax Act 1967** has been expanded to include section 132B of the **Income Tax Act 1967** (information under any arrangement with the government of any foreign territory for mutual administrative assistance in tax matters, including simultaneous tax examinations, automatic exchange of information or tax administrations abroad);
- When a financial institution has reason to suspect that an offence under any written law has been, or is being or may be committed, the list of persons to whom customer documents or information may be disclosed to has been expanded to include any officer of (a) any financial institution or its association; (b) an Islamic financial institution as defined in section 143 of the **Islamic Financial Services Act 2013** or its association; or (c) a prescribed institution as defined in

subsection 3(1) of the **Development Financial Institutions Act 2002** or its association; who may receive the documents or information.

CONTACT US FOR FURTHER INFORMATION REGARDING FINANCIAL SERVICES MATTERS.

Intellectual Property

The Patents (Waiver of Fee) Regulations 2020 Comes into Force

On 1 January 2021, the Patents (Waiver of Fee) Regulations 2020 came into operation in Malaysia. The Government of Malaysia enacted these Regulations as part of efforts to ease the burden on owners of patents and/or Utility Innovations (“UI”) affected by the control and prevention measures prescribed, made and taken under the **Prevention and Control of Infectious Diseases Act 1988** (Act 342) intended to control or prevent the spread of the COVID-19 virus.

Under Section 35 of the **Patents Act 1983**, and the modifications to Section 35 in the Second Schedule of the Act applicable to UIs, a grace period of six months is available for payment of the annual renewal fee if the deadline for payment has been missed. During this grace period, the annual renewal fee can still be paid but a prescribed surcharge must also be paid. The surcharge is prescribed in item 18, Part II, Schedule 1 to the Patents Regulations 1986.

The above-mentioned new Regulations provide a waiver of the surcharge for late payment of annual renewal fees, for both patents and UI, subject to certain requirements being fulfilled.

Requirements to apply

The owner of a patent or a certificate for a UI may seek a waiver to the surcharge if the following applies:

- a) The term of the patent or certificate for a UI expires between 1 January 2021 and 30 June 2021; and
- b) an application for the waiver of the surcharge is made to the Patents Registrar and accompanied by the payment of the annual renewal fee; the application and payment of the annual renewal fee have to be made within the grace period of six months after the date of expiration for the annual renewal fee due for the given year during the duration of the patent/UI.

Prerequisites for patent/UI owners

An owner who is an individual would have to satisfy the Registrar that he is from the B40 group who receives Bantuan Sara Hidup or Bantuan Prihatin Nasional, or that he has lost his job and income, or that his income has been affected by the control and prevention measures that were implemented in the country.

If the owner of the patent/UI is a body corporate or unincorporated body, then the said entity would have to show evidence of obtaining approval for moratorium extension or a flexible repayment programme from a financial institution, and that as a result of the control and prevention measures, said body has cash flow problems or has trouble resolving its debts.

Clarity required

Where there is more than one owner of the patent/UI, only one owner needs to satisfy the conditions above. However, the Regulations do not state whether a refund is available to owners who are eligible for waiver of the surcharge but have already paid the surcharge.

CONTACT US FOR FURTHER INFORMATION REGARDING INTELLECTUAL PROPERTY MATTERS.

Tax and revenue

Income tax

A revised version of [Rangka Kerja Pungutan Cukai](#) (as at 3 February 2021 and presently available in Malay language only) has been published on the [Inland Revenue Board of Malaysia's official website](#) to replace the earlier version dated 20 April 2016.

Service tax

A revised version of the Industry Guide on [Digital Services by Foreign Service Providers \(FSP\)](#) (as at 1 February 2021) has recently been published on the [Royal Malaysian Customs Department's MySST website](#) to replace the earlier version dated 1 August 2020.

CONTACT US FOR FURTHER INFORMATION REGARDING TAX AND REVENUE LAW MATTERS.

