

# Shearn Delamore & Co.

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Dear valued clients and business partners,

We are pleased to highlight the following legal update for November 2018.

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## **CORPORATE/M&A**

### **Rules for cryptocurrency exchanges, initial coin offerings (ICOs) to be in force by Q1 of 2019**

The regulations for digital asset or cryptocurrency exchanges and ICOs will come into force by the first quarter of 2019. Minister of Finance, Lim Guan Eng, announced this when delivering the keynote address at the Fintech Conference 2018 organised by the Securities Commission Malaysia on 28 November 2018.

He said: *“While some parties might still be skeptical of this space, there can be no doubt that we need appropriate regulations to be put in place and enforced to safeguard the interest of investors. ... Both Bank Negara and the SC, in terms of formulating this framework will be under the auspices of the Finance Ministry. The Finance Ministry will lead the committee comprising of Bank Negara, the SC, and the MOF itself”.*

### **Institute of Corporate Directors Malaysia launched to enhance board effectiveness**

The Institute of Corporate Directors Malaysia (ICDM), a dedicated body established by the Securities Commission Malaysia (SCM) to enhance the professionalism and effectiveness of corporate directors in Malaysia, was launched on 1 October 2018 by the Minister of Finance Lim Guan Eng. Formed by directors for the benefit of directors, ICDM’s main objectives are to promote excellence, integrity and the highest levels of skills and professional competence among corporate directors in Malaysia; represent the interests of its members; and advocate the adoption and application of corporate governance practices.

Under the leadership of its inaugural board led by Tan Sri Zarinah Anwar and a professional management team, ICDM will focus on building a sustainable pipeline of directors through education programmes that equip directors with essential skills to serve on listed boards. ICDM also maintains a directors’ registry to provide director-sourcing services to companies so that succession planning is competency-based.

The establishment of ICDM was spearheaded by the SCM as part of its Corporate Governance Strategic Priorities (2017-2020), and is also supported by Bank Negara Malaysia and Bursa Malaysia.

(See the SCM's media release/statement: [www.sc.com.my/post\\_archive/institute-of-corporate-directors-malaysia-launched-to-enhance-board-effectiveness/](http://www.sc.com.my/post_archive/institute-of-corporate-directors-malaysia-launched-to-enhance-board-effectiveness/))

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For further information regarding corporate/M&A matters, please contact our [Corporate/M&A Practice Group](#).

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## **DISPUTE RESOLUTION**

### **Ahmad Zubir Bin Zahid (suing by himself and as the administrator of the estate of Fatimah Binti Samad, deceased) v Datuk Dr Zainal Abidin Abdul Hamid**<sup>[1]</sup>

This is an appeal by **Ahmad Zubir Bin Zahid** (husband of the deceased) against the High Court decision dismissing his action. **Ahmad Zubir Bin Zahid** sued **Datuk Dr Zainal Abidin Abdul Hamid** for professional negligence resulting in the deceased's death. The deceased had not strictly followed medical advice nor attended appointments and only admitted herself into hospital at a late stage. The family of the deceased also refused to conduct a post-mortem on the deceased thereby depriving **Ahmad Zubir Bin Zahid** of the best primary evidence of the cause of death.

With regard to the standard of care in medical negligence cases in Malaysia, a distinction is made between diagnosis and treatment and the duty to advise of risks. The Bolam test applies in all medical negligence cases; however, in cases involving medical practitioners' duty to advise of risks, the medical expert opinion is subjected to logical analysis and judicial determination, following the English case of **Bolitho (administratrix of the estate of Bolitho (deceased)) v City and Hackney Health Authority**<sup>[2]</sup>.

This means that in cases involving allegations of negligence in advising risks associated with proposed treatment, the courts (rather than a body of respected medical practitioners) will decide whether a patient has been properly advised of the risks associated with a proposed treatment. The courts will no longer look to what a body of respectable members of the medical profession would do as the yardstick to govern the standard of care expected in respect of the duty to advise (see the Federal Court cases of **Foo Fio Na v Dr Soo Fook Mun**<sup>[3]</sup>, **Zulhasnimar bt Hasan Basri v Dr Kuppu Velumani P**<sup>[4]</sup> and **Dr Hari Krishnan & Anor v Megat Noor Ishak Megat Ibrahim**<sup>[5]</sup>).

The Court of Appeal in **Ahmad Zubir** took cognisance of the legal developments in

the United Kingdom, Australia and Singapore; however, the Court of Appeal declined the invitation to extend the scope of doctors' responsibility in requiring a doctor to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments (known as the "*Broad Test*" enunciated by the English Supreme Court in **Montgomery v Lanarkshire Health Board**<sup>[6]</sup> and adopted with modification by the Singapore Court of Appeal in **Hii Chii Kok v Ooi Peng Jin London Lucien**<sup>[7]</sup> and referred to as the "*Patient Autonomy Test*"), without appropriate legislative intervention.

The Court of Appeal took the view that the adoption of these tests would result in a protracted trial, harsh cross-examination tactics against the medical practitioners and institutions. The law of medical negligence, it was felt, needed appropriate legislative intervention to provide proper safeguards for patients as well as for doctors.

In affirming the High Court decision, the Court of Appeal (obiter), took the position that **Ahmad Zubir Bin Zahid**'s refusal to conduct a post-mortem and the absence of a post-mortem report may attract an adverse inference under section 114(g) of the **Evidence Act 1950** to be drawn against **Ahmad Zubir Bin Zahid** in view of the fact that the cause of death and medical negligence were highly contested.

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[1] [Civil Appeal No: W-02(NCVC) (W)-1087-06/2017] (Court of Appeal)

[2] [1997] 4 All ER 771

[3] [2007] 1 MLJ 593

[4] [2017] 5 MLJ 438

[5] [2018] 3 MLJ 281

[6] [2015] UKSC 11

[7] [2017] SGCA 38

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For further information regarding dispute resolution matters, please contact our [Dispute Resolution Practice Group](#).

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## **EMPLOYMENT AND ADMINISTRATIVE LAW**

### **Screening of Employees**

The Deputy Minister of the Ministry of Women, Family and Community Development announced that the Ministry is in the midst of developing a complete screening system effective next year which will allow the public to examine an individual's records before the individual is employed. The system is to mainly address the growing concerns in the number of child abuse cases, namely in operators dealing with children.

Source: [www.freemalaysiatoday.com/category/nation/2018/11/12/new-system-to-](http://www.freemalaysiatoday.com/category/nation/2018/11/12/new-system-to-)

[help-screen-employees-dealing-with-kids/](#)

## **Social Security for Foreign Workers effective 1 January 2019**

The Cabinet announced that with effect from 1 January 2019, all foreign workers will be under the Social Security Organisation (SOCSO). As it stands, SOCSO only applies to Malaysian citizens and does not extend to foreign workers. With effect from 1 January 2019, all employers who employ foreign workers with valid documents shall have to register the employees with SOCSO and make the necessary statutory contributions under SOCSO.

Source: [www.thestar.com.my/news/nation/2018/11/21/foreign-workers-to-be-covered-under-socso-effective-jan-1/](http://www.thestar.com.my/news/nation/2018/11/21/foreign-workers-to-be-covered-under-socso-effective-jan-1/)

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For further information regarding employment and administrative law matters, please contact our [Employment and Administrative Law Practice Group](#).

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## **FINANCIAL SERVICES**

### **Capital Market Developments**

The Securities Commission Malaysia released a revised Guidelines on Exchange Traded Funds (ETFs) which will come into effect on 2 January 2019. The changes include, among others, permitting new types of ETFs like commodity ETFs, synthetic ETFs and futures-based ETF and specific requirements on derivatives transactions and collateral, specific requirements for Islamic ETFs. The wider range of ETFs is intended to promote growth, facilitate product innovation and more choices for investors.

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For further information regarding financial services matters, please contact our [Financial Services Practice Group](#).

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## **TAX AND REVENUE**

### **Income tax**

The Inland Revenue Board of Malaysia has issued **Operational Guidelines No. 1/2018 on Special Program for Voluntary Disclosure** on 3 November 2018. This was later superceded by an amended version on 26 November 2018.

### **Service Tax**

The revised version of the following Industry Guides have been published on the [Royal Malaysian Customs Department's MySST website](#):

- i. **Advertising Services** (as at 9 November 2018)
- ii. **Information Technology Services** (as at 9 November 2018)
- iii. **Telecommunication Services** (as at 31 October 2018)
- iv. **Food & Beverages** (as at 2 November 2018).

## **Sales and Service Tax**

Further, a revised Specific Guide on **Customs Ruling** (as at 30 October 2018) has also been published on the [Royal Malaysian Customs Department's MySST website](#).

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For further information regarding tax and revenue matters, please contact our [Tax and Revenue Practice Group](#).

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