

Shearn Delamore & Co.

Dear valued clients and business partners,

We are pleased to highlight the following legal updates for September 2018.

COMPETITION LAW AND ANTITRUST

The Malaysia Competition Commission is investigating tyre and beverage companies in Malaysia for potential anti-competitive behaviours under section 4 of the **Competition Act 2010**. Investigation has also been carried out by the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs pursuant to the **Price Control and Anti-Profiteering Act 2011**.

For further information regarding competition law and antitrust matters, please contact our [Competition Law and Antitrust Practice Group](#).

EMPLOYMENT AND ADMINISTRATIVE LAW

Minimum wage to be increased across the board

The Prime Minister's Office has announced that the minimum wage for all employees in the private sector will be increased to RM1,050 effective 1 January 2019. As it stands, the Minimum Wage Order 2016 sets the minimum wage for employees in Peninsular Malaysia at RM1,000 whereas the minimum wage for employees in Sabah, Sarawak and Labuan is set at RM920. On 1 January 2019, the minimum wage for employees nationwide shall be increased to RM1,050.

Source: www.malaymail.com/s/1669681/minimum-wage-at-rm1050-a-month-nationwide-next-year-says-putrajaya.

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

FINANCIAL SERVICES

Regulatory Changes to facilitate greater retail Investment in the corporate bond and *sukuk* market

On 19 September 2018, the Securities Commission Malaysia issued the following documents which will effect changes to the existing framework for the bond and *sukuk* market from 11 October 2018:

- New Guidelines on Seasoned Corporate Bonds and *Sukuk*, with FAQs and Illustrations;
- Amendments to the Guidelines on Issuance of Corporate Bonds and *Sukuk* to Retail Investors[
- Amendments to the Guidelines on Sales Practices of Unlisted Capital Market Products;
- Changes to Division 2 of the Prospectus Guidelines.

The changes are to facilitate greater retail access to the ringgit corporate bond and *sukuk* market. They include reduced disclosures from qualified issuers, availability of additional types of corporate bonds and *sukuk* to retail investors, a new seasoning framework, application of the sales practices to distributors of corporate bonds and *sukuk* in the over-the-counter market.

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

INTELLECTUAL PROPERTY

Government rights over patented inventions in Malaysia

In September 2017 the Malaysian Government (“Government”) exercised its rights to exploit Gilead’s patented drug, Sofosbuvir, used for the treatment of Hepatitis C^[1] without Gilead’s authorisation. The Government proceeded with the exercise of its rights despite Gilead’s announcement of the extension of its voluntary licensing scheme to supply licensed generic Sofosbuvir to Malaysia^[2]. This is the second time that Malaysia has exercised its government rights to exploit a patented invention without the authorisation of the rights holder. The first time was in 2003, when the Government exercised its rights for the supply of affordable HIV/AIDS drugs patented by GlaxoSmithKline and Bristol-Myers Squibb after failed lengthy price negotiations with the patent owners^[3].

Patent rights are not absolute monopoly rights and are subject to compulsory licences on the grounds of non-use and interdependence of patents as well government use under the **Malaysian Patents Act 1983** (“Act”). Malaysia was the first country in the world to rely on government use rights to have access to affordable medicines following the adoption of the Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) and Public Health (“Doha Declaration”) in 2001 by member nations of the World Trade Organisation^[4].

Section 84 of the Patents Act allows the Government to use patented invention even without the agreement of the patent owner “*where there is a national emergency or where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the Government, so requires*”.

The patent owner will be notified of the Government's decision to exercise its rights as soon as reasonably practicable and will be compensated with adequate remuneration. The patent owner will have the right to be heard on the remuneration, to request that the authorisation be terminated or varied as well as to appeal to the High Court against the Government's decision.

Section 84 of the Patents Act closely mirrors Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Other Use Without Authorization of the Right Holder^[5] which also provides that:

“authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances”.

Paragraph 5(c) of the Doha Declaration further provides that:

“Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency”.

While Malaysia's right to protect public health and promote affordable access to the drug is recognised under the Doha Declaration, many in the biopharmaceutical industry have questioned the necessity for Malaysia to invoke section 84 of the Patents Act and continuing to exercise its government use right in respect of medicines for the treatment of Hepatitis C particularly, given that Gilead has extended its voluntary licensing programme for licensed generic Sofosbuvir to Malaysia^[6].

As a result of Malaysia's exercise of its government use rights in respect of Sofosbuvir, Malaysia's international ranking for its intellectual property system has

seen a significant drop in the latest Annual International IP Index issued by the US Chamber of Commerce Global Innovation Policy Center^[7].

In the 2018 Special 301 Report, it is stated that “*USTR will conduct an Out-of-Cycle Review of Malaysia, which will consider the extent to which Malaysia is providing adequate and effective IP protection and enforcement, including with respect to patents*”^[8]. It remains to be seen as to whether the newly elected Government will continue to impose government use licences as a means to provide affordable medicines to the Malaysian public.

TIMOTHY SIAW/MIKE HO
INTELLECTUAL PROPERTY PRACTICE GROUP

[1] [Press Statement Minister of Health 20th September 2017 – Implementation of the Rights of Government for Sofosbuvir Tablet to Increase Access for Hepatitis C Treatment in Malaysia, kpkesehatan.com/2017/09/20/press-statement-minister-of-health-20th-september-2017-implementation-of-the-rights-of-government-for-sofosbuvir-tablet-to-increase-access-for-hepatitis-c-treatment-in-malaysia/](http://kpkesehatan.com/2017/09/20/press-statement-minister-of-health-20th-september-2017-implementation-of-the-rights-of-government-for-sofosbuvir-tablet-to-increase-access-for-hepatitis-c-treatment-in-malaysia/).

[2] [Malaysia Grants Compulsory Licence For Generic Sofosbuvir Despite Gilead Licence BY CATHERINE SAEZ, INTELLECTUAL PROPERTY WATCH,http://www.ip-watch.org/2017/09/15/malaysia-grants-compulsory-licence-generic-sofosbuvir-despite-gilead-licence/](http://www.ip-watch.org/2017/09/15/malaysia-grants-compulsory-licence-generic-sofosbuvir-despite-gilead-licence/).

[3] [Access to affordable medicines for HIV/AIDS and hepatitis: the intellectual property rights context by World Health Organization,http://apps.searo.who.int/PDS_DOCS/B5144.pdf](http://apps.searo.who.int/PDS_DOCS/B5144.pdf).

[4] [Declaration on the TRIPS agreement and public health Adopted on 14 November 2001,https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm).

[5] [Part II — Standards concerning the availability, scope and use of Intellectual Property Rights of The Agreement on Trade-Related Aspects of Intellectual Property Rights, www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm).

[6] <https://galencentre.org/2017/09/14/take-advantage-of-gilead-sciences-voluntary-license-to-effectively-treat-hepatitis-c/>.

[7] [“Create” by the U.S. Chamber of Commerce Global Innovation Policy Center \(GIPC\) – –_globalipcenter.wpengine.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf](http://globalipcenter.wpengine.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf).

[8] 2018 Special 301 Report by Office of the United States Trade Representative –
– <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf>.

For further information regarding intellectual property law matters, please contact our [Intellectual Property Practice Group](#).

TAX AND REVENUE

Income tax

The Inland Revenue Board of Malaysia has recently issued four new public rulings on:

- (i) **Qualifying Expenditure and Computation of Industrial Building Allowance (Public Ruling No 3/2018)** — issued on 12 September 2018;
- (ii) **Taxation of a Resident Individual Part I — Gifts or Contributions and Allowable Deductions (Public Ruling No 4/2018)** — issued on 13 September 2018;
- (iii) **Taxation of a Resident Individual Part II — Computation of Total Income and Chargeable Income (Public Ruling No 5/2018)** — issued on 13 September 2018; and
- (iv) **Taxation of a Resident Individual Part III — Computation of Income Tax and Tax Payable (Public Ruling No 6/2018)** — issued on 13 September 2018.

Goods and Services Tax

The **Goods and Services Tax (Repeal) Act 2018** has been gazetted on 28 June 2018 and has come into operation on 1 September 2018.

Sales tax

The **Sales Tax Act 2018** has been gazetted on 28 August 2018 and has come into operation on 1 September 2018.

Following the above, the following regulations and orders have also been gazetted between 28 August 2018 and 6 September 2018 (both dates inclusive):

- (i) the **Sales Tax Regulations 2018** have come into operation on 1 September 2018;
- (ii) the **Sales Tax (Customs Ruling) Regulations 2018** have come into operation on 1 September 2018;
- (iii) the **Sales Tax (Determination of Sale Value of Taxable Goods) Regulations 2018** have come into operation on 1 September 2018;
- (iv) the **Sales Tax (Imposition of Sales Tax in Respect of Designated Areas) Order 2018** has come into operation on 1 September 2018;
- (v) the **Sales Tax (Imposition of Sales Tax in Respect of Special Areas) Order 2018** has come into operation on 1 September 2018;
- (vi) the **Sales Tax (Exemption from Registration) Order 2018** has come into operation on 1 September 2018;
- (vii) the **Sales Tax (Total Sale Value of Taxable Goods) Order 2018** has come into operation on 1 September 2018;
- (viii) the **Sales Tax (Persons Exempted from Payment of Tax) Order 2018** has come into operation on 1 September 2018;
- (ix) the **Sales Tax (Goods Exempted from Tax) Order 2018** has come into operation on 1 September 2018;
- (x) the **Sales Tax (Compounding of Offences) Regulations 2018** have come into operation on 1 September 2018;
- (xi) the **Sales Tax (Rates of Tax) Order 2018** has come into operation on 1 September 2018;
- (xii) the **Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018** has come into operation on 1 September 2018;
- (xiii) the **Sales Tax (Rates of Tax) (Amendment) Order 2018** has come into operation on 6 September 2018; and
- (xiv) the **Sales Tax (Goods Exempted from Tax) (Amendment) (No. 2) Order**

2018 has come into operation on 6 September 2018.

The following new and revised General Guides have been published on the [Royal Malaysian Customs Department's MySST website](#):

- i. **General Guide on Sales Tax** (as at 7 September 2018)
- ii. **Guide on Sales Tax Rates for Various Goods** (as at 8 September 2018).

Further, a revised version of the Specific Guide on **Sales Tax Return and Payment** (as at 5 September 2018) has also been published on the [Royal Malaysian Customs Department's MySST website](#).

Service tax

The **Service Tax Act 2018** has been gazetted on 28 August 2018 and has come into operation on 1 September 2018.

Following the above, the following regulations and orders have also been gazetted between 28 August 2018 and 6 September 2018 (both dates inclusive):

- (i) the **Service Tax (Customs Ruling) Regulations 2018** have come into operation on 1 September 2018;
- (ii) the **Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) Order 2018** has come into operation on 1 September 2018;
- (iii) the **Service Tax (Rate of Tax) Order 2018** has come into operation on 1 September 2018;
- (iv) the **Service Tax Regulations 2018** have come into operation on 1 September 2018;
- (v) the **Service Tax (Compounding of Offences) Regulations 2018** have come into operation on 1 September 2018;
- (vi) the **Service Tax (Amendment) Regulations 2018** have come into operation on 6 September 2018; and
- (vii) the **Service Tax (Imposition of Tax for Taxable Service in Respect of Designated Areas and Special Areas) (Amendment) Order 2018** has come into

operation on 6 September 2018.

A revised version of the **General Guide on Service Tax** (as at 8 September 2018) has been published on the [Royal Malaysian Customs Department's MySST website](#).

Further, the following new and revised Industry Guides have also been published on the [Royal Malaysian Customs Department's MySST website](#):

- i. **Accommodation** (as at 7 September 2018)
- ii. **Betting and Gaming** (as at 4 September 2018)
- iii. **Domestic Flight** (as at 9 September 2018)
- iv. **Information Technology Services** (as at 9 September 2018)
- v. **Insurance and Takaful** (as at 19 September 2018)
- vi. **Professional Services** (as at 4 September 2018).

Transitional Rules

A revised version of the **Transitional Rules** (as at 4 September 2018) have also been published on the [Royal Malaysian Customs Department's MySST website](#).

Director General's decisions

The Director General of Customs and Excise has issued decisions on the following issues and these decisions have been published on the [Royal Malaysian Customs Department's MySST website](#):

- (i) **Issuance of Tax Invoice On or After 1/9/2018** (as at 8 September 2018)
- (ii) **Declaration of Importation by Licensed Manufacturing Warehouse (LMW)** (as at 8 September 2018)
- (iii) **Retention Payments (GST Transitional Issue)** (as at 8 September 2018)

Customs duty

The **Customs (Amendment) Act 2018** has been gazetted on 28 August 2018 and

has come into operation on 1 September 2018.

The following regulations have also been gazetted on 29 August 2018 and have come into operation on 1 September 2018:

(i) **Customs Regulations (Appeal Tribunal) (Amendment) 2018**

(ii) **Customs (Amendment) Regulations 2018.**

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



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This Alert is issued for the information of the clients of the Firm and covers legal issues in a general way. The contents are not intended to constitute any advice on any specific matter and should not be relied upon as a substitute for detailed legal advice on specific matters or transactions.

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