

Shearn Delamore & co.

# Legal Update September 2020



---

Shearn Delamore & Co

7<sup>th</sup> 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](mailto:info@shearndelamore.com)

W: [www.shearndelamore.com](http://www.shearndelamore.com)

# Financial Services

## SME Merger and Acquisition instruments exempt from stamp duty

The Prime Minister announced that starting from 1 July 2020 until 30 June 2021, eligible SMEs will be exempted from paying stamp duty on instruments for Mergers & Acquisitions (“M&A instruments”), including Contracts or Agreements for sale or lease of properties (including land, building, machinery and equipment); Instrument of Transfer and Memorandum of Understanding; Loans or Financing Agreement; and First Tenancy Agreement.

To be eligible, SMEs must:

- Be 100% Malaysian owned; and
- have annual sales turnover of less than RM50 million or full-time employees of less than 200, as per the definition of SMEs in the manufacturing sector; or
- have annual sales turnover of less than RM20 million or full-time employees of less than 75, as per the definition of SMEs in the services sector.

Applicants must obtain the certification of SME Status and 100% Malaysian ownership status in order to verify the SME status.

The announcement as well as Procedures and Guidelines, and an FAQ can be found here <https://tinyurl.com/yyclu9xv>.

## Contents

<b>Financial Services</b> .....	2
<i>SME Merger &amp; Acquisition instruments exempt from stamp duty</i> .....	2
<i>BNM issues FAQs and Guidances on AML/CFT and TFS</i> .....	3
<b>Intellectual Property</b> .....	3
<i>Compounding of Offences under the Malaysian Trademarks Act 2019 and Regulations</i> .....	3
<b>Tax and Revenue</b> .....	5
<i>Income tax</i> .....	5
<i>Service tax</i> .....	5

## BNM issues FAQs and Guidances on AML/CFT and TFS

On 1 September 2020 Bank Negara Malaysia (“BNM”) issued FAQs and Guidances for both Financial Institutions (“FIs”) and Designated Non-Financial Businesses and Professions (“DNFBPs”) and Non-Bank Financial Institutions (“NBFIs”), with the purpose of providing further clarification on the requirements in the revised Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions (“AML/CFT and TFS”) Policy Document that was issued on 31 December 2019 and came into force on 1 January 2020.

These include:

- Guidance on Verification of Individual Customers for Customer Due Diligence; and
- Guidance on Beneficial Ownership.

The full announcement and set of Guidances can be found here for FIs <https://tinyurl.com/y3y7zkz5> and here for DNFBPs & NBFIs <https://tinyurl.com/yyxf5kal>.

---

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

---

## Intellectual Property

### Compounding of Offences under the Malaysian Trademarks Act 2019 and Regulations

Section 136 (2) of the **Trademarks Act 2019** (“Act”) grants the Controller with the power to compound offences under the Act. In essence, compounding means payment as a settlement in lieu of prosecution of an offence.

Further, section 136 (1) of the Act empowers the Minister to make regulations pertaining to compounding with the approval of the Public Prosecutor.

Pursuant to this, the Trademarks (Compounding of Offences) Regulations 2020 [P.U. (A) 252/2020] (“the Regulations”) was published on 28 August 2020. It sheds further details on what are the compoundable offences, and the procedures involved in respect to compounding under the Act.

The First Schedule under the Regulations sets out compoundable offences under the Act, which are:

- Counterfeiting a registered trademark — section 99 (1);

- Falsely applying a registered trademark to goods or services — section 100 (4);
- Making or possessing an article used for or in the course of committing an offence against sections 99 and 100 — section 101;
- Importing or selling, etc, goods with falsely applied trademark — section 102 (1);
- Making or causing to be made a false entry to the Trademarks Office or in the Register — section 103;
- Falsely representing a trademark as registered — section 104 (1);
- Offence relating to disobedience to summons or refusal to give evidence - section 105 (2);
- Falsely representing trademark as a protected international registration designating Malaysia — section 106 (1);
- Misuse of title “*Trademarks Office*” — section 107;
- Unregistered persons practising, etc, as a registered trademark agent — section 108;
- Non-compliance with the directions made by the Assistant Controller in respect of provision of information — section 113 (5);
- Disclosure or use of confidential information or document — section 115 (1);
- Giving false or misleading information, evidence or document — section 117;
- Destruction, concealment, mutilation and alteration of records — section 118;
- Tipping off an investigation which is being or is about to be conducted for the purposes of the Act — section 124 (1);
- Obstruction of entry — section 131; and

The Controller may only compound the above offences with the written consent of the Public Prosecutor. If such consent has been obtained, the Controller may at any time before a charge is being instituted (after the compoundable offence has been committed but before any prosecution for it has been instituted) make an offer to compound.

Such an offer must be in written form and is to be made to the person reasonably suspected of having committed the compoundable offence. The quantum of compound must not exceed 50% of the maximum fine for the relevant offence. Further, such offer to compound is for a period of 14 days or such extended time as the Controller may grant.

If the person to whom an offer to compound is made accepts such offer, payment may be made either in cash, by money order, postal order, bank draft or through an electronic fund transfer.

If the amount specified in the offer of compound is not paid within the time so specified in the offer or such extended time as the Controller may grant, prosecution for the offence may be instituted at any time after that without further notice.

Once the offence has been compounded, no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

---

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

---

- Non-compliance with guidelines or practice directions by the Registrar — section 160 (6) (b).

## Tax and Revenue

### Income tax

The **Income Tax (Special Treatment for Interest on Loan) Regulations 2020** have been gazetted on 25 August 2020 and shall have effect for the year of assessment 2020 and subsequent years of assessment.

The **Income Tax (Deduction for Expenses in relation to Listing on Access, Certainty, Efficiency (ACE) Market or Leading Entrepreneur Accelerator Platform (LEAP) Market of Bursa Malaysia Securities Berhad) Rules 2020** have been gazetted on 3 September 2020 and have effect from the year of assessment 2020 until the year of assessment 2022.

The **Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) Rules 2020** have been gazetted on 21 September 2020 and are deemed to have come into operation from the year of assessment 2019 until the year of assessment 2021.

### Service tax

The following policies and guides have recently been published on the [Royal Malaysian Customs Department's MySST website](#):

- i. **Service Tax Policy No. 1/2020 (Amendment No. 1)** issued on 13 August 2020;
- ii. **Service Tax Policy No. 3/2020 (Amendment No. 1)** issued on 13 August 2020;
- iii. **Service Tax Policy No. 4/2020 (Amendment No. 1)** issued on 13 August 2020;
- iv. **Service Tax Policy No. 5/2020 (Amendment No. 1)** issued on 13 August 2020;
- v. **Service Tax Policy No. 8/2020 (Amendment No. 1)** issued on 13 August 2020;
- vi. **Specific Guide on Disbursement and Reimbursement** (as at 15 September 2020); and
- vii. **Panduan Perkhidmatan Perundingan, Latihan dan Tunjuk Ajar** (as at 15 September 2020) — available in Malay language only.

---

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

---





Follow us on:



[www.shearndelamore.com](http://www.shearndelamore.com)



[www.linkedin.com/company/94702](https://www.linkedin.com/company/94702)

To subscribe to our legal updates, email us:



[km@shearndelamore.com](mailto:km@shearndelamore.com)

*COPYRIGHT © 2020 SHEARN DELAMORE & CO. ALL RIGHTS RESERVED.*

*THIS UPDATE 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.*