

Shearn Delamore & co.

Dear valued clients and friends,

We are pleased to bring you the latest legal updates for May 2020.

Contents

Financial Services	1
SC and Bursa extend temporary short selling suspension	1
SC amends Guidelines on Unlisted Capital Market Products under the LOLA	2
Government issues SOPs for Financial Services Sector	2
Amendments to Foreign Exchange Notices	2
SC issues Guidelines on Advertising for Capital Market Products and Related Services	3
Intellectual Property	4
Unauthorised use of Registered Mark in a Company Name	4
Brief Background	4
Whether the Defendant’s company names violate sections 25(2) and 26 of the Companies Act 2016	4
Whether the Defendant had interfered with the Plaintiff’s real estate business in respect of the use of the names as a trademark	4
Tax & Revenue	5
Tax & Customs Matters During Movement Control Order (“MCO”) and Conditional MCO Period	5
Income Tax	5
Service Tax	5

Financial Services

SC and Bursa extend temporary short selling suspension

On 28 April 2020, the Securities Commission Malaysia (“SC”) and Bursa Malaysia Berhad (“Bursa”) extended the temporary suspension of short-selling to 30 June 2020.

The temporary suspension of short-selling began on 24 March 2020 and was intended to last until 30 April 2020 with the purpose of mitigating potential risks arising from heightened volatility and global

uncertainties as a result of the Covid-19 pandemic. The suspension involves Intraday Short Selling (“IDSS”) and Regulated Short Selling (“RSS”), as well as intraday short selling by Proprietary Day Traders, but does not apply to Permitted Short Selling (“PSS”).

The suspension has been extended to ensure that market management measures are still in place to manage risks within the prevailing uncertain and challenging environment amid the Covid-19 pandemic, as well as to mitigate any excessive speculative activities in the marketplace.

SC Amends Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework (“LOLA”)

On 28 April 2020, the SC granted flexibilities for the issuing of convertible notes to Venture Capital (“VC”) and private equity (“PE”) firms by allowing issuers to lodge the issuance of convertible notes directly with SC without the need for a principal adviser. In addition to this, lodgement fees are also waived and the lodgement process has been simplified via electronic submission of the required information via email.

This is implemented via amendments to the Guidelines on Unlisted Capital Market Products under the LOLA Framework, specifically a new Part 5 to Section B of the LOLA Framework. The criteria to issue convertible notes without a principal adviser include:

- the convertible notes must only be issued to, and transferable only between, VC and PE firms registered with the SC;
- the convertible notes must only be convertible into shares of the issuer; and
- the tenure of the convertible notes must not exceed seven years from the date of issuance.

The SC’s Summary of Amendments on the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework is available here (<https://tinyurl.com/yc822hym>) and updated FAQs are here (<https://tinyurl.com/y96ahjbo>).

Government Issues SOPs for Financial Services Sector

On 1 May 2020, the Ministry of Finance (“MOF”) issued protocol for the financial services sector which apply to all financial services, including banking institutions, insurance/*takaful* institutions, development financial institutions, approved and registered intermediaries and agent banking.

The protocol includes:

- all activities in the financial services sector can operate except those which are set out in the list of prohibited activities issued by the Government. The list includes selling and marketing banking and financial services outside their premises or in public areas;
- health and safety guidelines; and
- a SOP living document which is to be periodically reviewed by MOF.

The full protocol can be found here (<https://tinyurl.com/y7avozrb>).

Amendments to Foreign Exchange Notices

On 30 April 2020, Bank Negara Malaysia (“BNM”) amended the Foreign Exchange Policy (“FEP”) Notices. The FEP Notices set out:

- approvals of the bank for transactions which are otherwise prohibited under section 214(2) read together with Schedule 14 of the **Financial Services Act 2013** and section 225(2) read together with Schedule 14 of the **Islamic Financial Services Act 2013**;
- requirements, restrictions and conditions of the approvals; and
- directions from BNM.

A person will need to obtain the ad hoc written approval from BNM for any transaction that is not approved by BNM under the FEP notices.

Save for the “*Declaration on entities created, incorporated, etc in Labuan*” issued on 28 June 2013, the amended FEP Notices supersede the:

- (i) previous notices,
- (ii) supplementary notices; and
- (iii) Direction on Dealings with Specified Persons and in Restricted Currencies [BNM/RH/CIR-000-3] issued on 28 June 2013.

The amended FEP Notices take into effect from 30 April 2020.

SC Issues Guidelines on Advertising for Capital Market Products and Related Services

On 4 May 2020, the SC issued the “*Guidelines on Advertising for Capital Market Products and Related Services*” with the intention of according greater flexibility to capital market product issuers and capital market service providers to promote their products and services through a medium that best suits their needs. Under the framework, advertisers can now take advantage of social media, messaging applications, video streaming sites, to promote their products and services without submitting advertisements to the SC. This includes apps/platforms such as Twitter, LinkedIn, Instagram, WhatsApp, etc.

There are two effective dates for the Guidelines:

1. Advertisers who are issuers of structured products as well as those who are subjected to the following guidelines will be required to comply with the Guidelines upon its issuance:
 - a) Guidelines on Unit Trust Advertisements and Promotional Materials;
 - b) Guidelines on Private Retirement Schemes;
 - c) Prospectus Guidelines; and
 - d) Guidelines on Compliance Function for Fund Management Companies

This will include issuers and distributors of unit trust funds and private retirement schemes and issuers who are seeking to list capital market products such as shares, corporate bonds, real estate investment trust, exchange traded funds and structured warrants on the exchange

2. Other advertisers who are not subject to the above guidelines will need to comply with the Guidelines from 4 August 2020 onwards.

The full guidelines are available here (<https://tinyurl.com/y83q3asz>) and the corresponding FAQs here (<https://tinyurl.com/ybccwsp8>).

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

Intellectual Property

Unauthorised use of Registered Mark in a Company Name

Written by Timothy Siaw and Paw Ying Hui

Earlier this year, the Court of Appeal in the case of **Skyworld Development Sdn Bhd v Skyworld Holdings Sdn Bhd**¹ held that the use of a company name containing a registered trademark can amount to trademark infringement.

Brief Background

The Plaintiff, Skyworld Development Sdn Bhd, is involved in the business of property development and is the owner of the registered trade marks  and  (“Skyworld’s Registered Marks”)

The Defendants had used the words “*Skyworld*” and “*Sky World*” in their company names, which are, Skyworld Holdings Sdn Bhd, Skyworld Global Sdn Bhd, Skyworld (Sabah) Sdn Bhd and Sky World City Bhd (“Offending Names”), domain name as well as in their tourism theme park project.

Whether the Defendant’s company names violate sections 25(2) and 26 of the Companies Act 2016

The Plaintiff claimed that the registration of the Offending Names as company names violates the prohibitions provided under sections 25(2) and 26 of the **Companies Act 2016** as the Defendant’s company names are practically identical to the Plaintiff’s names (save for the generic words “*Holdings*”, “*Sabah*”, “*Sdn*” and “*Bhd*”).

The Court of Appeal held that the Defendant’s company names are not identical to the Plaintiff’s name except for the word “*Skyworld*” which was used. Further, the Registrar does not have the power under section 26(2) of the **Companies Act 2016** to refuse application for registration of a company name which may offend an existing trademark registered under the Trade Marks Act 1976. The Court held that the registration of the Defendant’s company names containing the word “*Skyworld*” or “*SkyWorld*” did not contravene section 26 (2) of the **Companies Act 2016** as they are not identical to the Plaintiff’s company name.

Whether the Defendant had interfered with the Plaintiff’s real estate business in respect of the use of the names as a trademark

Despite finding the Offending Names not to be identical to the Plaintiff’s company name, the Court of Appeal held that the Offending Names so nearly resemble the Plaintiff’s Registered Marks as were likely to deceive or cause confusion. There should not be a microscopic comparison of the minute differences between the Offending Names and the Plaintiff’s Registered Marks, namely whether the Offending Names are used in uppercase or lowercase, nor is there a need to take into account other features outside the actual trademark used by the Defendant for the purpose of ascertaining whether there is confusion.

The Court of Appeal held that in determining the issues of trade mark infringement, the correct approach is to consider whether the use of the Offending Names comes within the specification of services covered by the Plaintiff’s Registered Marks, and not whether the Plaintiff and the Defendant

were engaged in the same business. The Court held that the words in the specifications should be given their ordinary and natural meanings and should not be given an unnaturally narrow meaning. Therefore, the Plaintiff's registered services "*real estate development*", "*property development*", and "*building and construction of real property*" would include the Defendant's business of constructing and developing a theme park.

The Court consequently allowed the Plaintiff's appeal.

¹[2020] MLJU 41

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

Tax & Revenue

Tax & Customs Matters During Movement Control Order ("MCO") and Conditional MCO Period

As the CMCO period in Malaysia has been extended, the Inland Revenue Board ("IRB") has published an updated list of Frequently Asked Questions ("FAQ") on tax matters arising during the MCO and CMCO period. For the updated FAQ (as at 20 May 2020), please refer to http://lampiran1.hasil.gov.my/pdf/pdfam/faq_2.pdf.

The Royal Malaysian Customs Department ("RMCD") has also recently issued two announcements pertaining to payment of taxes due during the MCO and CMCO period: <https://tinyurl.com/y7ae87sj> and <https://tinyurl.com/ybqo8g47>.

Income Tax

The **Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020** have been gazetted on 19 May 2020 and have effect from the year of assessment 2020.

The following public ruling and guidelines have recently been published on the [Inland Revenue Board of Malaysia's official website](#):

- (i) **Tax Incentives for Bionexus Status Companies (Public Ruling No. 1/2020)** issued on 22 May 2020 to replace Public Ruling No. 8/2018 dated 9 October 2018;
- (ii) **Garis Panduan Permohonan untuk Kelulusan Di Bawah Subseksyen 44(11C) Akta Cukai Pendapatan 1967 Bagi Tabung Relif Covid-19** (available in Malay language only) — issued on 5 May 2020;
- (iii) **Pindaan Anggaran Cukai (CP204) Pada Bulan Ke-3 Ansuran Yang Jatuh Dalam Tahun Kalendar 2020 Dan Penangguhan Bayaran Anggaran Cukai (CP204 dan CP500) Di Bawah Pakej Rangsangan Ekonomi 2020 (PRE)** (available in Malay language only) — issued on 12 May 2020; and
- (iv) **Guidelines on the Application of Subsections 12(3) and 12(4) of the Income Tax Act 1967 in Determining a "Place of Business"** — issued on 21 May 2020.

Service Tax

The following Order and Regulations have been gazetted on 13 May 2020 and have come into operation on 14 May 2020:

- (i) **Service Tax (Person Exempted from Payment of Tax) (Amendment) Order 2020;**
- (ii) **Service Tax (Amendment) Regulations 2020;**
- (iii) **Service Tax (Digital Service) (Amendment) Regulations 2020.**

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



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.

YOU MAY AMEND YOUR BUSINESS CONTACT INFORMATION OR UNSUBSCRIBE FROM OUR MAILERS AT ANY TIME. TO UNSUBSCRIBE, EMAIL US AT KM@SHEARDELAMORE.COM, WITH THE WORD "UNSUBSCRIBE" IN THE SUBJECT FIELD. PLEASE ALLOW US ONE MONTH TO EFFECT THE CHANGE.