

Shearn Delamore & co.

Dear valued clients and friends,

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

Contents

FINANCIAL SERVICES	1
Bursa Malaysia announces further relief measures for capital market players	1
PRIHATIN economic stimulus package	2
FAQs by the Inland Revenue Board of Malaysia on Stamp Duty Payment	4
INTELLECTUAL PROPERTY	4
“Doctrine of Equivalents” — Patent Infringement in Malaysia	4
TAX & REVENUE	6
Tax & Customs Matters During Movement Control Order (“MCO”) Period	6
Income Tax	6
Service Tax	6

FINANCIAL SERVICES

Bursa Malaysia announces further relief measures for capital market players

Bursa Malaysia Berhad (“Bursa”) announced a new set of relief measures targeted to a broader group of participants within the capital market on 26 March 2020. These measures are designed to help lessen the financial burden and provide greater flexibility in navigating the challenging period posed by the COVID-19 pandemic.

The measures include:

- Rebate of 50% of the annual listing fees for the year 2020 for listed issuers that:
 - have a market capitalisation of less than RM500 million as at 31 December 2019; and
 - report after-tax losses on a group basis in their quarterly report for a quarter ended on any date between 1 April 2020 to 30 June 2020.
- Extension of time to submit regularisation plan for PN17/GN3 and 8.03A Listed Issuers
 - For listed issuers that are in financial distress according to Practice Note 17/Guidance Note 3 (“PN17/GN3 Listed Issuers”) or do not have an adequate level of operations as set out in paragraph/Rule 8.03A of the Listing Requirements (“8.03A Listed Issuers”), Bursa will be extending the timeframe for submission of the regularisation plan from the

existing 12 months to 24 months from the date they first announce they are PN17/GN3 Listed Issuers or 8.03A Listed Issuers. This applies to listed issuers that trigger the criteria in 2019 and 2020.

- Automatic one-month extension to submit financial statements
 - Listed issuers are now granted an automatic one-month extension for issuance of quarterly and annual reports for the Main and ACE Markets, as well as semi-annual and annual audited financial statements for the LEAP Market, that are due on 31 March 2020 and 30 April 2020. Notwithstanding the one-month extension, listed issuers are still to comply with their continuing disclosure obligations under the Listing Requirements, including the obligation to make immediate announcements of any material information to ensure that shareholders and investors continue to receive information in a timely manner.
- Greater flexibility for brokers to manage margin accounts
 - Bursa will give more flexibility and discretion to brokers by removing the requirement to automatically liquidate their client's margin account if the equity in the margin account falls below 130% of the outstanding balance. Brokers will also not be required to make additional margin calls or impose haircuts on any collateral and securities purchased and carried in margin accounts due to an unusually volatile market.
- Expanding the list of collaterals for purposes of margin financing
 - Bursa will allow brokers to accept other collaterals, such as bonds, collective investment schemes, unit trusts, gold and immovable properties for purposes of maintaining their clients' margin account if such collaterals are valued as per the broker's credit policy.

The circular detailing the changes to the Rules and Directives of Bursa Malaysia Securities Berhad to reflect the changes in regards to margin accounts and margin financing is available [here](#).

- Extension of time for submission of CDS transaction forms to Bursa Malaysia
 - All Authorised Depository Agents (“ADAs”) are now given an extension of time for the submission of specified physical CDS transaction forms to Bursa Malaysia Depository Sdn Bhd. The extension of time provided for the submission of physical CDS transaction forms are as follows:
 - Transactions performed between 2 March 2020 to 31 March 2020 are granted an extension of time for submission by 30 April 2020; and
 - Transactions performed between 1 April 2020 to 30 April 2020 are granted an extension of time for submission by 29 May 2020.

These measures are in addition to the measures announced by the Government on 27 February 2020 under the Economic Stimulus Package 2020.

PRIHATIN economic stimulus package

On 27 March 2020, Prime Minister Tan Sri Muhyiddin Yassin announced the Prihatin Rakyat Economic Stimulus Package or PRIHATIN (“Stimulus Package”), a relief and economic stimulus package to assist individuals and businesses during the turbulent and uncertain economic landscape caused by the Covid-19 outbreak. This is in addition to the packages announced on 27 February 2020 and 23 March 2020.

Valued at RM250 billion, the package is the single largest package of its kind in Malaysian history. Of this, almost RM128 billion will be channelled to public welfare, RM100 billion to support

businesses including SMEs, and RM2 billion to strengthen the economy, while the remaining RM20 billion was announced in the previous stimulus package.

Among the measures are:

Assistance for SMEs

- The Government and Bank Negara Malaysia (“BNM”) will increase the funding available in the following existing programmes:
 - The Special Relief Facility (“SRF”) for SMEs will be increased by RM3 billion to RM5 billion and the interest rate for the fund will be reduced from 3.75% to 3.5%;
 - The All Economic Sector Facility fund will be increased by RM1 billion to RM6.8 billion;
 - Funds for the Micro Credit Scheme will be increased by RM500 million to RM700 million for soft loans.
 - The scheme will be administered by Bank Simpanan Nasional at 2% interest rate with no collateral.
 - Loan eligibility requirements are relaxed to a minimum of six months of operation compared to one year of operation.
 - Maximum financing amount is increased from RM50,000 to RM75,000 for each entrepreneur.
 - The initiative is open to all micro-entrepreneurs in all business sectors including child-care centres, taxi and bus operators as well as the creative industry and online traders
 - SMEs with business records of less than four years can use the BizMula-i and BizWanita-i schemes for financing up to RM300,000 under the Credit Guarantee Malaysia Berhad (“CGC”); and
 - Syarikat Jaminan Pembiayaan Perniagaan (“SJPP”) will provide RM5 billion worth of guarantees and increase the guarantee coverage from 70% to 80% for SMEs that face difficulties in obtaining loans.

Extension of moratorium

- The six-month interest payment moratorium will be extended to loans from TEKUN, MARA and cooperatives as well as other government agencies providing financing to SMEs beginning 1 April 2020.

Guarantee Scheme by Danajamin

- The Government will provide a RM50 billion guarantee scheme with a guarantee of up to 80% of the loan amount for the purpose of financing working capital requirements. The scheme will be managed and subject to credit evaluation by Danajamin. The facility is targeted at viable businesses in all sectors facing difficulties due to the COVID-19 outbreak. The minimum guaranteed loan size is RM20 million per business. This facility will be available for application from 1 May to 31 December 2020 or until the fund is fully utilised.

The full version of the announcement can be found [here](#).

BNM have also announced on 27 March 2020 further details of the measures described above (including a set of FAQs) as well as other measures. The announcement and FAQs can be accessed [here](#) and [here](#).

FAQs by the Inland Revenue Board of Malaysia on Stamp Duty Payment

The Inland Revenue Board of Malaysia (“LHDN”) has on 19 March 2020 released a set of FAQs to address public queries regarding matters relating to, *inter alia*, payment of stamp duty during the Movement Control Order period, and the same have been updated as of 16 April 2020. The FAQs can be accessed here (http://lampiran1.hasil.gov.my/pdf/pdfam/faq_2.pdf).

Briefly, all LHDN premises will remain closed throughout the Movement Control Order period, except for the stamp duty counters at 34 LHDN branches and the Hasil Care Line. Law firms, companies, partnerships, businesses, financial institutions, authorised agents including individuals with businesses registered with the Companies Commission of Malaysia which have access to the *Sistem Taksiran dan Pembayaran Duti Setem Secara Dalam Talian* (“STAMPS”) may submit documents for stamp duty assessment and make payments of stamp duty online via STAMPS. The stamp duty counters which are open during the Movement Control Order period cater only to individuals and general public with no STAMPS user ID and for payments of stamp duty which cannot be done online, that is, stamp duty assessed at RM1 million and above.

Notwithstanding the above, the LHDN has announced the deadline for stamp duty payment in respect of documents which are required to be stamped within the Movement Control Order period, that is, between 18 March 2020 to 28 April 2020, has been automatically extended to 31 May 2020, and no late payment penalty will be imposed on such documents so long as stamp duty payments are made within the extended timeline.

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

INTELLECTUAL PROPERTY

“Doctrine of Equivalents” — Patent Infringement in Malaysia

Written by Timothy Siaw and Melvin Au

In the recent case of **Emerico Sdn Bhd v Maxvigo Solution Sdn Bhd**¹ (“Emerico”), the High Court of Malaya held the Actavis test/doctrine of equivalents is applicable in patent and utility innovation infringement cases in Malaysia.

In assessing whether a variant of an invention falls within the scope of a patent, the Courts have traditionally applied the Improver’s test. The differences between the Actavis test and the previous Improver’s test are tabulated below.

	Improver’s Test	Reformulated in Actavis
Q1	Does the variant have material effect upon the way the invention works? If no ... Q2	Notwithstanding that it is not within the literal meaning of the relevant claims of the Patent, does the variant achieve substantially the same result in substantially the same way as the inventive concept revealed by the patent? If yes ... Q2

<p>Q2</p>	<p>Would this have been obvious to the skilled person as at the date of publication of the patent? If yes ... Q3</p>	<p>Would it be obvious to the skilled person, reading the patent at the priority date, but knowing that the variant achieves substantially the same result as the invention, that it does so in substantially the same way as the invention? If yes ... Q3</p>
<p>Q3</p>	<p>Would the skilled person nevertheless have understood from the language of the claim that the patentee intended that strict compliance with the primary meaning was an essential requirement of the invention? If no = Infringement</p>	<p>Would the skilled person have concluded that the patentee nonetheless intended that strict compliance with the literal meaning of the relevant claim(s) of the patent was an essential requirement of the invention? If no = Infringement</p>

The claims in **Emerico** are as follows:

- i. A protective sleeve for an electronic device;
- ii. A connector tab extended to the recess for contacting with a socket connector of the electronic device; and
- iii. Wherein the biometric information retrieval means and the connector tab are connected to the input and the output ports of the circuit board for establishing a communication link between the biometric information retrieval means and the electronic device when the electronic device is attached to the connector tab and seated in the recess

The defendant’s product does not have a protective sleeve per se, but the electronic device sits in a protective recess which the Court viewed as a variant of a “*protective sleeve*”. The infringing product also does not have a connector tab but the Court, relying on a disassembly demonstration, concluded that there is a male USB port connected to the infringing product which is an equivalent of a connector tab.

However, one may come to the same conclusion by applying the Improver’s test if the “*protective sleeve*” can be purposively construed to include the recess of the product and if the “*connector tab*” can be purposively construed to include the male USB port.

In Singapore, the Supreme Court has rejected the Actavis Test on the grounds that:

- i. It is inconsistent with the Singapore Patents Act which limits the extent of the protection conferred by a patent to that specified in the claims as purposively interpreted in the light of the description and any drawings in the patent specification
- ii. The Singapore Patents Act, unlike the UK Patents Act, is not bound by Article 2 of the Protocol on Interpretation of Article 69 to the European Patent Convention (the “**Protocol**”).
- iii. it tilts the balance too far in favour of the patentee; and
- iv. it gives rise to undue uncertainty.

The Malaysian Patents Act is similarly not bound by the Protocol, and one may be prudent to exercise caution when applying the Actavis test in cases where the alleged infringed product does not fall within the literal meaning of the relevant claims of the patent.

¹[2020] MLJU 340

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

TAX & REVENUE

Tax & Customs Matters During Movement Control Order (“MCO”) Period

As the MCO 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 period. For the updated FAQ (as at 21 April 2020), please refer to http://lampiran2.hasil.gov.my/pdf/pdfam/faq_2.pdf.

Similarly, the Royal Malaysian Customs Department (“RMCD”) has also issued a list of FAQs on customs matters arising during the MCO period. For the updated FAQ (as at 7 April 2020), please refer to <https://tinyurl.com/yaeha5gl>.

Further, the RMCD also issued announcements pertaining to:

- i. payment of taxes due during MCO period: <https://tinyurl.com/ybqm5cqn>.
- ii. application for review during MCO period: <https://tinyurl.com/y8rfd2vt>.

Income Tax

The following practice note has recently been published on the IRB’s official website:

- **Practice Note No. 2/2020 on Claiming Capital Allowance on the Development Cost for Customised Computer Software under the Income Tax Rules 2019** issued on 16 March 2020.

Service Tax

The following policies have recently been published on RMCD’s MySST website:

- i. **Specific Guide on Digital Services by Foreign Service Provider (FSP) (Registration, Return & Payment)** (as at 30 March 2020); and
- ii. **Service Tax Policy on Service Tax Exemption on Provision of Digital Services Related to Banking/Financial Services (Service Tax Policy No. 10/2020)** issued on 17 April 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@shearndelamore.com, with the word “unsubscribe” in the subject field. Please allow us one month to effect the change.