

the *ZRp* brief

Brief: 12/2014

Folder 3

KDN No: PP 12857/08/2013(032657)



ZUL RAFIQUE & partners wins **Firm of the Year 2014**
awarded by **ASIAN-MENA COUNSEL**

(for Corporate and M & A, Employment, Litigation & Dispute Resolution, Real Estate & Construction)

Publisher: ZUL RAFIQUE & partners Consultancy Sdn Bhd D3-3-8, Solaris Dutamas, No. 1, Jalan Dutamas 1, 50480 Kuala Lumpur, Malaysia
Printer: NC Print Sdn Bhd (197139-T) AS 101, Jalan Hang Tuah 4, Salak South Garden, 57100 Kuala Lumpur. Tel: 03-79825893; Fax: 03-79835314

ZUL RAFIQUE & partners

A BRIEF NOTE...

by Dato' Zulkifly Rafique



Understanding oneself...

Aristotle once said, "Knowing yourself is the beginning of all wisdom".

In our lives, most of us are on a perpetual quest to gain knowledge of worldly affairs or of practical matters, but very few realise that one of the most important attributes is to truly understand oneself.

Why is that important, you may ask. The most obvious answer is because you have to live with yourself 24/7, and wouldn't you feel more comfortable with someone familiar?

So what does "knowing oneself" mean? Simply put, it means understanding and having certainty of your emotions, your beliefs and convictions, your strengths and limitations.

We believe that employees are able to unlock and maximise their full potential upon knowing their strengths and managing their weaknesses. It is only by truly understanding yourself that you will be able to understand and manage your relationship with others. After all, as aptly put by Maya Angelou: "when you know better, you do better".

With that said, we hope you enjoy this issue of our ZRp Brief. We have tried our best to capture some interesting developments in the law, especially in the last quarter.

Last but not least, we would like to dedicate our *Firm of the Year* award from the *ASIAN-MENA Counsel*, to all of you who have continued to support and believe in us.

in this issue...

BRIEFING...

Amongst the articles in our feature:

- *Landmark case on minimum wages in Malaysia... Does it include a service charge?*
- *Taxing times ahead?*

2

IN BRIEF...

The highlights in this Folder include:

- *AMLA (Amendment) Bill passed*
- *Landmark case on minimum wages*
- *Special Magistrates' Court*
- *Hard Rock v Soft Rock*
- *Lawyer overcharging*
- *Proposed Arbitration Bill in Myanmar*
- *Sukuk history in Hong Kong*
- *Triumph for Tom Cruise*

5

BRIEF-CASE...

Our Brief-Case contains the following:

- *Bank Islam Malaysia Bhd v Aquasix Corp Sdn Bhd & Ors* [2014] 3 MLJ 812, Court of Appeal
- *Lim Mey Lee Susan v Singapore Medical Council* [2014] 4 MLRH 277, High Court (Singapore)

8

BRIEFLY...

Legislation Update:

- *Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014*
- *Price Control and Anti-Profitteering (Amendment) Act 2014*
- *Promotion of Investments (Amendment) Act 2014*
- *Guidelines/Rules/Circulars/Directives and Practice Notes issued between July and September 2014 by Bank Negara Malaysia, Bursa Malaysia and Securities Commission Malaysia*

9

BRIEFING...

EMPLOYMENT & INDUSTRIAL RELATIONS

LANDMARK CASE ON MINIMUM WAGES IN MALAYSIA... DOES IT INCLUDE A SERVICE CHARGE?

In June 2014, the Malaysian Industrial Court, in a landmark decision, ruled on the issue of a hotel employee's salary structure.

The judgment, reported as *Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia v Crystal Crown Hotel & Resort Sdn Bhd*¹, reminds us of the significance of the National Minimum Wages Policy initiated in October 2010.

In this article, we analyse the judgment, with emphasis on the issue of whether minimum wages include a service charge.

THE FACTS A trade dispute arose between *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya)* ("the Hotel") and *Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran* ("the Union") on the issue of the salary structure of the Hotel's employees.

THE ISSUE The dispute began when the employees of the Hotel had insisted for their salaries to be aligned with the Minimum Wages Order 2012 ("the Order"), and for such wages to be separated from the 10% service charge² imposed on the billings of the customers of the Hotel.

¹ [2014] 3 ILR 410.

² In Malaysia, there is no compulsory "tipping". Instead, a 10% service charge is imposed on all bills paid by customers for services rendered. Out of the 10%, 1% is kept by hotels for administrative charges and the remaining 9% is given to the employees of the hotel. Distribution of the service charge amongst the employees is highly dependent on the type of business the hotel runs, as well as the number of employees within the scope of the collective agreement.


MINIMUM WAGES IN MALAYSIA The Minimum Wages Policy ("the Policy") was announced by the Malaysian Prime Minister, Dato' Seri Najib Tun Razak, in his budget speech on 15 October 2010. It is one of the Government's policy instruments *vide* the New Economic Model, which looks to rectify the wages-setting mechanism for low-income workers.

The Policy raised the basic wages of all employees to a minimum amount of MYR900 in Peninsular Malaysia and MYR800 in East Malaysia³, and such policy was extended to foreign workers with effect from 1 January 2014.

The Order took effect from 1 January 2013 for employers with more than five employees, and 1 July 2013 for employers with five or fewer employees.

The Order does not apply to apprentices⁴ or to domestic servants⁵ as defined under section 2 of the Employment Act 1955, section 2 of the Sabah Labour Ordinance and section 2 of the Sarawak Labour Ordinance.

THE DECISION The Industrial Court held that an employee shall be paid minimum wages in accordance with the Order, over and above the service charge imposed, and that the Hotel would retain 10% of the total service charge imposed on all its monthly bills and the remaining 90% to be fully distributed to all employees covered in relation to the award.

The court also held that every employee, with effect from 1 October 2013, should be paid according to the new outlined salary structure, with the exception of part-timers, temporary, casual as well as retired employees. 

³ Sabah, Sarawak and Labuan.

⁴ An "apprenticeship contract" means a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period which shall not be less than two years in the course of which the apprentice is bound to work in the employer's service.

⁵ A "domestic servant" means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washer-woman, watchman, groom and driver or cleaner of any vehicle licensed for private use.

FINANCE

TAXING TIMES AHEAD? Introduction of the Goods and Services Tax ("GST") in Malaysia during the Budget 2014, at the rate of 6% effective 1 April 2015, received mixed reviews from the public.

In this article we discuss the general principles of GST in order to have a better comprehension of its scope and implications.

INTRODUCTION At Malaysia's Budget 2014 on 25 October 2013, the Prime Minister of Malaysia, Dato' Seri Najib Tun Razak announced that the GST will be introduced in Malaysia at the rate of 6% with effect from 1 April 2015. The GST Bill 2014 was passed on 7 April 2014 and the GST Act 2014 ("the GST Act") was gazetted on 19 June 2014.

The GST will replace the existing sales tax and service tax⁶ which, in comparison, are single-stage taxes imposed on domestic consumption of particular taxable goods and services, calculated on an *ad valorem*⁷ basis.

WHY GST? The GST implementation is part of the government's tax reform programme to enhance the capability, effectiveness as well as the transparency of tax administration and management. The government has also proposed a lower rate of 6% in comparison to the current 16% of the combined sales tax and service tax. This is to neutralise the GST impact on the consumers, so as to reduce their burden. Consumers will in fact benefit from the price reduction of most of the goods and services.

"Taxes are what we pay for civilised society." –
Oliver Wendell Holmes, Jr (US Supreme Court Judge)

⁶ The current sales tax and service tax in Malaysia are 10% and 6% respectively.

⁷ *Ad valorem* tax is a tax imposed on the value of property – the difference between the price of the commodity before taxes and the cost of its production.

UNDERSTANDING GST The GST is a multi-stage consumption tax which is levied on all taxable supplies of goods and services made by a taxable person in Malaysia in the course or furtherance of any business.

The GST is levied on the supply of goods and services at each stage of the supply chain, from the supply right up to the retail stage of distribution. Although GST is imposed on each stage of the supply chain, it is not part of the cost of the business product, as GST paid on business inputs is claimable.

However, only a registered person may charge and collect GST on the taxable supplies of goods and services made by him. GST is also imposed on supplies made only by taxpayers who are carrying on commercial activities and not just by any private individual.

REGISTRATION FOR GST Individuals, sole proprietors, partnerships, amongst others, must register if they fulfil the following conditions, namely that (1) they make taxable supplies of goods and services; (2) such goods and services are in the course or furtherance of business; (3) such businesses are in Malaysia; and (4) the registrants have a taxable turnover above the threshold of MYR500,000⁸.

Only businesses with an annual turnover of over MYR500,000 are liable to be registered under GST. If the turnover does not exceed MYR500,000, they are not liable to be registered under GST. However, businesses which have a turnover that does not exceed MYR500,000 may apply for voluntary registration. The advantage of registering on a voluntary basis is that such businesses may be entitled to input tax credits for GST on goods or services acquired.

BASIC DEFINITIONS

Input tax is GST charged on purchase of goods and services used in business activities.

⁸ Calculation of the threshold of MYR500,000 may be determined via two methods, namely, (1) historical method, which is the calculation based on the sales and records for the preceding 12 months; and (2) future method, which is calculated based on the estimated sales for the next 12 months.

Output tax is GST charged and collected on sales or supplies of goods and services.

Input tax credit is tax input claimable by businesses registered under GST.

TYPES OF TAXABLE SUPPLIES There are different categories of taxable supplies under the GST scheme in Malaysia. They may be divided as follows⁹:

Standard-rated supplies Standard-rated supplies are taxable supplies of goods or services which are subject to GST at the proposed rate of 6%. When a supplier, who is a GST registered person, supplies standard-rated goods or services, he has to charge GST on the supply. He is also eligible to claim input tax credit on his business inputs in making such taxable supplies. Examples of standard-rated supplies include the purchase of cars, household items as well as advertising and consultancy services.

Zero-rated supplies Zero-rated supplies are taxable supplies of goods or services which are subject to GST at a zero percent rate. Businesses do not collect any GST on their supplies but are entitled to claim credit on inputs used in furtherance of their business. Examples of zero-rated supplies include basic food items such as rice, fish, meat, poultry, supply of treated water to domestic consumers, and international services.

Exempt supplies Exempt supplies are supplies of goods or services which are not subject to GST. In this context, businesses do not collect any GST on their supplies and are not entitled to claim credit on their business inputs. Examples of exempt supplies include certain financial services, provisions for public transportation (except airport and limousine taxis), toll highways, private health services, and land and buildings used for residential, agricultural, burial and religious purposes.

Supplies not within the scope of GST These types of supplies do not fall within the charging provision of the GST Act. Therefore, no GST is payable or recoverable. Examples


of such supplies include supplies made by the Federal and State government (with the exception of certain prescribed services), and supplies made by local authorities and statutory bodies with regulatory and enforcement functions.

IMPACT OF GST ON CONSUMERS A

change in the taxation system is bound to cause confusion amongst the consumers as they may face difficulties understanding the impact of GST on them. However, the greatest concern about the implementation of GST would be the effect of pricing on consumers. Based on the GST Model in Malaysia, such effects are minimal. This is due to the fact that basic supplies and essential food items are zero-rated while public amenities will be exempted. Production costs for businesses are also lower since GST paid on input is claimable. Thus, savings that businesses make from input tax credits should be realised in the form of lower prices for goods and services.

"The consumers will be taxed only if they buy goods and services. The government has considered the burden on the rakyat before deciding to introduce the GST." – Dato' Seri Najib Tun Razak

In addition, the government has also taken measures to ease the burden of the *rakyat* effective April 2015. The measures taken are, namely, to (1) provide one-off cash assistance of MYR300 and MYR650 to individuals and households that receive *Bantuan Rakyat 1Malaysia* (BR1M); (2) reduce individual income tax rates by between 1% and 3%; and (3) review the individual income tax structures to ensure a more progressive tax structure which includes increasing the chargeable income, subject to the maximum rate from in excess of between MYR100,000 and MYR400,000.

CONCLUSION Lack of knowledge of the scope and concept of GST is the main reason for negative public perception. Thus, awareness programmes, education initiatives and a proper transition period for the understanding of the GST system is essential in order for businesses and individuals to better prepare themselves for the successful implementation of the new tax structure. 

⁹ www.gst.com.my and the *Guide on Supply, Malaysia Goods and Services Tax (GST) by the Royal Malaysian Customs*

IN BRIEF...

- **ALTERNATE CENTRE FOR ARBITRATION?** The Kuala Lumpur Regional Centre for Arbitration (“KLRCA”) is working towards making Malaysia the alternate centre for major arbitration cases originating from Europe and the US. Malaysia is planning to sign a host country agreement with the Permanent Court of Arbitration to set up an office in KLRCA’s new premises. 
- **AMLA (AMENDMENT) BILL PASSED** The Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Bill 2013 (“the Bill”) has been passed. The Bill seeks to provide more powers to law enforcers to freeze and seal assets of those involved in money laundering, as well as ensuring efficient enforcement and prevention, through heavier penalties. 
- **ENVIRONMENTAL QUALITY (CLEAN AIR) REGULATIONS 2014** The Environmental Quality (Clean Air) Regulations 2014 which replaces the Environmental Quality (Clean Air) Regulations 1978 have come into force on 5 June 2014. The new Regulations were formulated to control the discharge of air pollutants from industries, including power plants, incinerators and asphalt mixing plants, as well as to control and improve air quality in order to safeguard the public’s health and safety. 
- **LANDMARK CASE ON MINIMUM WAGES** Following a salary dispute between a hotel and their employees, the Industrial Court has ruled that an employee must be paid minimum wages, in accordance with the new outlined salary structure and the Minimum Wages Order 2012, which took effect from 1 January 2013. 
- **LIABILITY FOR NEGLECTING CHILDREN** The police is sending out reminders to the public that the act of neglecting a child, resulting in death, is a criminal offence which would attract severe punishment. This is reflected in section 31(1) of the Child Act 2001 which contains the offences, namely, oppression, neglect and dumping or abusing children. This is in light of the recent case where a 15-year old boy was found in a deplorable condition after being neglected by his mother. 
- **NATIONAL HARMONY & RECONCILIATION BILL** The proposed National Harmony and Reconciliation Bill (“the Bill”) will address issues concerning gender discrimination, including sexual orientation and discrimination of persons based on religion, race, descent, place of birth and disability. The draft Bill is available for public feedback on the National Unity Consultative Council’s website. 
- **NEW LAW ON CLEAN WATER** A new law is being drafted by the Ministry of Health to ensure that consumers are supplied with clean water that comes not only from clean and safe sources but one that meets the standards of the World Health Organisation. The new law gives the Ministry powers to carry out inspections on basic sources, as well as on the processing and distribution of water supply. 
- **NUCLEAR ACT?** A Nuclear Act which will prove ground breaking for the atomic energy industry, has been announced to be tabled. The new law which aims at supervising and regulating nuclear or atomic energy, will be based on the standards and guidelines of the International Atomic Energy Agency to ensure that standards are not compromised. 

- **SPECIAL MAGISTRATES' COURT**
In order to expedite disposal of traffic and general offences cases under its jurisdiction, the Kuala Lumpur City Hall ("DBKL") has proposed to set up a Special Magistrates' Court. Since Mayor, Datuk Seri Ahmad Phesal Talib has pointed out that the two days allotted to DBKL to deal with such cases were clearly insufficient, setting up of the special court would allow DBKL to conduct prosecution throughout the week. ✚

AROUND THE WORLD... IN BRIEF

- **CANADIAN ANTI-SPAM LEGISLATION**
A new anti-spam legislation designed to protect Canadians from unwanted spam emails, unsolicited messages and social media boxes, has taken effect from 1 July 2014. Businesses will now need to obtain consent before sending emails to their customers. ✚
- **FROM HACKER TO EXPERT** Gary McKinnon, the computer hacker suffering from Asperger's Syndrome, who hacked US government computers and was embroiled in a 10-year legal proceeding over US extradition, has reinvented himself as a search expert by launching a site known as Search Engine Optimisation. Despite having committed the "biggest military computer hack of all time" as described by the US authorities, McKinnon's extradition to the US was blocked on grounds of human rights. ✚
- **HARD ROCK V SOFT ROCK** Multinational restaurant chain, Hard Rock Café has not ruled out legal action to be taken against Soft Rock Café for trademark infringement, in order to protect the goodwill and reputation of the brand. It is claimed that the logo and stylised mark used at the Soft Rock Café premises are similar to that of the registered logo of the Hard Rock Café. ✚
- **HERSHEY V HERSHEY** US senator, Steve Hershey, has been ordered by the court to change his promotional materials as they were considered too similar to the trademark belonging to chocolate maker *The Hershey Company*, which bears the same white lettering on a dark brown background. ✚
- **HIGH HEELS BAN IN RUSSIA** Russian women may soon undergo a dramatic makeover if a Kremlin-friendly lawmaker has his way and pushes through a ban on a fashion item they perhaps cherish the most: high heels. ✚
- **INTERNET GAG ON LAWYERS** New rules have been drafted in China banning lawyers from drawing attention to cases through the Internet. According to the rules, lawyers are prohibited from making "misleading" comments, issuing open letters or inciting demonstrations to pressure courts or judges to review decisions. ✚
- **KANYE V COINYE** Kanye West has filed a lawsuit against the founders of cryptocurrency, *Coinye*, for wilful trademark infringement with their "*Coinye West*" mark which was claimed to be substantially similar to the "*Kanye West*" mark. As *Coinye* failed to file an answer or respond to the trademark infringement complaint, they lost the case by default. ✚
- **LARGEST ARBITRAL AWARD** The Permanent Court of Arbitration in The Hague held in favour of claimants – Hulley Enterprises, Yukos Universal and Veteran Petroleum – and ordered the Russian government to pay EUD50.02 billion in damages, USD60 million in legal fees and EUD4.2 million in arbitration costs, for breaching its obligations under the Energy Charter Treaty by expropriating assets from Yukos. This is the largest arbitral award in history. ✚
- **LAWYER OVERCHARGING** The Singapore High Court has ruled that the legal bills sought by the Singapore Medical Council ("SMC") from surgeon Dr Susan Lim were inflated, and therefore, slashed them from SGD1.33 million to SGD317,000. Ironically, the SMC had previously found Susan Lim guilty of professional misconduct for overcharging a member of the Brunei royal family for medical treatment. ✚

- **NEW LABOUR LAW IN BRAZIL** A new labour law targeting domestic workers has come into force in Brazil. The law provides for basic entitlements such as an eight-hour working day, the right to minimum wages, a lunch break, social security, as well as severance pay. Employers are also liable to be fined for failure to register their domestic workers. ✚
- **OBESITY = DISABILITY?** The Court of Justice of the European Union (“CJEU”) is considering a test case which could oblige employers to treat obesity as a disability. This came after Denmark’s request to the CJEU to rule on the case of a male child-minder who claimed to have been sacked for being too fat. ✚
- **PROPOSED ARBITRATION BILL IN MYANMAR** Based on the provisions of the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration (the “Model Law”), which accommodates the recognition and enforcement of arbitration agreements and foreign arbitral awards, an Arbitration Bill was submitted to the Parliament in Myanmar to implement the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). The Arbitration Bill which will replace the existing legislation, namely the Arbitration (Protocol and Convention) Act 1937 and the Arbitration Act 1944, signifies a positive development for foreign investors looking to trade internationally. ✚
- **RIGHT TO DIE REJECTED** The UK Supreme Court, in a landmark judgment has dismissed an appeal on the right to die, brought by campaigner Paul Lamb, and the widow of the late Tony Nicklinson. The appellants claimed that the prohibition on assisted suicide in section 2(1) of the Suicide Act 1961 is incompatible with article 8 of the European Convention on Human Rights. Majority of the full panel of the Supreme Court, however, ruled that they did not have the jurisdiction to change the law, and that this would be a matter for Parliament to consider. ✚
- **RULING AGAINST BANPU OVERTURNED** A 2012 ruling that required the country’s top coal miner, Banpu Pcl to pay more than USD1 billion in compensation to partners in a former Laos joint venture was overturned by the Thailand Court of Appeal. ✚
- **SIMPLER ENGLISH IN SINGAPORE STATUTES** The Attorney-General’s Chambers of Singapore will be simplifying the language and presentation of Singapore’s existing laws. Changes to the laws will be made under the Revised Edition of the Laws Act which allows changes to the language and presentation of the statutes, without affecting the meaning behind such laws. ✚
- **SUKUK HISTORY IN HONG KONG** Hong Kong has created a new *Sukuk* history when it launched its first Islamic bond, selling a USD1 billion five-year *Sukuk*, the fourth-largest Islamic bond this year. The proposed issuance follows a law passed in March 2014 which allows the Hong Kong government to issue *Sukuk* under its existing Government Bond Programme, and an amendment to its tax framework in July 2013 which removes additional profits tax and stamp duty charges incurred in issuing *Sukuk*, compared to conventional bonds. ✚
- **THAILAND SURROGACY LAWS** Following an issue of the abandonment by an Australian couple of one of the twin babies diagnosed with Down Syndrome, born via a surrogate mother in Thailand, a surrogacy legislation has been drafted and would be tabled for the approval of the National Legislative Assembly. The new surrogacy legislation seeks to protect children born under such an arrangement by making provisions requiring couples who wish to have a child through a surrogate mother to be legally married, and for the surrogate mother to be legally married as well. Further, although the surrogate mother must not be the parent or child of either couple, she must be related to either

one of them. In addition, before agreeing to any arrangement, the surrogate mother must also already have at least one child, and in cases where the surrogate mother is married, she must seek permission from her husband. Commercially motivated surrogacy arrangements are strictly prohibited. ✚

- **TRIUMPH FOR TOM CRUISE** Actor Tom Cruise has had a USD1 billion copyright infringement case against him dismissed. Screenwriter Timothy Patrick McLanahan filed the suit in December 2013, alleging that Cruise and Paramount Pictures had infringed his copyright in the film *Mission: Impossible – Ghost Protocol*, which was released in 2011. ✚
- **UBER BAN IN GERMANY OVERTURNED** A temporary injunction in Germany banning one of the services offered by the alternative taxi firm, *Uber*, has been overturned. The German Taxi Association, Taxi Deutschland has expressed its position to appeal. *Uber*, which uses smartphone apps to connect drivers and customers, has received opposition worldwide, claiming it to be illegal. ✚
- **UPDATED ARBITRATION RULES IN LCIA** The London Court of International Arbitration (“LCIA”) has introduced a new set of rules which will come into force on 1 October 2014. Such changes made to the LCIA rules are intended to align them with current arbitration practices. ✚
- **USD23 BILLION RECORD PAYOUT** The widow of a chain-smoker who died of lung cancer was awarded punitive damages of more than USD23 billion by a Florida jury, in her lawsuit against the RJ Reynolds Tobacco Company, the United States’ second-biggest cigarette maker. ✚
- **WTO RULING ON RARE EARTH EXPORT** China has lost an appeal on the World Trade Organisation ruling on exports of rare earth which was brought by the United States, the European Union and Japan. ✚

✚ BRIEF-CASE...

BANKING – Banker and customer – Loan facilities – Condition precedent – Whether the relevant condition precedent had been waived – Whether there was a breach of contract

BANK ISLAM MALAYSIA BHD V AQUASIX CORP SDN BHD & ORS [2014] 3 MLJ 812, Court of Appeal

FACTS The defendant had, by two separate letters of offer, granted the first plaintiff a revolving *Murabahah* working capital financing to the limit of MYR700,000 and a cash note facility in the sum of MYR750,000.

The defendant, however, subsequently refused to disburse the loans to the first plaintiff on the basis that the loan was conditional upon the first plaintiff taking over 100% shares in Panduan Era Sdn Bhd, a company owned and operated by the second plaintiff.

The first plaintiff, therefore, claimed for breach of contract. The trial judge held that there was sufficient evidence to show that the defendant had waived the condition precedent, and thus the issue of the first plaintiff’s failure to fulfill the condition precedent did not arise. The defendant appealed.

ISSUES The issues before the Court of Appeal were (1) whether the relevant conditions precedent had been waived by the defendant; and if so, (2) whether the defendant was in breach of contract for failure or refusal to allow disbursement or drawdown banking facilities to the first plaintiff.

HELD In allowing the appeal, the Court of Appeal held that the take-over of 100% shares in Panduan Era Sdn Bhd by the first plaintiff was a condition precedent to the disbursement of the loan facilities, and that such condition precedent had not been waived by the defendant. Therefore, since the plaintiff had failed to comply with the said condition precedent, the defendant cannot be said to have been in breach of the contract. ✚


PROFESSION – Medical profession – Whether obligation on part of medical practitioners to charge fair and reasonable fees – Whether such obligation must be embodied in statute – Whether ethical obligations may be waived by agreement for fees

**LIM MEY LEE SUSAN V
SINGAPORE MEDICAL COUNCIL**

[2014] 4 MLRH 227, High Court (Singapore)

FACTS The appellant, a registered medical practitioner, was charged with professional misconduct under the Singapore Medical Registration Act. The charges against the appellant were largely related to invoices issued by the appellant's clinics, which amounted to approximately SGD24 million, for services of over 110 treatment days from January to June 2007, rendered to a member of the royal family of Brunei. In finding that the fees charged by the appellant were grossly excessive and unreasonable, the Disciplinary Committee ("DC"), appointed by the respondent, ordered that the appellant be suspended from practice for a period of three years, pay a financial penalty, be censured in writing and undertake, on her return to practice, not to charge her patients more than a fair and reasonable fee for her services. The appellant appealed against her conviction by the DC.

ISSUE The issues before the High Court were as follows, namely (1) whether there is an inherent ethical obligation on the part of medical practitioners in Singapore to charge a fair and reasonable fee for services rendered; and (2) whether ethical obligations may be superseded by an agreement for fees between doctor and patient.

HELD In dismissing the appeal, it was held that medical practitioners in Singapore are under an ethical obligation to charge a fair and reasonable fee for their services. Such an obligation is inherent and the appellant was bound by it even though it had not been embodied in any statute. It was also held that there is an objective ethical limit on medical fees in both private and public health care that operates over and above contractual and market forces. This cannot be superseded by an agreement between a doctor and patient. 

BRIEFLY...


AMENDMENT ACTS

**ANTI-MONEY LAUNDERING AND
ANTI-TERRORISM FINANCING
(AMENDMENT) ACT 2014**

No
A1467

Date of coming into operation
8 August, 1 September and 1 October 2014

Notes


The highlights of the amending Act include amendment to section 3 which changes several definitions, including the definitions of "unlawful activity", "proceeds of an unlawful activity" and "financial institution". New sections 4A, 12A and 14A provide respectively for the offence of structuring transactions to evade reporting requirements; the prescription of additional financial institutions by the Minister of Finance; and the prohibition against disclosure of reports and related information by a reporting institution. There is also the introduction of Part IVA which provides for cross-border movements of cash and bearer negotiable instruments. Other sections introduced include sections 44A, 52A, 56A, 75A, 86A and 91A which provide respectively for the variation or revocation of order to freeze property; the expiry of a seizure order; forfeiture order not to be affected by acquittal; stay of proceedings; attempts, abetments and criminal conspiracies; and particulars of charge. 

**PRICE CONTROL AND ANTI-
PROFITEERING (AMENDMENT) ACT
2014**

No
A1464

Date of coming into operation
1 September 2014

Notes


The highlights of the amending Act include the introduction of section 10A which ensures that prices or charges imposed shall not include items stipulated in the Schedule; introduction of section 53A which provides for the duty to keep records relating to the business operations; introduction of section 60A which gives the Minister power to amend the Schedule; and the introduction of the Schedule which provides for the exclusion of items from the imposition of prices and charges. 

**PROMOTION OF INVESTMENTS
(AMENDMENT) ACT 2014**

No
A1468

Date of coming into operation
22 August 2014

Notes


The highlight of the amending Act is the introduction of section 27P which provides for the determination of the effective date and compliance for investment tax allowance. 

**PRIVATE HIGHER EDUCATIONAL
INSTITUTIONS (AMENDMENT) ACT
2014**

No
A1465

Date of coming into operation
25 July 2014

Notes

The highlights of the amending Act include the amendment of Part IV which provides for the deletion of section 22; amendment of section 23 which substitutes the words "Except as is expressly provided under sections 21 and 22" for the words "For the avoidance of doubt"; and the saving and transitional provision which provides that all invitations made by the Minister under section 22 of the principal Act and applications made pursuant to such invitations immediately before the commencement of the Act shall be dealt with as if section 22 of the principal Act had not been amended. 

**GUIDELINES/RULES/CIRCULARS/
DIRECTIVES AND PRACTICE NOTES
ISSUED BETWEEN
JULY AND SEPTEMBER 2014
BY BANK NEGARA MALAYSIA,
BURSA MALAYSIA AND
SECURITIES COMMISSION**

BANK NEGARA MALAYSIA (BNM)

- Guidelines on External Auditor —
Date issued: 29 August 2014
- Guidelines on Credit Transactions and Exposures with Connected Parties —
Date issued: 16 July 2014

- Guidelines on Credit Transactions and Exposures with Connected Parties for Islamic Banks — *Date issued: 16 July 2014*

BURSA MALAYSIA

- Directives on the List of Approved Securities — *Effective date: 21 August 2014*
- ACE and Main Market Consolidated Listing Requirements — *Updated: 22 July 2014*
- Amendments to Bursa Malaysia Securities Berhad ACE Market Listing Requirements regarding an Independent Adviser's Role in relation to a Major Disposal and Voluntary Withdrawal of Listing, Issuance of a Best Practice Guide in relation to Independent Advice Letters and Clarification of the Disclosure Requirements in Annual Reports — *Effective date: 22 July 2014*
- Best Practice Guide in relation to Independent Advice Letters — *As at: 22 July 2014*

SECURITIES COMMISSION

- Guidelines on *Sukuk* — *Effective date: 28 August 2014*
- Guidelines on Private Debt Securities — *Effective date: 28 August 2014*
- Guidelines on Offering, Marketing and Distribution of Foreign Funds — *Effective date: 25 August 2014*
- Guidelines on Unit Trust Funds — *Effective date: 25 August 2014*
- Prospectus Guidelines for Collective Investment Schemes — *Effective date: 25 August 2014*
- Handbook for CIS Operators of ASEAN CISs — *Dated: 25 August 2014*

ZRp IN-BRIEF...

The ZRp **Brief** is published for the purposes of updating its readers on the latest development in case law as well as legislation. We welcome feedback and comments and should you require further information, please contact the Editors at:

mariette.peters@zulrafique.com.my
amyliia.soraya@zulrafique.com.my

This publication is intended only to provide general information and is not intended to be either a complete or definitive statement of law on the subject matter. The publisher, authors, consultants and editors expressly disclaim all and any liability and responsibility to any person in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication.

All rights reserved. No part of this publication may be produced or transmitted in any material form or by any means, including photocopying and recording or storing in any medium, by electronic means and whether or not transiently or incidentally, to some other use of this publication, without the written permission of the copyright holder, application for which should be addressed to the Editor.

The contributors for this **Brief** are:

- *Mariette Peters*
- *Amylia Soraya*
- *Victoria Yap*
- *Iris Tang*