

THE BRIEF *Case*



ZUL RAFIQUE & partners named Employer of Choice 2019



A BRIEF NOTE...

by Dato' Zulkifly Rafique

Our greatest assets are our people...

ZUL RAFIQUE & partners is delighted to announce that we were named *Employer of Choice 2019* by Asian Legal Business. This is our 9th win since 2009.

We, at ZUL RAFIQUE & partners, acknowledge that our best assets are our employees. It is only with the determination and dedication of our people that we can serve our clients.

As aptly put by Richard Branson, “A company’s employees are its greatest asset and your people are your product.”

We would like to thank everyone at the firm for bringing their best to work every day. We truly appreciate the hard work, effort and dedication, that has made the firm such a success today.

We would also like to thank our clients and friends for their endless support.

With that said, we hope you enjoy this issue of the BriefCase, and to all our Muslim friends, *Salam Aidilfitri, Maaf Zahir dan Batin.*

CONTENTS

page 2 IN-BRIEF...

The highlights in this Folder include:

- *First woman Chief Justice*
- *Landmark case: Bank Negara council ruling supersedes civil courts*
- *Securities Commission: Property crowdfunding framework*
- *“Beer Contract” in Sweden*
- *Japan: Legal cap on long work hours*
- *Singapore: New law for fake news*

page 5 BRIEFING...

Amongst the articles in our features:

- *Exiting work WhatsApp group – A ground for dismissal?*
- *The EU General Data Protection Regulation (GDPR) application in Malaysia*
- *Shariah Advisory Council ruling binding on civil courts?*

page 9 DEBRIEF...

The cases DeBriefed include:

- *Alma Nudo Atenza v Public Prosecutor and another appeal* [2019] MLJU 280, Federal Court
- *CIMB Bank Bhd v Anthony Lawrence Bourke & Anor* [2019] 2 MLJ 1, Federal Court
- *Gula Perak Bhd v Datuk Lim Sue Beng & Other Appeals* [2019] 1 CLJ 153, Federal Court

page 12 BRIEFLY...

Legislation Update:

- Finance Act 2018
- Road Transport (Amendment) Act 2019
- Children and Young Persons (Employment) (Amendment) Act 2019
- Service Tax (Amendment) Act 2018
- Sales Tax (Amendment) Act 2018
- Guidelines/Rules/Circulars/Directives and Practice Notes issued between January and June 2019 by Bank Negara Malaysia, Bursa Malaysia and Securities Commission Malaysia

- **ZUL RAFIQUE & partners NAMED ALB EMPLOYER OF CHOICE 2019** ZUL RAFIQUE & partners has been named ALB Employer of Choice 2019. This is our ninth win since 2009.
- **CHANGES TO ACT GIVE KING SOLE POWER** Under the proposed amendments to the National Security Council Act, the power of the Prime Minister to declare a security area will be removed and will rest in the hands of the Yang di-Pertuan Agong on the advice of the National Security Council.
- **ECRL TO PROCEED WITH ADJUSTMENTS** The East Coast Rail Link (ECRL) project will finally be re-started, with several changes in Malaysia's favour, which includes increased participation by Malaysian companies, the splitting of operating and maintenance costs with China, and the return of money which was paid in advance to China.
- **FEDERAL COURT STRUCK DOWN THE USE OF "DOUBLE PRESUMPTIONS" IN DRUG TRAFFICKING CONVICTIONS** The Federal Court in a landmark ruling has struck down the use of "double presumptions" under section 37A [Admission of statement evidence] of the Dangerous Drugs Act 1952 (DDA) to secure the conviction of an accused person charged for drug trafficking. The Federal Court declared section 37A of the DDA as unconstitutional and in violation of Article 5(1) [Liberty of the person] read with Article 8(1) [Equality] of the Federal Constitution.
- **FEDERAL COURT TO REHEAR 'BIN ABDULLAH' APPEAL** The Federal Court will rehear an appeal by the National Registration Department (NRD) and two others on whether a Muslim child conceived out of wedlock can bear the father's surname instead of the illegitimacy tag of "bin Abdullah". The Court of Appeal had previously held that a fatwa had no force of law and could not form the legal basis for the NRD director-general to decide on the surname of an illegitimate child under section 13A(2) of the Births and Deaths Registration Act 1957 (BDRA).
- **FINANCIAL THREAT INTELLIGENCE PLATFORM BY YEAR-END** Bank Negara Malaysia (Central Bank of Malaysia) is developing a Financial Threat Intelligence Platform ("the Platform") which is expected to be operational by year-end. The Platform is established in order to fortify and better equip Malaysia against cyber threats.
- **FIRST WOMAN CHIEF JUSTICE** Federal Court judge Datuk Tengku Maimun Tuan Mat has been appointed as the new Chief Justice of Malaysia, the first woman to take on the role. She replaces Tan Sri Richard Malanjum.
- **LANDMARK CASE: BANK NEGARA COUNCIL RULING SUPERSEDES CIVIL COURTS** In a landmark decision, a nine-man Federal Court Bench held that Bank Negara's Syariah Advisory Council's (SAC) ruling on Islamic finance is constitutional and binding on civil courts even though the SAC is not a judicial body.
- **LEGISLATION ON COLLECTION AND DISTRIBUTION OF FOOD DONATIONS** Malaysia is proposing a legislation to regulate the collection and distribution of perishable and near-expiry food for onward distribution to those in need. The said proposed legislation or the "Good Samaritan Bill" will comprise three components to protect all those involved in food rescue efforts.
- **RESIDENTIAL TENANCY ACT** The National Housing Department's proposed Residential Tenancy Act ("the Act") which aims to boost the residential rental market is targeted for implementation in two years' time. The Act will assist in determining the affordable rental rate based on location, as well as laws to protect both tenants and owners.
- **SECURITIES COMMISSION MALAYSIA ISSUES GUIDES ON BUSINESS CONTINUITY** The Securities Commission Malaysia (SC) has issued the *Guiding Principles on Business Continuity* for capital market entities to enhance the systemic resiliency of the capital market. It sets out the SC's expectations of the business continuity management approach of capital market entities, to ensure timely continuity of critical services and the fulfilment of business obligations in the event of disruptions.

- SECURITIES COMMISSION: PROPERTY CROWDFUNDING FRAMEWORK** The Securities Commission Malaysia has released a new property crowdfunding framework following revisions to the *Guidelines on Recognized Markets*, which provides an alternative financing avenue for first-time homebuyers. The revised guidelines list out new requirements and obligations of a property crowdfunding platform operator in order to support the integrity of the scheme and protect investors' interest.
- SPECIAL MARRIAGE COURT** A Special Marriages, *Hadhanah* (child custody) and *Nafkah* (maintenance) court which has the authority to confiscate the property of a man who has failed to provide for his ex-wife is now in the final process of getting the views of various parties on its administration, before it is tabled to the Cabinet.
- STANDING ORDERS BEING AMENDED TO ALLOW LIVE COVERAGE** Amendments to Parliament's Standing Orders are underway to allow live coverage of the Public Accounts Committee (PAC) hearings in a move towards having a more transparent Parliament.
- SUSPECTS INVOLVED IN COUNTERFEITING ACTIVITIES TO BE CHARGED UNDER AMLA** Effective April 2019, individuals arrested on suspicion of being involved in the selling of counterfeit goods worth more than MYR30,000 will be remanded and charged under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA), and compound fines would no longer be issued for such offences.
- THE ADMINISTRATION OF ISLAMIC LAW (FEDERAL TERRITORIES) (AMENDMENT) BILL 2018** The Administration of Islamic Law (Federal Territories) (Amendment) Bill 2018 has been approved in *Dewan Negara*. The amendment among others would enable all religious schools, *tahfiz* centres and Islamic kindergartens in the Federal Territories to be registered and supervised. It would also enable the religious council to take legal action including directing the closure of any *tahfiz* centre, if any problem arises.

AROUND THE WORLD... IN-BRIEF

- AUSTRALIA: NEW LAW THREATENS SOCIAL MEDIA FIRMS WITH FINES, JAIL OVER VIOLENT CONTENT** Under Australia's new law, social media companies can be fined up to 10 per cent of their annual global turnover and executives imprisoned for up to three years if violent content is not removed "expeditiously". Companies are also expected to inform Australian police within a "reasonable" timeframe. The new law came about after the incident where a lone gunman attacked two mosques in Christchurch, killing 50 people as they attended Friday prayers.
- "BEER CONTRACT" IN SWEDEN** Sweden has introduced "The Beer Contract", a legally binding contract that allows friends to take each other to court for cancelling or rearranging a planned beer. Failing to meet a friend for a beer will cost 500 Swedish Krona (USD50) for breach of contract.
- DIVORCE LAWS IN ENGLAND AND WALES TO BE OVERHAULED SO COUPLES CAN SPLIT FASTER** Under the current divorce laws, one spouse has to allege adultery or unreasonable behaviour by the other for the immediate start of divorce proceedings. New laws will now allow them to merely state that the marriage has broken down irretrievably and provides for a minimum timeframe of six months from petition stage to decree absolute. A new option which allows couples to apply for a divorce jointly will also be available.
- EU MANDATES 'HIGH-LEVEL' PROTECTION TO WHISTLEBLOWERS** Whistleblowers across the European Union (EU) will be granted greater protection under the new landmark legislation aimed at encouraging reports of wrongdoing. The new law shields whistleblowers from retaliation and creates "safe channels" to allow them to report breaches of EU law.

- **JAPAN: LEGAL CAP ON LONG WORK HOURS** Japan is setting a legal cap on long work hours to change its notorious overwork culture that has caused sickness and deaths via a labor reform law. The cap, which only targets major companies for now, limits overtime work to 45 hours a month and 360 hours a year in principle. The monthly cap can be extended in busy periods, for up to six months a year. 🌀
- **RUSSIA: LEGISLATION ON DIGITAL RIGHTS AND FAKE NEWS** Russian lawmakers have enacted a new legislation which will punish those who spread what the authorities regard as fake news or who show “blatant disrespect” for the state online. The new law also grants authorities the power to block websites if they fail to comply with requests to remove information they deem factually inaccurate. 🌀
- **SINGAPORE: HARSHER PUNISHMENTS FOR CRIMES TO VULNERABLE PEOPLE** Recent changes to the Singapore Penal Code have introduced harsher penalties against vulnerable persons, such as young children, domestic workers and the disabled. Those who are found to have committed the crime can now be arrested by the police without a warrant and if found guilty, may receive twice the maximum penalty. 🌀
- **SINGAPORE: HIGH BAR FOR WHEN CLAIMS CAN BE STRUCK OUT** The Singapore High Court judge has ruled no claim should be struck out without a trial “as long as there are issues of fact and law that need to be proven”. This was provided in the case of a Hong Kong-based *Qroi* company, which provides technical services to mobile operators in Singapore, who sued the Managing Partner *Ian Pascoe* and *Grant Thornton Advisory Services* for alleged non-payment for services delivered. 🌀
- **SINGAPORE: JOINT TENANCY CONTRACTS NOW VALID FOR MUSLIMS** The Fatwa Committee of Singapore has issued a *fatwa*, which recognises the agreement of Muslims who co-own a property in Singapore under a joint tenancy contract as religiously valid. This means that when one of the owners dies, the surviving owner can automatically absorb the former’s share of the property - known as the right of survivorship - without having to present additional paperwork. 🌀
- **SINGAPORE: JUDGES MUST TURN SERIOUS CASES OF HURT AND HARASSMENT TO POLICE** Under the amended Penal Code of Singapore, judges will be required to escalate serious cases of hurt or harassment to the police, even if the victims have not sought the police’s help and are seeking only protection orders from the court. This is part of the responsibilities of the new Protection from Harassment Court, which would be established as set out in the amended Protection from Harassment Act. 🌀
- **SINGAPORE: MINIMUM AGE OF CRIMINAL RESPONSIBILITY TO BE RAISED** The minimum age at which a person is criminally responsible for his actions in Singapore will be raised from seven to ten, following Parliament’s approval of the new Criminal Law Reform Bill. This law reform was made to strike a balance between protection of the public and fairness to young children who may not be able to understand the consequences of their action. 🌀
- **SINGAPORE: NEW LAW FOR FAKE NEWS** Singapore has passed new laws, the Protection from Online Falsehoods and Manipulation Bill, to tackle the spread of fake news. The new law requires online news sites to publish corrections or warnings on fake news, or even remove such articles in extreme cases. 🌀
- **UK: ‘LIKE’ AND ‘STREAKS’ LIMITS ON SOCIAL MEDIA** The UK Information Commissioner’s Office has suggested new guidelines to protect youngsters on the internet. Under the new rules, *Facebook* and *Instagram* will face limits on letting under-18s “like” posts on their platforms while *Snapchat* could be prevented from allowing the age group to build up “streaks”. “Likes” help build up profiles of users interests while “streaks” encourage them to send photos and videos daily. Both of these tools encourage users to share more personal data and spend more time on apps than desired. 🌀
- **US: ALABAMA BANS ABORTION** Alabama has passed a Bill to restrict abortions in almost all cases including rape or incest. Under the said Bill, doctors face 10 years in prison for attempting to terminate a pregnancy and 99 years for carrying out the procedure. However, a woman who has an abortion would not be held criminally liable, and abortion in cases where the mother’s life is at serious risk are allowed. 🌀

EMPLOYMENT AND INDUSTRIAL RELATIONS

EXITING WORK WHATSAPP GROUP

– A GROUND FOR DISMISSAL?... The introduction of instant messaging, namely *WhatsApp*, has changed the mode of communication in a workplace. It is now recognised as being a platform for fast, direct and professional communication. It is commonplace for employers to create different *WhatsApp* groups for employees in order to cater to different needs. The golden question here is whether an employee, upon deciding to quit a work *WhatsApp* group, can be used as a ground for dismissal.

The Industrial Court of Malaysia has recently ruled on a dismissal claim involving an employee for quitting the work *WhatsApp* group.

In this article, we examine the facts, issues and ruling of the case.

BACKGROUND The Industrial Court of Malaysia (the “Court”) in the case of *Thilagavathy a/p Arunasalam v Maxis Mobile Service Sdn Bhd*¹ has recently granted an award in favour of *Maxis Mobile Sdn Bhd* (“the Company”) pertaining to the claim of unfair dismissal by a former employee (“the Claimant”) who was charged for misconduct relating to her continuous argumentative, disrespectful, abrasive, tactless and uncooperative attitude.

FACTS In this Case, the Claimant was an Executive Sales & Service, Customer Service at the Company. It was common practice for the Company to create *WhatsApp* groups among its employees for ease of communication. The Company had clearly stated that this would be an official form of work communication and that employees are not allowed to exit such groups without prior approval of the Company. The Claimant was argumentative, disrespectful and uncooperative towards her superior and had exited the groups in blatant disregard of her superior’s instructions. Further, the Claimant had also failed to submit “Day End Sales and Service Report” on time despite numerous reminders. The Company then decided to terminate the Claimant’s services. Dissatisfied, the Claimant appealed on the ground that her dismissal was without just cause and excuse.


THE ISSUE The main issue raised was whether the Claimant was guilty of the charges preferred against her which would constitute just cause or excuse for the Company to dismiss her.

“...the Claimant’s conduct in totality challenged and rejected the whole fabric of the relationship of employer and employee and effectively destroyed the trust, which must subsist in any such relationship where the employee holds a responsible position.”

THE DECISION The Industrial Court upheld the dismissal of the Claimant and held that,

- (i) the Claimant was aware that she was required to seek the approval of her supervisor prior to exiting the *WhatsApp* groups. However she had failed to obtain such approval and had deliberately exited the *WhatsApp* groups; and
- (ii) the Claimant had failed to send out the “Day End Sales and Service Report” on several occasions despite several reminders.

As such, it was held that the Claimant’s continuous argumentative, disrespectful, abrasive, tactless and uncooperative attitude not only breached the implied duty of mutual respect but also disruptive to teamwork and cooperation at the workplace. The Claimant’s conduct also shows willful defiance to the lawful orders of the Company and her persistent refusal to obey instructions of her superior or to respect his authority amounted to an act of indiscipline and insubordination.

COMMENTS This is the first reported case on misconduct relating to the use of *WhatsApp* at work. To many employees, quitting work *WhatsApp* groups may seem petty to a degree that it does not warrant a dismissal. However considering the circumstances, whereby it was made clear that *WhatsApp* would be the official form of work communication and clear instructions were made that prior approval was required before an employee could leave the *WhatsApp* groups, it is pertinent that such instructions are obeyed as defiance may amount to misconduct to warrant dismissal. This case shows the changing demands of workplace communication methods which traverse into personal social media platforms. 

¹ Industrial Court Case No. 29(7)/4-224/16, Award No. 1050 of 2019 dated 27 March 2019

PERSONAL DATA PROTECTION

THE EU GENERAL DATA PROTECTION REGULATION (GDPR) APPLICATION IN MALAYSIA...

In this article, we aim to narrate the essentials of the General Data Protection Regulation (GDPR) and Malaysia's Personal Data Protection Act 2010 (PDPA) to give a better understanding of GDPR's application in Malaysia and also an overview of what needs to be done for Malaysian businesses receiving personal data from individuals of European Union (EU) member states.

INTRODUCTION In January 2012, the European Commission set out plans for data protection reform across the EU in order to make Europe "fit for the digital age"². Fast forward to today, an agreement was reached on what that involved and how it will be enforced via the introduction of the GDPR. The GDPR is Europe's new framework for data protection laws, replacing the previous 1995 Data Protection Directive. This new EU framework applies to organisations in all member-states and has implications for businesses and individuals across Europe, and beyond.

GDPR v PDPA The objective of the EU's GDPR and Malaysia's PDPA is to protect an individual's right on their personal data. However there are more robust rights granted to data subjects under the GDPR. The following are a few examples of the various differences.

Personal data

Under the PDPA, personal data means information processed in respect of commercial transactions, from which a data subject can "be identified or is identifiable"³. The GDPR also takes a similar approach to the PDPA by not setting out strict rules as to what classes of information are personal data. Both focus on the identifiability of a data subject to determine whether or not a class of information would constitute personal data. However, the GDPR applies to automated processing of personal data which forms or are intended to form part of a filing system. As such, the application of the GDPR does not seem to be limited to "commercial transactions".

² <https://eugdpr.org/the-regulation/>

³ Section 4 of PDPA: Interpretation

Right to be forgotten

Right to be forgotten entitles the data subject to have their data controller erase his/her personal data, cease further dissemination of the data, and potentially have third parties halt processing of the data.

Section 10 of the Malaysian PDPA merely provides that personal data of data subjects shall not be kept for "longer than is necessary". In contrast, Article 17 of the GDPR grants data subjects the right to actively object to the processing of personal data and imposes a one month time limit to respond to such a request⁴.

Right to data portability

The GDPR also provides a right to "data portability" which allows individuals to obtain their personal data in a machine readable format, and to request for the move, copy or transfer of personal data easily from one controller to another in a safe and secure way, without affecting its usability. This is to be contrasted with the PDPA, which only provides for the right to request from a data user the personal data processed by the data user in an intelligible form.

APPLICATION The GDPR applies to organisations that control or process personal data of subjects in the EU and it also applies to organisations located outside of the EU *i.e.* Malaysia, if they control or process personal data of data subjects residing in the EU.

There are two questions that should be addressed to determine if you or your business is (or had previously done so) collecting, storing or processing personal data of residents in the EU:

- (i) Does your business have any direct/indirect presence in Europe; and/or
- (ii) Does your business offer any goods or services to/monitor the behaviour of individuals in the EU?

If the answers to any of these questions are in the affirmative, then yes, the GDPR will apply to the Malaysian business as well.

APPLICABLE TESTS Two tests have been established in determining whether or not your business offers any goods or services to, or monitor the behavior of, individuals in the EU. The tests are as follows:

⁴ <https://gdpr-info.eu/art-17-gdpr/>

(a) Goods and Services Test


In relation to what amounts to offering of goods and services to data subjects in the EU, the relevant test to consider is the *Goods and Services Test*.

There are two elements that need to be fulfilled under this test to determine if your business would be caught by the GDPR, (i) firstly, it must be apparent that your business or company envisages offering goods and services to data subjects in the EU; and (ii) secondly, whether you or your business make a conscious decision, or have the intention of making its services available to customers based in the EU.

While it is insufficient to only consider mere accessibility of the business website in the EU or the use of a language generally used in the third country where the business is established, certain factors may make it apparent that the business or company envisages offering goods or services to data subjects in the EU. An example would be the use of a language or a currency generally used in the EU with the possibility of ordering goods and services in that other language, or mentioning EU customers or users.

(b) Monitoring Test

On the other hand, the *Monitoring Test* is the monitoring of behaviours that involves the tracking of the behaviour of data subjects on the Internet and the subsequent processing of such personal data for other purposes, such as profiling in order to make decisions regarding the data subject or to analyse or predict the data subject's personal preferences, behaviours and attitudes. Profiling is basically the automated processing of personal data for evaluating aspects, in particular to analyse or make predictions about individuals. The use of the word "evaluating" suggests that profiling involves some form of assessment or judgment about a person.

CONCLUSION Overall, the GDPR has wide-ranging consequences for Malaysian businesses, particularly ones that serve customers or deal with individual data from all parts of the world, especially with the EU member states. The introduction of the GDPR presents an opportunity for Malaysian businesses to buckle up and set a higher standard of protection and procedure to ensure that their business processes are in sync with the changes in both the local and global personal data protection regulatory regime. 

CONSTITUTIONAL LAW

SHARIAH ADVISORY COUNCIL RULING BINDING ON CIVIL COURTS? In a landmark decision with a historic nine-member panel of judges, the Federal Court in the case of *JRI Resources Sdn Bhd v Kuwait Finance House (M) Bhd (President of Association of Islamic Banking Institutions Malaysia & Anor, interveners)*⁵ held that any decision by the Central Bank of Malaysia's (Bank Negara Malaysia) Shariah Advisory Council (SAC) on Islamic finance is constitutional and binding on civil courts.

In this article, we examine the facts, issues and ruling of the case.

FACTS The Applicant, *JRI Resources Sdn Bhd* was given by the Respondent, *Kuwait Finance House (Malaysia) Berhad*, various Islamic credit Facilities ("the Facilities") to facilitate the leasing of shipping vessels. The Applicant defaulted in making monthly lease payments under the Facilities, resulting in the Respondent applying for and succeeding in the summary judgment application at the High Court.

The Applicant then appealed to the Court of Appeal and argued that there was a failure to derive income from the charter proceeds due to the Respondent's failure to carry out major maintenance works on the shipping vessels as owner of the vessels. Such contention is also contrary to the express wordings in clause 2.8⁶ of the *Ijarah Agreements*.

The Applicant further submitted that the High Court should have referred this issue to the SAC pursuant to section 56⁷ of the Central Bank of Malaysia Act 2009 (CBMA). The Court of Appeal set aside the summary judgment and remitted the case to the High Court for trial with an order to the High Court that a reference be made to the SAC on the following question: "*Whether clause 2.8 of the Ijarah Agreements (which makes it the obligation of the Customer, to bear all the costs of maintaining the leased vessels including major maintenance), is Shariah compliant*". The Applicant filed an application for a reference to the Federal Court.

⁵ [2019] 3 MLJ 561, Federal Court

⁶ "...the Parties hereby agree that the **Customer (meaning the Applicant here) shall undertake all of the Major Maintenance** as mentioned herein and the Customer will bear all the costs, charges and expenses in carrying out the same".

⁷ Reference to Shariah Advisory Council for ruling from court or arbitrator

THE ISSUE The main issue was whether a ruling made by the SAC established under sections 56 and 57⁸ of the CBMA is *ultra vires* Article 121⁹ of the Federal Constitution (FC) which, *inter alia*, vests judicial power over civil matters in the High Court.

Section 56 – Reference to Shariah Advisory Council for ruling from court or arbitrator

- (1) *Where in any proceedings relating to Islamic financial business before any court or arbitrator any question arises concerning a Shariah matter, the court or the arbitrator, as the case may be, shall-*
- (a) take into consideration any published rulings of the Shariah Advisory Council; or*
 - (b) refer such question to the Shariah Advisory Council for its ruling*

Section 57 – Effect of Shariah rulings


Any ruling made by the Shariah Advisory Council pursuant to a reference made under this Part shall be binding on the Islamic financial institutions under section 55 and the court or arbitrator making a reference under section 56.

THE DECISION The majority judgment of the Federal Court found that the SAC in ascertaining the Islamic law for Islamic banking, does not conclusively and finally determine the right between the parties. The contest between parties remain with the adjudicating judge. Therefore, a ruling by the SAC was held to not be in breach of Article 121 of the FC and is thus not unconstitutional.

COMMENTS Much of the argument brought forth was on the binding effect of the SAC's ruling, mainly on the claim that it precludes the court from deciding the law applicable and as such usurps the courts power to interpret and apply the law in the case before the court.

The Federal Court disagreed on this point and drew a distinction between the word "ascertainment" and "determination". It held that an "ascertainment" is an exercise which results in a "ruling", while "determination" results in a final decision. Thus, the function of the SAC here is merely to ascertain the Islamic law for Islamic banking, and upon such ascertainment, is left to the court to apply the ascertained Islamic law for banking to the facts of the case. Essentially, the SAC is merely the legislature's machinery to assist in resolving disputes in Islamic banking and does not exercise judicial power.

"We are of the firm opinion that it is for a body of eminent jurists, properly qualified in Islamic jurisprudence and/or Islamic finance, to be the ones dealing with questions of validity of a contract under Islamic law and in Malaysia that special body would be the SAC."

CONCLUSION The landmark case proves significant to the future development of Islamic banking and finance industry as diversity of opinion on Islamic legal principles often lead to uncertainty which would thus affect the stability of the Islamic financial system, to the detriment of the economy. The Federal Court acknowledged that there is a need for a single authority to ascertain Islamic law for the purpose of Islamic financial business as the civil courts are not sufficiently equipped to make findings on Islamic law. Further, it was opined that the use of expert evidence would not be helpful to a civil court judge as ultimately, the civil court judge would still have to make a decision and would end up having to choose which expert evidence to rely, which is further complicated in the instance each expert based their opinion on different schools of jurisprudence. 

⁸ Effect of Shariah rulings

⁹ Judicial power of the Federation

CONSTITUTIONAL LAW – Double presumption – Trafficking in dangerous drugs – Liberty of the person – Equality – Constitutional validity of section 37A of Dangerous Drugs Act 1952, with reference to Articles 5 and 8 of the Federal Constitution

**ALMA NUDO ATENZA V PUBLIC
PROSECUTOR AND ANOTHER APPEAL**
[2019] MLJU 280, Federal Court

FACTS The first Appellant, a national of the Republic of the Philippines, and the second appellant, a Thai national, were charged before and convicted by two different trial Judges for drug trafficking under section 39B¹⁰ of the Dangerous Drugs Act 1952 (DDA). Since both appeals were premised on one common and crucial issue, these two appeals were heard together in the Federal Court. Both Appellants were reprimanded at the airport travelling to Malaysia on two separate occasions. The High Court observed that section 37A¹¹ of the DDA would allow the use of double presumptions, namely, the presumptions under subsections 37(d)¹² and (da)¹³ could be used together to prove “possession and knowledge” and thereafter to prove “trafficking” and thus found both appellants guilty as charged and were sentenced to death. Aggrieved, both parties appealed to the Court of Appeal but were dismissed. Hence, this appeal.

ISSUE The common and central issue in the present appeals is on the constitutional validity of section 37A of the DDA, with reference to Articles 5¹⁴ and 8¹⁵ of the Federal Constitution (FC).

HELD In allowing the appeal, the Federal Court held that section 37A of DDA is unconstitutional for violating Article 5(1)¹⁶ read with Article 8(1)¹⁷ of the FC. The Federal Court found that the unacceptably severe incursion into the right of the accused under Article 5(1) is disproportionate to the aim of curbing crime, hence fails to satisfy the requirement of proportionality housed under Article 8(1). ❄️

¹⁰ Trafficking in dangerous drugs

¹¹ Application of presumptions

¹² “any person who is found to have had in his custody or under his control anything whatsoever containing any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug.”

¹³ “any person who is found in possession of... otherwise than in accordance with the authority of this Act or any other written law, shall be presumed, until the contrary is proved, to be trafficking in the said drug.”

¹⁴ Liberty of the person

¹⁵ Equality

¹⁶ No person shall be deprived of his life or personal liberty save in accordance with law

¹⁷ All persons are equal before the law and entitled to the equal protection of the law

PERLEMBAGAAN – Anggapan berganda – Pengedaran dadah berbahaya – Kebebasan diri – Kesamarataan – Kesahihan perlembagaan seksyen 37A Akta Dadah Berbahaya 1952, dengan rujukan kepada Perkara-perkara 5 dan 8 Perlembagaan Persekutuan

**ALMA NUDO ATENZA V PENDAKWA
RAYA DAN SATU LAGI RAYUAN**
[2019] MLJU 280, Mahkamah Persekutuan

FAKTA-FAKTA Perayu pertama, seorang warganegara Filipina, dan perayu kedua, seorang warganegara Thailand, telah didakwa dan disabitkan bersalah untuk pengedaran dadah di bawah seksyen 39B¹⁸ Akta Dadah Berbahaya 1952 (ADB). Memandangkan kedua-dua rayuan mempunyai isu yang sama, kedua-dua rayuan itu didengar bersama di Mahkamah Persekutuan. Kedua-dua Perayu ditangkap di lapangan terbang ke Malaysia. Mahkamah Tinggi, mengikut seksyen 37A¹⁹ ADB membenarkan penggunaan anggapan berganda, iaitu, anggapan di bawah subseksyen 37(d)²⁰ dan (da)²¹ untuk membuktikan “pemilikan dan pengetahuan” dan selepas itu untuk membuktikan “pengedaran” dan dengan itu mendapati kedua-dua perayu bersalah dan dijatuhi hukuman mati. Kedua-dua pihak merayu kepada Mahkamah Rayuan tetapi ditolak. Oleh itu, rayuan ini.

ISU Isu utama dalam rayuan ini adalah mengenai kesahihan perlembagaan seksyen 37A ADB, dengan merujuk kepada Perkara-perkara 5²² dan 8²³ Perlembagaan Persekutuan.

KEPUTUSAN Dalam membenarkan rayuan itu, Mahkamah Persekutuan memutuskan bahawa seksyen 37A ADB tidak mengikut perlembagaan kerana melanggar Perkara 5(1)²⁴ dibaca bersama Perkara 8(1)²⁵ Perlembagaan Persekutuan. Mahkamah Persekutuan mendapati bahawa pencerobohan ke atas hak tertuduh di bawah Perkara 5(1) adalah tidak sepadan dengan tujuan membanteras jenayah, oleh itu ia gagal memenuhi kehendak yang ditempatkan di bawah Perkara 8(1) Perlembagaan Persekutuan tersebut. ❄️

¹⁸ Pengedaran dadah berbahaya

¹⁹ Pemakaian anggapan

²⁰ “Mana-mana orang yang didapati ada dalam jagaannya atau di bawah pengawalannya apa-apa sahaja yang mengandungi sebarang dadah berbahaya adalah, sehingga sebaliknya dibuktikan, dianggap ada dalam pemilikannya dadah tersebut dan adalah, sehingga sebaliknya dibuktikan dianggap telah mengetahui sifat-sifat dadah tersebut.”

²¹ “Mana-mana orang yang didapati ada dalam pemilikannya... selain dari menurut kuasa Akta ini atau mana-mana undang-undang bertulis lain, hendaklah sehingga di-buktikan sebaliknya, dianggap sebagai mengedarkan dadah tersebut.”

²² Kebebasan diri

²³ Kesamarataan

²⁴ Tiada seorang pun boleh diambil nyawanya atau dilucutkan kebebasan dirinya kecuali mengikut undang-undang

²⁵ Semua orang adalah sama rata di sisi undang-undang dan berhak mendapat perlindungan yang sama rata di sisi undang-undang

CONTRACT LAW – Exclusion clause – Housing/ Shophouse Loan Agreement – Breach of Loan Agreement – Termination of Sale and Purchase Agreement

**CIMB BANK BHD V ANTHONY
LAWRENCE BOURKE & ANOR**
[2019] 2 MLJ 1, Federal Court

FACTS The Respondents are husband and wife living in the United Kingdom. To finance their purchase of a property, they applied for and was granted a term loan by the Appellant bank (“Loan Agreement”). The property purchased was still under construction and payment was to be made progressively. The Appellant did not notify either the developer or the Respondents on the need of a site visit inspection as an additional condition to disburse payment on the invoice. The Appellant had also never made any request to the developer to extend the invoice due date in order for them to conduct the site visit. The sum remained unpaid which led to the termination of the Sale and Purchase Agreement (SPA). The Respondents filed a claim against the Appellant seeking for damages suffered resulting from the termination of the SPA. The learned Judicial Commissioner dismissed the claim as it was found that Clause 12²⁶ of the Loan Agreement absolved any liability against the Appellant. Dissatisfied, the Respondents appealed to the Court of Appeal. The Court of Appeal concluded that the Appellant had breached its main obligation under the Loan Agreement when it failed to fulfil the terms to pay the invoice issued directly to it under the Loan Agreement. Hence, this appeal.

ISSUE Whether an exclusion clause in an agreement entered into between two parties, a house buyer and a bank, may be struck out by the provisions of section 29²⁷ of the Contracts Act 1950 (“the Act”).

HELD In dismissing the appeal, the Federal Court found that mere limitations and/or some restrictions added into an exclusion clause is insufficient to invoke section 29 of the Act. However, Clause 12 of the Loan Agreement speaks of an absolute restriction to the Respondents’ right to damages. As such, section 29 of the Act may be invoked and the exclusion clause is rendered void. ❄️

²⁶ Liability: “Notwithstanding anything to the contrary, in no event will the measure of damages payable by the Bank to the Borrower for any loss or damage incurred by the Borrower include, nor will the Bank be liable for, any amounts for loss of income or profit or savings, or any indirect, incidental consequential exemplary punitive or special damages of the Borrower, even if the Bank had been advised of the possibility of such loss or damages in advance, and all such loss and damages are expressly disclaimed.”
²⁷ Agreements in restraint of legal proceedings void

UNDANG-UNDANG KONTRAK – Klausu pengecualian – Perjanjian Pinjaman Perumahan/ Rumah kedai – Pelanggaran Perjanjian Pinjaman – Penamatan Perjanjian Jual Beli

**CIMB BANK BHD V ANTHONY
LAWRENCE BOURKE & YANG LAIN**
[2019] 2 MLJ 1, Mahkamah Persekutuan

FAKTA-FAKTA Responden adalah suami isteri bermastautin di United Kingdom. Untuk membiayai pembelian hartanah mereka, mereka memohon dan diberi pinjaman jangka panjang oleh bank Perayu (“Perjanjian Pinjaman”). Harta tanah yang dibeli masih dalam pembinaan dan pembayaran akan dibuat secara progresif. Perayu tidak memberitahu sama ada pemaju atau Responden tentang keperluan pemeriksaan lawatan tapak sebagai syarat tambahan untuk mengeluarkan pembayaran invois. Perayu juga tidak pernah membuat apa-apa permintaan kepada pemaju untuk memanjangkan tarikh luput invois agar mereka boleh melakukan lawatan tapak tersebut. Pembayaran gagal dilangsaikan dan mengakibatkan penamatan Perjanjian Jual Beli (PJB). Responden memfailkan tuntutan terhadap Perayu untuk menuntut kerugian yang dialami akibat penamatan PJB. Pesuruhjaya Kehakiman menolak tuntutan itu dan mendapati bahawa Klausu 12²⁸ Perjanjian Pinjaman membebaskan sebarang tanggungan terhadap Perayu. Responden seterusnya merayu kepada Mahkamah Rayuan. Mahkamah Rayuan memutuskan bahawa Perayu telah melanggar kewajipan utamanya di bawah Perjanjian Pinjaman apabila mereka gagal untuk membayar invois yang dikeluarkan. Oleh itu, rayuan ini.

ISU Sama ada klausu pengecualian dalam perjanjian antara dua pihak, pembeli rumah dan bank, boleh dibatalkan di bawah seksyen 29²⁹ Akta Kontrak 1950 (“Akta Kontrak”).

KEPUTUSAN Dalam menolak rayuan itu, Mahkamah Persekutuan mendapati bahawa batasan dan/ atau beberapa sekatan yang dimasukkan ke dalam klausu pengecualian tidak mencukupi untuk tuntutan pembatalan di bawah seksyen 29 Akta Kontrak. Walau bagaimanapun, Klausu 12 Perjanjian Pinjaman menyatakan tentang sekatan mutlak kepada hak Responden untuk ganti rugi. Oleh itu, seksyen 29 Akta Kontrak boleh digunakan dan klausu pengecualian yang diberikan adalah tidak sah. ❄️

²⁸ Liabiliti: “Walaupun apa pun yang bertentangan, tidak akan ada tindakan ganti rugi yang perlu dibayar oleh Bank kepada Peminjam untuk apa-apa kerugian atau kerosakan yang ditanggung oleh Peminjam termasuk, dan juga tidak akan bertanggungjawab atas apa-apa amaun untuk kehilangan pendapatan atau keuntungan atau penjimatan, atau mana-mana ganti rugi punitif atau punca secara langsung yang tidak langsung yang berlaku kepada Peminjam, walaupun Bank telah dinasihatkan tentang kemungkinan kerugian atau kerosakan sedemikian terlebih dahulu, dan semua kerugian dan ganti rugi sedemikian ditolak secara nyata.”
²⁹ Perjanjian yang menghalang proses undang-undang adalah tidak sah

BANKRUPTCY LAW – Sale and Purchase Agreement – Conditional agreement to sell estate land – Sale subject to obtaining approval of Estate Land Board

GULA PERAK BHD V DATUK LIM SUE BENG & OTHER APPEALS [2019] 1 CLJ 153, Federal Court

FACTS Gula Perak, a public limited company, obtained financial assistance from a number of syndicated term loan lenders (“the lenders”), including AmBank (M) Berhad (“AmBank”). Gula Perak failed to service the syndicated term loan facility and was subsequently wound up. Gula Perak then issued bonds of a legal charge in favour of AmBank for the full and final settlement of the term loan, which was later substituted with a deed of assignment. AmBank sought to realise the deed of assignment only to be hindered by a caveat lodged by Faithmont Estate Sdn Bhd (“Faithmont”) on the said land. Faithmont initiated a civil action against Gula Perak and AmBank claiming for specific performance of a Sale and Purchase Agreement (SPA) and the removal of the caveat of the said land. The dispute was successfully mediated and a compromise was reached. The liquidators of Gula Perak filed an application at the High Court to enter into the said compromise to sell off a piece of land in view of the debt between Gula Perak, Faithmont and AmBank, which was allowed. Consequently, Yakin Tenggara, a contributory of Gula Perak, and Datuk Lim, a preferred creditor, appealed to the Court of Appeal. The order of the High Court with regard to the compromise was set aside. Hence, this appeal.

ISSUE Whether a conditional agreement to sell an estate land to a purchaser with a condition precedent that the sale was subject to obtaining the approval of the Estate Land Board (“the Board”) was in breach of section 214A(1)³⁰ of the National Land Code (NLC).

HELD In allowing the appeal, the Federal Court held that section 214A(1) of the NLC does not prohibit the making of a conditional or contingent agreement to sell an estate land which has an express term incorporated in that the intended sale is subject to the parties obtaining the approval of the Board. The prohibition under the said section is merely against an act of transfer, conveyance or disposal of estate land without the approval of the Board. The SPA being a conditional or contingent agreement is therefore not illegal for non-compliance with the provisions of the said section. ❄️

³⁰ **Control of transfer of estate land**

(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as “the Board”) established under sub-section (3)

UNDANG-UNDANG KEBANKRAPAN – Perjanjian Jual Beli – Perjanjian bersyarat untuk menjual tanah estet – Jualan tertakluk kepada kelulusan Lembaga Tanah Ladang

GULA PERAK BHD V DATUK LIM SUE BENG & RAYUAN-RAYUAN LAIN [2019] 1 CLJ 153, Mahkamah Persekutuan

FAKTA-FAKTA Gula Perak, sebuah syarikat terhad awam, memperoleh bantuan kewangan daripada para peminjam pinjaman sindiket berjangka, termasuk AmBank (M) Berhad (“AmBank”). Gula Perak tidak berupaya membayar kemudahan pinjaman sindiket berjangka dan kemudiannya digulung. Gula Perak mengeluarkan bon-bon berjamin sebagai penyelesaian penuh dan muktamad pinjaman berjangka tersebut dengan gadaian sah memihak pada AmBank, yang kemudiannya digantikan dengan surat ikatan penyerahhakan. AmBank memohon untuk merealisasikan surat ikatan penyerahhakan tetapi dihalang oleh kaveat yang dimasukkan oleh Faithmont Estate Sdn Bhd (“Faithmont”) atas tanah tersebut. Faithmont telah mengambil tindakan sivil terhadap Gula Perak di Mahkamah Tinggi dan memohon pelaksanaan spesifik atas Perjanjian Jual Beli (PJB) tanah dan pembatalan kaveat ke atas tanah tersebut. Pertikaian tersebut berjaya diselesaikan dengan pengantara dan Gula Perak, Faithmont dan AmBank mencapai satu kompromi. Pelikuidasi-pelikuidasi Gula Perak memfailkan permohonan ke Mahkamah Tinggi untuk menjual sebidang tanah menurut kompromi tersebut dan ia dibenarkan. Yakin Tenggara, penyumbang Gula Perak, dan Datuk Lim, pemiutang pilihan, merayu ke Mahkamah Rayuan. Perintah Mahkamah Tinggi berhubung kompromi tersebut diketepikan. Oleh itu, rayuan ini.

ISU Sama ada perjanjian bersyarat untuk menjual tanah ladang kepada pembeli dengan syarat terdahulu bahawa jualan tersebut tertakluk kepada kelulusan Lembaga Tanah Ladang (“Lembaga Tanah”) melanggar seksyen 214A(1)³¹ Kanun Tanah Negara (KTN).

KEPUTUSAN Dalam membenarkan rayuan itu, Mahkamah Persekutuan memutuskan bahawa seksyen 214A(1) KTN tidak melarang membuat perjanjian bersyarat atau kontingen untuk menjual tanah ladang yang mempunyai istilah nyata yang dimasukkan dalam penjualan adalah tertakluk kepada perolehan kelulusan Lembaga Tanah. Larangan di bawah seksyen tersebut adalah untuk menentang tindakan pemindahan, pengangkut atau pelupusan tanah estet tanpa kelulusan Lembaga Tanah. PJB yang merupakan perjanjian bersyarat atau kontingen adalah tidak sah kerana tidak mematuhi peruntukan-peruntukan di bawah seksyen tersebut. ❄️

³¹ **Kawalan pindahtanah tanah estet**

(1) Walau apa jua pun yang terkandung dalam Akta ini, tiada tanah estet berupaya dipindahtanah, dipindahtanah atau dilupuskan dengan apa-apa cara sekali pun, melainkan kelulusan untuk pindahtanah, pindahtanah atau pelupusan sedemikian telah terlebih dahulu diperolehi dari Lembaga Tanah Estet (selepas ini disebut sebagai “Lembaga”) yang ditubuhkan di bawah subseksyen (3)


ACT

FINANCE ACT 2018

National Language
Akta Kewangan 2018

No
812

Date of coming into operation
Refer Act


Notes
This is an Act to amend the Income Tax Act 1967, Promotion of Investments Act 1986, Stamp Act 1949, Real Property Gains Tax Act 1976, Labuan Business Activity Tax Act 1990, Service Tax Act 2018 and Sales Tax Act 2018. 

SURUHANJAYA PENGANGKUTAN AWAM DARAT (DISSOLUTION) ACT 2018

National Language
Akta Suruhanjaya Pengangkutan Awam Darat (Pembubaran) 2018

No
811

Date of coming into operation
1 January 2019

Notes
This is an Act to repeal the Suruhanjaya Pengangkutan Awam Darat Act 2010 [Act 714], to dissolve the Suruhanjaya Pengangkutan Awam Darat established under the Act, to provide for the vesting of its properties in the Government and to provide for related matters. 


AMENDMENT ACTS

ROAD TRANSPORT (AMENDMENT) ACT 2019

National Language
Akta Pengangkutan Jalan (Pindaan) 2019

No
A1585

Date of coming into operation
1 March 2019


Notes
The highlight of the amending Act is the amendment to section 66(1)(nn) which empowers the Transport Minister to regulate the deregistration of motor vehicles, which would enable local councils to remove abandoned vehicles within their jurisdiction. 

CHILDREN AND YOUNG PERSONS (EMPLOYMENT) (AMENDMENT) ACT 2019

National Language
Akta Kanak-Kanak dan Orang Muda (Pekerjaan) (Pindaan) 2019

No
A1586

Date of coming into operation
1 February 2019

Notes
The highlight of the amending Act is the amendment to section 1A which substitutes the definition of "child" to mean a person under the age of fifteen years, and the word "young person" to mean a person who has attained the age of fifteen years and under the age of eighteen years. The definition of "light work" was also substituted. The word "family" is also now defined under the same section. New Fourth Schedule also provides a list of hazardous work. Penalties under section 14 has also been increased. 

SERVICE TAX (AMENDMENT) ACT 2018

National Language

Akta Cukai Perkhidmatan (Pindaan) 2018

No

A1579

Date of coming into operation

2 January 2019

Notes

The highlight of the amending Act is the introduction of new section 56A which deals with the powers of enforcement, inspection and investigation.

SALES TAX (AMENDMENT) ACT 2018

National Language

Akta Cukai Jualan (Pindaan) 2018

No

A1578

Date of coming into operation

2 January 2019

Notes

The highlight of the amending Act is the introduction of new section 72A which deals with the powers of enforcement, inspection and investigation.

INCOME TAX (AMENDMENT) ACT 2018

National Language

Akta Cukai Pendapatan (Pindaan) 2018

No

A1576

Date of coming into operation

Sections 2, 6, 7, 8, 9 and 10 on 28 December 2018. Sections 3, 4 and 5 have effect for the year of assessment 2019 and subsequent years of assessment.

Notes

The highlight of the amending Act is the amendment to section 75B where responsibility for all acts and

things required to be done by or on behalf of a limited liability partnership is extended to a company secretary who is a citizen or permanent resident of Malaysia and ordinarily resides in Malaysia. Section 117 is also amended to widen the applicability of breach of confidence offence. New section 132c was introduced to provide for arrangements made by the Government of Malaysia to give effect to Malaysia's international obligations in relation to tax under the Act or any other written law.

SUBSIDIARY LEGISLATION

- PU(A) 116/2019: Strata Management (Compounding of Offences) Regulations 2019 – Effective date: 2 May 2019
- PU(A) 122/2019: Fees (Employment Pass, Visit Pass (Temporary Employment) and Work Pass) (Amendment) Order 2019 – Effective date: 30 April 2019
- PU(A) 103/2019: Renewable Energy (Amendment of Schedule) (No.2) Order 2019 – Dated: 29 March 2019
- PU(A) 76/2019: Companies (Practising Certificate for Secretaries) Regulations 2019 – Effective date: 15 March 2019
- PU(A) 147/2019: Income Tax (Exemption) (No.4) Order 2019 – Effective date: 1 March 2019
- PU(A) 137/2019: Income Tax (Exemption) (No. 3) Order 2019 – Effective date: 1 February 2019
- PU(A) 12/2019: Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 – Effective date: 15 January 2019
- PU(A) 82/2019: Stamp Duty (Exemption) (No.3) Order 2019 – Effective date: 1 January 2019
- PU(A) 81/2019: Stamp Duty (Exemption) (No.2) Order 2019 – Effective date: 1 January 2019
- PU(A) 118/2019: Income Tax (Deduction for Expenditure on Issuance of Sukuk) Rules 2019 – Effective date: Years of assessment 2019 and 2020
- PU(A) 117/2019: Income Tax (Deduction for Expenditure on Issuance of Retail Debenture and Retail Sukuk) Rules 2019 – Effective date: Years of assessment 2019 and 2020

**GUIDELINES/RULES/CIRCULARS/
DIRECTIVES AND PRACTICE NOTES ISSUED
BETWEEN
JANUARY AND JUNE 2019
BY BANK NEGARA MALAYSIA,
BURSA MALAYSIA AND
SECURITIES COMMISSION MALAYSIA**

BANK NEGARA MALAYSIA (BNM)

- BNM Policy Document on Shareholder Suitability – Notification and Application Procedures – *Effective date: 3 June 2019*
- BNM Policy Document on Trade Credit Insurance and Trade Credit Takaful – *Effective date: 3 May 2019*
- BNM Policy Document on Investment-linked Business – *Effective date: 11 January 2019 except for certain other requirements*
- BNM Policy Document on Publishing Open Data using Open Application Programming Interface (API) – *Effective date: 2 January 2019*
- BNM Policy Document on Outsourcing – *Effective date: 1 January 2019 save for the transitional arrangements as set out in Part D*

BURSA MALAYSIA

- Amendments to Bursa Malaysia Securities Berhad Main Market and ACE Market Listing Requirements in relation to continuing disclosure obligations and other amendments – *Effective date: 3 June 2019*
- Consolidated Rules of Bursa Malaysia Securities Bhd – *As at: 29 April 2019*
- Consolidated Main Market and ACE Market Listing Requirements – *As at: 29 April 2019*
- Consolidated Rules of Bursa Malaysia Securities Clearing Sdn Bhd – *As at: 29 April 2019*
- Participating Organisations' (PO) Directives and Guidance – *Issued on: 29 April 2019*
- Amendments to the Rules of Bursa Malaysia Securities Clearing Sdn Bhd in relation to migration to a T+2 settlement cycle – *Effective date: 29 April 2019*

- Amendments to the Rules and Directives of Bursa Malaysia Securities Berhad in relation to the T+2 settlement cycle – *Effective date: 29 April 2019*
- Amendments to Bursa Malaysia Securities Berhad Main Market Listing Requirements consequential to the revised guidelines issued by the Securities Commission Malaysia – *Effective date: 13 March 2019*

SECURITIES COMMISSION

- SC Prospectus Guidelines for Collective Investment Schemes – *Effective date: 23 May 2019*
- SC Guidelines on the Registration and Conduct of Capital Market Services Providers – *Effective date: 14 May 2019*
- SC Guidelines on Guiding Principles on Business Continuity – *Effective date: 14 May 2019*
- SC Guidelines on Registration of Credit Rating Agencies – *Effective date: 14 May 2019*
- SC Guidelines on Registration of Bond Pricing Agencies – *Effective date: 14 May 2019*
- SC Guidelines on Financial Markets Infrastructures – *Effective date: 14 May 2019*
- SC Guidelines on Compliance Function for Fund Management Companies – *Effective date: 14 May 2019*
- SC Guidelines on Recognized Markets – *Revised on: 17 May 2019*
- SC Prospectus Guidelines – *Effective date: 13 March 2019*
- SC Guidelines on Marketing and Distribution of Unit Trust Funds – *Effective date: 4 March 2019*
- SC Guidelines on Exchange-Traded Funds – *Effective date: 1 January 2019*

WORD OF THE BRIEFCASE

de bene esse

It is a Latin phrase which means 'of well-being'.

It denotes a course of action that is the best that can be done in the present circumstances or in anticipation of a future event.

Our rankings for 2019

asialaw
PROFILES 2019
OUTSTANDING FIRM



ASIA-PACIFIC 2019

THE BRIEFCASE

The *BriefCase* 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:

look@zulrafique.com.my

This publication is intended only to provide general information and is not intended to be, neither is it a complete or definitive statement of the 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 Editors.

The contributors for this *BriefCase* are:

- *Wong Keat Ching*
- *Amylia Soraya*
- *Najwa Arifah Ismail*

Publisher:
ZUL RAFIQUE & partners Consultancy Sdn Bhd
D3-3-8, Solaris Dutamas, No.1, Jalan Dutamas 1, 50480 Kuala Lumpur, Malaysia

Printer:
Enviropress Sdn Bhd
No. 48, Jalan PBS 14/4, 43300 Seri Kembangan, Selangor Darul Ehsan, Malaysia