

THE ZRp BRIEF

KDN No: PP12857/8/2005

BRIEFING...

1

Is there a doctor in the house? introduces us to the scope of telemedicine and its legal aspects with specific reference to the Telemedicine Act 1997 while *56...A magical number?* is an examination of the legal implications should the age of retirement be omitted from the contract of service in relation to employees in the private sector. If you are wondering what KFC, Bonia and Malaysian Idol have in common, we invite you to read *The Future of Franchising...* where we examine various aspects of franchising including its legal framework.

BRIEF-UP...

5

In our legislation update, reference is made to the FIC Guidelines on the *Acquisition of Interests, Mergers and Takeovers by Local and Foreign Interests*. With regard to the Securities Commission we examine some of its guidelines including those in relation to the *Offering of Asset-Backed Securities; Offering of Islamic Securities* and *Offering of Private-Debt Securities*. We have also examined some of the amendments that would take place in the near future.

BRIEFLY...

10

The government's plan to revamp the country's water and sewerage services is highlighted in *Bridge over Troubled Water* while the debate over whether to build-and-sell or sell-and-build continues in *Build-and-sell backfire?* The Budget 2005 also has a place in this Brief where we reflect on the benefits of the GST regime in *GST or SST?*

BRIEFING...

INFORMATION TECHNOLOGY

IS THERE A DOCTOR IN THE HOUSE?

Telemedicine refers to telecommunication that connects a patient and a health care provider through live two-way audio, two-way video transmission across distances and that permits effective diagnosis, treatment and other health care activities.

In fact the prefix 'tele' is derived from the Greek word 'telos' which implies distance and telemedicine has been defined in terms of advanced communications technology.

We examine the legal framework of telemedicine in Malaysia.

INTRODUCTION The role of telemedicine informatics in telemedicine is dependent on using the power of the computerised database which is not limited to only feeding patient specific information to the health care providers, but includes utilising info-communications technologies to enable monitoring of the individual operating theatres simultaneously and separately, and conferencing between doctors and these theatres as well. The computer database can also assist in the collaboration of distributed diagnosis and analysis systems, which permits physicians who are not co-located to consult on the status of a patient.

WHY TELEMEDICINE? Telemedicine is seen as a useful and potentially powerful tool and may evolve into a cost-effective alternative to the current forms of healthcare delivery. It offers not only increased access but also improved quality of healthcare.

Telemedicine is also a means to better medical treatment as it allows a medical practitioner with less expertise to communicate with another medical practitioner who is specialised in that particular area of medicine on an international level without the need for the patient to appear physically before the expert medical practitioner.

FOR BETTER OR WORSE... A major problem relates to patients' rights and confidentiality in the use of telemedicine. There are no standard guidelines and procedures in the practice of telemedicine as yet. Both the patient and the physician are unsure of the standard of practice and how to maintain confidentiality. The patient is uncertain as to how to protect his rights in the use of telemedicine. An issue which may arise in the event of litigation is where the physician is practising when he uses telemedicine. Is he practising in the country where the patient resides or is the physician practising in the country of his origin? These issues need to be addressed urgently so that telemedicine may derive standards of ethical practice and patients' rights and confidentiality will be protected.

TELEMEDICINE ACT 1997 The Telemedicine Act 1997 ('the Act') contains provisions governing licences and specifying the persons who may practise telemedicine. Apart from fully registered medical practitioners, a medical practitioner registered outside Malaysia may also practise telemedicine in Malaysia if he has been granted a certificate to do so. The procedure for obtaining the licence is spelt out in the Act.

It must be noted however that the Act is not yet in force. The Act in its current state needs to be reviewed to include fresh approaches to teleconsultation and other telemedicine applications. There has also been a need to consider the confidentiality aspect of information and this needs to be developed before the framework for telemedicine is established - ZRp

INDUSTRIAL RELATIONS

56... A MAGICAL NUMBER?

Malaysian public sector employees retire at 56, the compulsory retirement age. These employees, however, can opt to retire at 40 at the government's discretion. There is no statutory provision for private sector employees. At what age, therefore does one in the private sector retire?

WHERE THE CONTRACT PROVIDES If the contract of employment or collective agreement provides for the age of retirement (which may be at any age), an employee will retire from service upon attaining that age and the retiring employee will not be entitled to retirement benefits unless the contract provides for such. This also means that if the contract has a provision stipulating the age, any attempt by the employer to retire the employee from service before he reaches the stipulated age for retirement will amount to a breach of the contract of employment by the employer, which will in turn entitle the employee to seek a remedy. If the employee falls within the scope of the Employment Act 1955, he may be entitled to payment of termination benefits under Regulation 4 (1)(a) of the Employment (Termination and Lay-Off) Benefits Regulations 1980.

On this point, reference may be made to the Industrial Court case of *Pelangi Enterprises Sdn Bhd v Oh Swee Choo* (2001). In this case, the employee had been assured by her employer that there was no retirement age for her job. Despite that representation, the company unilaterally retired her at the age of 55. The court found this to be a fundamental breach going to the root of the claimant's contract of employment and was of the view that 'to retire an employee in breach of the employment contact is to deprive that

employee of his right to continue to earn a living.'

WHERE THE CONTRACT DOES NOT

PROVIDE In the event that the retirement age is not stipulated in the employment contract, the issue that arises is whether the employer may retire an employee from the service upon the employee attaining a certain age.

In the past, the position of the courts has been inconsistent on this issue.

The position however appears to have been resolved by the Court of Appeal in *Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong*, (2001). In this case the claimant, who began his career in 1963, was informed that he would be retired at the age of 55. He contended that this amounted to an unfair dismissal, as there was no clause or term in his contract stating that he was to retire at that age. He further alleged that the company's action amounted to a unilateral variation of his term in his contract of service and argued that he ought to retire at the age of 60 as three of his other colleagues had retired upon attaining the same age.

It was held that the non-existence of a retirement clause in an employment contract cannot mean that no employer can ever bring an employee's service to an end by retiring him at a certain retirement age, or that such an action would be tantamount to dismissal without just cause or excuse. In fact it was stated that 'the Industrial Court is not constrained to do justice according to the terms of a contract of employment...'

However, in introducing a retirement age, the court must ensure that it is reasonable and proper and in order to achieve that, the court must look at various factors, such as the terms of the contract, the history of the employment relationship and the conduct of the parties – ZRp

CONTRACT

THE FUTURE OF FRANCHISING...

If you are wondering what Kentucky Fried Chicken ('KFC'), Bata and Malaysian Idol have in common, look no further than the franchising industry.

We examine the various aspects of franchising including its legal framework.

WHAT IS A FRANCHISE? A franchise refers to an agreement between two or more persons whereby a franchisor grants the right, such as the right to use a mark, trade secret, confidential information or intellectual property, to a franchisee to operate a business in accordance with the franchise system established by the franchisor during a term to be determined by the franchisor. Franchising includes manufacturing, product and business format franchises.

A franchisor is a person who grants a franchise while a franchisee is a person who is being granted a franchise. In some cases franchisors grant the rights to a person to sub-franchise to another person at his own expense.

Although the first franchising venture took place in 1967, it was only in the 1990's that franchising really took off in Malaysia. Under the Eighth Malaysian Plan, the country's economic development plan for 2001-2005, franchising has been identified as one of the growth areas for the structural change and upgrading the distributive trade industry.

Although the foreign franchising sales in Malaysia originate from countries such as Australia, Singapore, United Kingdom and United States of America ('the US'), the US accounts for 70% with familiar names such as KFC, McDonalds and Haagen Dazs.

Local franchising is growing, slowly but surely. There are a few successful local franchises (the largest being Edaran Otomobil Nasional) and a number of home-grown ones have even started penetrating the foreign markets.

WHY FRANCHISE It is an ideal solution to develop a business network and at the same time, it ensures profitability under the franchisor's trademark.

Start-up funds

It is easier for a franchisor to acquire start-up funds. The franchisor supplies the know-how, experience and initial capital investment while the supplemental capital investment will be mostly provided by the franchisees.

Marketing Advantages

For the franchisee it creates instant recognition and value of the trademark while the franchisor benefits from the rapid expansion of a franchise network.

Exclusivity

It offers the franchisee an exclusivity within a particular area.

THE LEGAL FRAMEWORK In 1994, the government established the Malaysian Franchise Association ('the MFA') as a self-regulating body for the franchising industry. The MFA provides recommendations, formulates strategies and fosters training, development and strategic planning for the industry. The MFA also assists in the organizing of the Franchise International Malaysia ('FIM') – the annual franchising exhibition and conference in Malaysia.

The Franchising Act 1998 ('the Act') was introduced to regulate the franchising industry in Malaysia. The Act provides for the registration and regulation of franchises and for incidental matters relating to franchising.

Approval

Pursuant to section 54 of the Act, a foreigner who wishes to sell a franchise in Malaysia or a local franchisor desiring to sell a franchise to a

foreign franchisee must first apply to the Registrar of Franchises by way of letter to obtain approval.

Forms

The franchisor or master franchisee or franchisee of a foreign franchise is first required to submit Form BAF 2 and Disclosure Form BAF 1 (which may be obtained from the Ministry of Entrepreneur Development) together with the relevant documents certified as true copies and requisite fees.

Registration

A one-time fee of RM1,000 is required for the registration of the franchise while a processing fee of RM50 is also imposed. The application must enclose a sample of the franchise agreement, the operational manual, the training manual, copies of the company's certificate of incorporation, the return of allotment of shares, the return giving particulars in register of directors, managers and secretaries and changes of particulars, the annual return of a company having a share capital pursuant to section 165 of the Companies Act 1965, the latest audited balance sheet and profit and loss account, the company's organisation chart together with the names and positions in the company of key personnel and the company's business brochures.

The Franchise Agreement

The franchise agreement must contain:

- the name and description of the product and business under the franchise;
- the territorial rights granted to the franchisee;
- the franchise fee, promotion fee, royalty or any related type of payment which may be imposed on the franchisee, if any;
- the obligations of the franchisor and franchisee under the proposed franchising arrangement;
- the franchisee's rights to use the mark or any other intellectual property, pending the

registration or after the registration of the franchise;

- the conditions under which the franchisee may assign the rights under the franchise;
- a statement on the cooling off period (this refers to the period during which the franchisee has the option to terminate the agreement);
- a description pertaining to the mark or any other intellectual property owned or related to the franchisor which is used in the franchise;
- if the agreement is related to a master franchisee, the franchisor's identity and the rights obtained by the master franchisee from the franchisor;
- the type and particulars of assistance provided by the franchisor;
- the duration of the franchise and terms of renewal; and
- the effect of termination or expiration of the franchise agreement.

THE FUTURE OF FRANCHISING

Franchising appears to have a huge potential for growth in Malaysia despite encountering some teething problems during its infancy in the early 1990's. Worldwide, franchising has arguably become the fastest and most effective method of business expansion. In view of this, the government has stepped up efforts to promote entrepreneurship through franchising with a view of developing more home-grown franchises. In fact the Entrepreneur and Cooperative Development Ministry is preparing a framework to study suitable approaches to develop the franchise sector in the country, especially among bumiputeras. A study has also been conducted at the ministry's level on the possibility of cooperative companies taking over and spearheading the industry - **ZRp**

BRIEF-UP...

GUIDELINES ON THE ACQUISITION OF INTERESTS, MERGERS AND TAKEOVERS BY LOCAL AND FOREIGN INTERESTS

Date of coming into operation

21 May 2003

Notes

The purpose of the revised Guidelines is to clarify the rules and regulations of the Foreign Investment Committee ("the FIC") pertaining to the acquisition of interests, mergers and take-overs by local and foreign interests.

The revised Guidelines apply to, inter alia, the following transactions:-

- Any proposed acquisition of interest in a local company or business in Malaysia which is RM10 million or more in value, by local or foreign interests;
- Any proposed acquisition of interest by any foreign interest of 15% or more of the voting right of any local company or business in Malaysia; or any associated or non-associated group of foreign interests, in aggregate of 30% or more of the voting rights of any local company or business in Malaysia, regardless of whether the value is less than RM10 million with the exception of open market acquisitions on Bursa Malaysia meant for short term holdings;
- Any proposed acquisition of interest and control of more than 50% of the voting rights in any local company or business in Malaysia by local interests, regardless of whether the value is less than RM10 million;

- Any transaction by statutory bodies, companies and their subsidiaries owned by the Federal or State Governments;
- Any charging of shares in a local company to any foreign interest where the value of loan or the market value of the shares is RM10 million or more.

Any proposal related to any unit trust management company, any equity structure of a company licensed or registered with the Securities Commission ("the SC"), any proposal which is subject to section 32 of the Securities Commission Act 1993, any proposed acquisition of interests or take-overs and mergers must be submitted for the consideration of the SC, without having to submit the application to the FIC.

With regard to transactions requiring the approval of any government agencies or statutory bodies, the equity condition imposed will be considered by the relevant government agencies or statutory bodies based on the revised Guidelines.

The revised Guidelines will not apply to any acquisition of interest in manufacturing companies licensed by the Ministry of International Trade and Industry ("MITI"), Multimedia Super Corridor ("MSC") status companies and companies that have been granted the status of International Procurement Centre, Operational Headquarters, Representative Office, Regional Office and Labuan offshore company or other special status by the Ministry of Finance, MITI and other ministries.

The revised Guidelines also impose some equity conditions to be followed in relation to companies whose activities involve national interests such as water and energy supply, broadcasting, defence and security, companies incurring losses and undertaking debt restructuring and companies seeking listing on Bursa Malaysia.

No equity condition will be imposed in respect of a non-licensed manufacturing

company incorporated after 31 July 1998. Meanwhile, the condition imposed with regard to any corporate transaction involving an increase of paid-up capital and which results in the dilution of Bumiputera equity is that 30% of the new shares issued must be offered to Bumiputera investors.

Apart from equity conditions, the revised Guidelines have also imposed conditions in relation to share capital and employment.

Any equity conditions imposed must be complied with within two years from the date of the FIC approval letter. The compliance status must be reported to the FIC at least one month before the compliance deadline and/or whenever requested by the FIC and the compliance period may be extended by one year based on the merits of the case. The onus to submit the application is on the purchaser. However, an application by the vendor or the target company may also be accepted. All applicants are fully responsible for the accuracy of the information submitted - ZRp

SC GUIDELINES ON THE OFFERING OF ASSET-BACKED SECURITIES

Date of coming into operation
26 July 2004

Notes

With the release of the new Guidelines on the Offering of Islamic Securities (‘the IS Guidelines’), the Guidelines on the Offering of Asset-Backed Securities have been amended to make reference to it. A person who wishes to issue asset-backed securities must comply with the Guidelines on the Offering of Private Debt Securities or the IS Guidelines. The meaning of ‘asset-backed securities’ has been amended to exclude all Islamic securities, which are capable of being

converted into equity, whether redeemable or otherwise – ZRp

SC GUIDELINES ON THE OFFERING OF ISLAMIC SECURITIES

Date of coming into operation
26 July 2004

Notes

These new guidelines were issued to provide specific rules on the offering of Islamic securities which was previously governed by the Guidelines on the Offering of Private Debt Securities (‘the PDS Guidelines’) that apply to conventional bond products.

The provisions in the Guidelines on the Offering of Islamic Securities (‘the IS Guidelines’) are similar to the provisions in relation to Islamic securities in the PDS Guidelines. The IS Guidelines, however, require an Information Memorandum to be issued to investors for transactions structured under the principles of *Musyarakah* or *Mudharabah*, in order to ensure that the level of disclosure is sufficient to enable the investors to make informed investment decisions.

In a press release dated 26 July 2004, the SC stated that the IS Guidelines were released pursuant to the prescription by the Minister of Finance that securities using *Musyarakah* or *Mudharabah* principles, as well as *Sukuk* issuances, are securities as defined in the Securities Commission Act 1993 through the SC (Prescription of Islamic Securities) Order 2004 (‘the Prescription Order’). The Prescription Order clarifies that all Islamic securities must comply with the statutory requirements on trust deeds and duties of trustees and borrowers. The PDS Guidelines will no longer apply to issuance of Islamic securities in Malaysia, but the SC Guidelines on the Offering of Asset-Backed Securities will continue to apply where relevant – ZRp

**PRACTICE NOTE 2 TO SC GUIDELINES
ON THE OFFERING OF
PRIVATE DEBT SECURITIES**

Date of coming into operation
28 July 2004

Notes

This Practice Note was issued by the Securities Commission ('the SC') to clarify the requirements and exemptions in relation to the application of the Guidelines on the Offering of Private Debt Securities ('the PDS Guidelines') to the issue, offer or invitation of Ringgit denominated private debt securities by a multilateral development bank or multilateral financial institution in Malaysia.

With regard to the aforesaid, exemption is given from the following requirements:-

- Documents or information required by the SC under Appendices 1 and 2 of the PDS Guidelines;
- Underwriting or minimum level of subscription;
- Utilisation of proceeds subject to the National Bond Market Committee negative list.

This Practice Note further clarifies that international ratings are acceptable; and prior to the issuance, an information memorandum must be submitted to the SC through an adviser or by the multilateral development bank or multilateral financial institution. In the event the issue is made under a debt programme, an information supplement must be submitted to the SC.

The issue shall be deemed approved by the SC on the date of receipt of a complete submission pursuant to the relevant requirements in the PDS Guidelines and this Practice Note – **ZRp**

**SC GUIDELINES ON THE OFFERING OF
PRIVATE DEBT SECURITIES**

Date of coming into operation
26 July 2004

Notes

With the release of the new Guidelines on Offering of Islamic Securities, the Guidelines on the Offering of Private Debt Securities have been amended to remove all references in relation to issuance of Islamic private debt securities – **ZRp**

**SC GUIDANCE NOTE 2 ISSUED
PURSUANT TO CHAPTER 4 (THE
MANAGEMENT COMPANY) OF THE
GUIDELINES ON UNIT TRUST FUNDS**

Date of coming into operation
7 July 2004

Amendment

Clauses 4.02, 4.03 and 4.05

Deletion

Clauses 4.03(2)-(5)

Notes

This guidance note was issued to notify a policy amendment in relation to the eligibility and business of a management company. The management company must now be a public company incorporated in Malaysia or a subsidiary of a company involved in the financial services industry in Malaysia, except where the management company is an entity licensed by the Securities Commission ('the SC'). The management company must not have foreign equity exceeding 49% on an effective basis as compared to the previous threshold of 30%. The amendment has also expanded the business of a management company to include the provision of

investment advisory services and the activities allowed for a universal broker under the Guidelines for a Universal Broker if the management company is a universal broker. The management company must now have a minimum shareholders' fund of RM10 million instead of RM5 million. The designated person who is responsible for investment management function of the fund must be a licensed person under the Securities Industry Act 1983 and/or Futures Industry Act 1993, whichever is applicable – **ZRp**

**SC PRESS RELEASE
DETAILS OF THE BUDGET 2005 –
ANNOUNCEMENT ON STRENGTHENING
THE CAPITAL MARKET**

Budget 2005 has not only relaxed, it has also broadened and strengthened the capital market industry.

Following this, the Securities Commission ('the SC') had issued a Press Release on 13 September 2004 providing additional details of the measures:

- Issuance of up to five new licences to foreign stockbrokers
- Issuance of up to five new licences to foreign fund managers
- 100% foreign ownership in the futures broking industry
- 100% foreign ownership in the venture capital industry
- Four additional branches allowed for local stockbroking companies which have merged with at least one other stockbroking company
- No restriction on the number of foreign dealer representatives – **ZRp**

**OTHER RULES/ GUIDELINES/
PRACTICE NOTES ISSUED BY
SC/ BURSA MALAYSIA
BETWEEN JULY - SEPTEMBER 2004**

Amendments to the Rules of Bursa Malaysia Securities Berhad pertaining to Bank Charges – 20 August 2004

Amendments to the Rules of Bursa Malaysia Securities Berhad pertaining to the Requirement of Consultation with the Securities Commission – 9 September 2004

Circular on Guidelines on Unit Trust Funds - Reference Made to Kuala Lumpur Stock Exchange - 1 September 2004

Circular on Guidelines on Property Trust Funds – Reference Made to Kuala Lumpur Stock Exchange - 1 September 2004

Fee Computation Checklist for Unit Trust Funds and Property Trust Funds – 28 August 2004

Fee Computation Checklist (Other) for Unit Trust Funds and Property Trust Funds – 28 August 2004

Guidelines for a Universal Broker – Amended as at 27 August 2004

*Guidelines for a Universal Broker - Practice Note 1 - Clarification on Additional Activities Allowed to be Undertaken by a Universal Broker – Amended as at 27 August 2004 - **ZRp***

It is the justice's clerk that makes justice
Thomas Fuller (1654 – 1734)

**ACTS/ AMENDING ACTS
ENACTED/ PUBLISHED
BETWEEN JULY - SEPTEMBER 2004**

Communications and Multimedia (Amendment) Act 2004 – not yet in force

Fees (Marine Parks Malaysia) (Validation) Act 2004 – 13 August 2004

Housing Loans Fund (Amendment) Act 2004 - 1 September 2004

Offshore Insurance (Amendment) Act 2004 – 1 September 2004

Malaysian Palm Oil Board (Amendment) Act 2004 – 2 July 2004

Malaysian Maritime Enforcement Agency Act 2004 – not yet in force

National Anti-Drugs Agency Act 2004 - not yet in force

National Forestry (Amendment) Enactment 2004 – not yet in force

Protection of New Plant Varieties Act 2004 – not yet in force

Registration of Pharmacists (Amendment) Act 2003 - 2 September 2004

Supplementary Supply (2003) Act 2004 – 13 August 2004

Supply (Reallocation of Appropriated Expenditure) Act 2004 – 27 March 2004

Trustees Incorporation (Amendment) Act 2004 – not yet in force – **ZRp**

Amendments...In the Future

Promotion of Investments Act 1986

The Promotion of Investments Act 1986 ('the PIA') may be repealed altogether to include a wider scope for the development of the services sector. This decision is due mainly to problems and constraints identified under the existing PIA, such as the limited scope and coverage of incentives.

Industrial Co-ordination Act 1975

The Industrial Co-ordination Act 1975 may also be fine-tuned to ensure that procedures and processes add to competitiveness.

Financial Reporting Act 1997

The Financial Reporting Act 1997 is being reviewed to allow foreign majority-owned companies listed on Bursa Malaysia to use the International Finance Reporting Standards. The goal is to minimize the differences between the national and international accounting standards.

Hire Purchase Act 1967

The Government is proposing amendments to the Hire Purchase Act 1967 to allow for hire-purchase loans to be priced at flexible interest rates.

Malay Reservation Enactments

The amendments include allowing Malay reserve land to be leased to selected financial institutions and to allow it to be jointly developed by the owners, including non-Malays. The amendments will begin with changes to land laws in Kuala Lumpur followed by amendments to the enactments of the other states - **ZRp**

BRIEFLY...

LOCAL

BUILD-AND-SELL BACKFIRE?

In the April – June 2004 issue of our ZRP Brief, we addressed issues of the *Build-and-Sell* regime and the fact that it may very well be favourable to the purchasers. In this issue we examine the extent of the benefits of that regime.

Build-and-sell - a situation where the house buyer pays in full only when the house is ready or pays only 10% of the purchase price when the sale and purchase agreement ('the SPA') is signed and the balance when the house is completed.

If implemented, the *build-and-sell* regime would force industry players to place great emphasis on the purchasers' requirements, addressing the issue of sub-standard quality. However, what must be borne in mind is the costs of the benefits of the *build-and-sell* regime, which may include the following:

- Price increase – While a *sell-then-build* regime only requires the developer to finance 20% of the costs (since the purchasers fund a significant portion), a *build-and-sell* framework imposes 100% of the financing costs on the developer resulting in sky-rocketing costs.
- Developers' dilemma – Lack of funding will be the main hurdle faced by developers. Banks are not used to funding projects which do not have confirmed sales. There are currently over 2000 developers but if we *build-and-sell* it is expected that only 10% will remain in the industry.
- Other effects – With increased costs, the property boom may slow down and its effects will be felt by the construction

employment, building materials industry and other professional consultants.

More research therefore should be done before any sort of framework is implemented. It may be worth experimenting with the model from Singapore and Australia where something of an in-between is practised. It has also been suggested that the Government introduce incentives to encourage the developers to implement the new system. Examples would include tax rebates for people who practise *build-and-sell* and speedier approvals.

The ultimate issue is whether the rights of the purchasers are protected. If the *build-and-sell* regime defeats the purpose, then perhaps alternatives should be considered - **ZRp**

BRIDGE OVER TROUBLED WATER?

The government is to launch what is expected to be one of the biggest ever infrastructure projects by revamping the country's water and sewerage services over 5 years. A proposal has been made to establish a National Water Services Commission by early 2005 that would centralise planning by taking over responsibility from the state governments that currently handle water distribution. The government has justified the move by saying that state governments do not have the financial resources to upgrade water systems.

Challenges however are expected in the form of concerns raised not only by private contractors that benefited from previous water privatisation schemes but also consumers who expect higher water charges.

Whether in fear or favour of this RM50 billion project, there appears to be consensus that the current industry situation is in need of an overhaul – **ZRp**

GST OR SST ?

The current sales tax and service tax ("SST") in Malaysia is governed by two separate statutes – the Sales Tax Act 1972 and the Service Tax Act 1975. This current system will be replaced with a single consumption tax, known as the Goods and Services Tax ("GST"), effective 1 January 2007. This is in line with the government's intention to reduce the country's budget deficit.

GST is a form of Value-Added Tax ("VAT"), a consumption tax and the tax would be borne by the man on the street or the end user. It is an internal tax and will be levied on goods that are manufactured and traded in Malaysia.

The issue is whether the GST will result in the increase of prices. At this stage it is difficult to say as the framework of how this tax would operate or what the features and scope would be has yet to be announced though it has been suggested that the rate should not exceed 3% as a curtain raiser to test the response of the public. Whether boon or bane, what is vital is to prepare the mindset of Malaysians for any such tax reforms – *ZRp*

CODE OF CONTENT

The Communications and Multimedia Content Forum was given the task of drafting and administering the Content Code ('the Code'). The long-awaited Code enters its final stages of development. The industry Code is to regulate all content disseminated through the electronic and network format to ensure that the content is not 'indecent, obscene, false, menacing or offensive'. Media covered by the Code include the television, radio, ATM machines, electronic billboards and airport TV networks – *ZRp*

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

huili@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 editor 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:

- *P Jayasingam*
- *Mariette Peters*
- *Lee Siew May*
- *Hamsa Valli Palaniappan*

Publisher:

Zul Rafique & Partners Consultancy Sdn Bhd
Suite 17.01, 17th Floor, Menara PanGlobal
No 8 Lorong P Ramlee, 50250 Kuala Lumpur
Tel: 03-20788228; Fax: 03-20341913

Printer:

Bintang Print Enterprise
No 91-1, 1st Floor, Changkat Thambi Dollah
Off Jalan Pudu,
55100 Kuala Lumpur
Tel: 03-21417893; Fax: 03-21424869

STOP THE PRESS !!!

DATO SERI ANWAR IBRAHIM V PP

On 15 September, the Federal Court after reviewing the corruption trial upheld the conviction.

It began with the trial where the accused, the former Deputy Prime Minister ('the appellant') was charged under section 2 of the Essential Powers Ordinance (No 22) 1970 on 4 charges of abuse of power ('the corruption trial'). He was found guilty and was sentenced to 6 years imprisonment on each charge with the sentences to run concurrently. The appellant's appeal to both the Court of Appeal and Federal Court were dismissed. The appellant then applied to the Federal Court to review its own decision, citing rule 137 of the Rules of the Federal Court 1995 which provides for the inherent powers of the court. It reads:

For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

The grounds for the application revolved around aspects of the corruption trial which were alleged to be unfair and prejudicial.

On 7 September 2004, the Federal Court ruled ('the ruling') that it has jurisdiction to review its own decision and ordered the parties to make their submissions. On 15 September 2004, the case was reviewed and the conviction upheld).

An important issue that arises is whether the particular ruling of the Federal Court dilutes the aspect of finality attached to any judgment of the highest appellate court. A situation which creates uncertainty may promote further injustice.

One man's justice is another man's injustice
- Ralph Waldo Emerson (1803 – 82)