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LEGAL INSIGHTS

A SKRINE NEWSLETTER

MESSAGE FROM THE EDITOR-IN-CHIEF

The quarter ended 30 September 2016 witnessed several interesting developments in the corporate sector in Malaysia.

On 15 August 2016, the Malaysian Code on Take-Overs and Mergers 2010 was replaced by the Malaysian Code on Take-Overs and Mergers 2016 ("2016 Code") and the Rules on Take-Overs, Mergers and Compulsory Acquisitions ("Take-Over Rules"). The 2016 Code is now a five-page document which sets out 12 General Principles that have to be adhered to in take-overs while the detailed requirements are set out in the Take-Over Rules issued by the Securities Commission of Malaysia.

During the quarter, Bank Negara Malaysia, under the stewardship of our new governor, Datuk Muhammad bin Ibrahim, launched two significant policy documents on Corporate Governance and Shareholder Suitability which came into effect on 3 August 2016 (subject to transitional arrangements) and 18 August 2016 respectively. The former replaces eight previous guidelines and circulars whilst the latter replaces a policy document of the same name issued on 8 October 2014.

On 2 September 2016, Bursa Malaysia issued a Consultation Paper on a proposed new market to enable SMEs to have greater access to the capital market. Interestingly this new market will be open only to sophisticated investors under the Capital Markets and Services Act 2007 and to venture capital corporations, venture capital management corporations, private equity corporations and private equity management corporations registered with the Securities Commission of Malaysia.

Last, but most significantly, the Companies Bill 2015 received Royal Assent on 31 August 2016 and was gazetted on 15 September 2016, thereby becoming the Companies Act 2016 on 16 September 2016. The new Act will come into operation on a date to be determined by the Minister, which is expected to be sometime in early 2017.

We hope that you will enjoy reading the articles and case commentaries that we have lined-up for you in this issue of our newsletter.

With Best Wishes,

Kok Chee Kheong
Editor-in-Chief

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ANNOUNCEMENTS

WHO'S WHO LEGAL AWARDS 2016

Skrine is pleased to have been awarded the Malaysian Firm of the Year 2016. This is the fourth consecutive year that we have received this award. The Firm extends its congratulations to the following lawyers who have been listed in Who's Who Legal 2016:

- Charmayne Ong Poh Yin (Telecommunications, Media & Technology & Trademarks)
- Datin Faizah Jamaludin (Energy)
- Khoo Guan Huat (Life Sciences)
- Leong Wai Hong (Litigation)
- Lim Chee Wee (Asset Recovery)
- Lim Koon Huan (Trade & Customs)
- Selvamalar Alagaratnam (Labour, Employment & Benefits)
- To' Puan Janet LH Looi (Corporate/M&A)
- Vinayak P Pradhan (Arbitration, Construction, Litigation, Mediation)
- Wong Chee Lin (Restructuring & Insolvency)

SENIOR ASSOCIATES

The Partners are pleased to announce that Witter Yee, Damian Kiethan, Joshua Teoh Beni Chris, Karthini Mahendranathan and Addy Herg have been promoted to Senior Associates.

Witter is a member of our Dispute Resolution Division. He obtained his Bachelor of Laws from the National University of Malaysia in 2011 and was admitted as an Advocate and Solicitor of the High Court of Malaya in May 2012.

Damian graduated from the University of London in 2010 and was admitted as an Advocate and Solicitor of the High Court of Malaya in November 2011. He is a member of our Dispute Resolution Division.

Joshua is a member of our Intellectual Property Division. He obtained his Bachelor of Laws from the University of Malaya in 2011 and was admitted as an Advocate and Solicitor of the High Court of Malaya in July 2012.

Karthini graduated from the University of Malaya in 2011. She was admitted as an Advocate and Solicitor of the High Court of Malaya in 2012 and is a member of our Construction and Engineering Practice Group.

Addy is a graduate of the University of Manchester. He graduated in June 2010 and was admitted an Advocate and Solicitor of the High Court of Malaya in August 2012. Addy is a member of our Corporate Division.

A REVIEW OF THE COMPANIES

Tiong Hui Jin discusses the
for member's

The Companies Act 2016 ("Act") became law on 16 September 2016 and will come into operation on a date to be determined by the Minister. In this article, we continue our review of the Act by examining the requirements pertaining to the dispensation of annual general meetings and to member's written resolutions.

THE NO AGM REGIME

Applicability of the No AGM Regime

The present Act, i.e. the Companies Act 1965 ("CA65") requires every company to hold an annual general meeting ("AGM") once in every calendar year and not later than 15 months after the date of the preceding AGM.

The Act introduces a new regime whereby it will no longer be mandatory for a private company to hold AGMs. The rationale stems from the notion that AGMs are unnecessarily burdensome and serve little purpose as members of a private company are usually involved in the management of the company and thus, already have access to its corporate information.

The "No AGM Regime" does not apply to a public company which is required under Section 340 of the Act to hold an AGM in every calendar year within six months of its financial year end and not later than 15 months after the last preceding AGM.

Consequential changes from the No AGM Regime

The Act introduces new provisions to facilitate the "No AGM Regime" by addressing matters which are usually dealt with at an AGM. First, a private company will be required to circulate its financial statements and reports to its members within six months of its financial year end (Sections 257 and 258).

Secondly, Sections 267(4)(a) and 267(6) of the Act require the members to appoint an auditor for a private company by way of an ordinary resolution 30 days before the end of the period for submission of the previous year's financial statements to the Registrar, or if such financial statements are lodged earlier than the foregoing submission deadline, then the appointment must be made before the financial statements are lodged.

Thirdly, in respect of the retirement of directors of a private company, which is an ordinary business to be transacted at an AGM under the CA65, the Act provides that the retirement of a director of a private company may be determined by the passing of a written resolution (Section 205(2)).

Section 132 of the Act authorises the directors to make such distribution as they consider appropriate to the members of a company. Hence, the Act dispenses with the requirement for members to approve the payment of a final dividend at an AGM.

Section 165(4) of the CA65 requires an annual return to be lodged with the Registrar within one month after the company's

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ACT 2016 – PART 2

"No AGM Regime" and requirements written resolutions

AGM. Under Section 68(1) of the Act, an annual return will have to be lodged by a company within 30 days from each anniversary of its incorporation date. The Act dispenses with the aforesaid requirement for the calendar year in which a company is incorporated.

MEMBER'S WRITTEN RESOLUTIONS

Section 152A of the CA65 sets out the requirements for a member's written resolution. This provision applies to both a private company and a public company. It also requires such resolution to be passed by unanimous approval of the members.

Applicability of the Member's Written Resolution Regime

The Act draws a distinction between the manner in which a private company and a public company may pass a member's resolution. Section 290(1) provides that a private company may pass a member's resolution either at a meeting or by a written resolution. On the other hand, Section 290(2) provides that a public company may only pass a member's resolution at a meeting of its members. In other words, the provisions relating to a member's written resolution in Sections 297 to 308 of the Act apply only to private companies.

> **"it will no longer be mandatory for a private company to hold AGMs"**

Notwithstanding the above, a public company which has only one member may resort to Section 344 of the Act to formalise decisions in respect of matters that require the approval of its members in general meeting.

Approval thresholds

The requirement for unanimity under Section 152A of CA65 for a member's written resolution of a private company will be abolished when the Act comes into force. A member's written resolution in respect of an ordinary resolution is to be passed by a simple majority of members, and in respect of a special resolution, by not less than 75% majority (Section 306(4) read with Sections 291 and 292).

Initiation of member's written resolution

A member's written resolution may be proposed by the board of directors or a member (Section 297(1)). The Act expressly prohibits two matters from being decided by a written resolution, namely, the removal of a director or an auditor before the expiration of their respective terms of office (Section 297(2)). Thus, a physical meeting has to be convened to consider such resolutions.

Circulation of written resolution

To prevent the reduced approval threshold for written resolutions from being abused, the Act requires a proposed written resolution to be circulated to every eligible member (i.e. those entitled to vote on the resolution on the circulation date of the written resolution) (Section 298).

The circulation date of a written resolution will be either the date on which copies of the written resolution are circulated to the eligible members or if such copies are circulated on different days, the first of those days (Section 299). The written resolutions may be circulated in hard copy or electronic form (Section 300(1)).

The Act also requires a copy of the written resolution to be circulated together with a statement that sets out the procedure for signifying agreement or otherwise to the resolution and the date by which the resolution shall lapse if it is not passed (Sections 301(2) and 303(4)).

Other matters concerning a member's written resolution

A member who holds 5% (or such lower percentage as is specified in the constitution) of the total voting rights of all eligible members may require the company to circulate a proposed resolution as a member's written resolution (Section 302(1)). The request shall be made in hard copy or electronic form, state the resolution and any accompanying statement, and be signed by the member making the request (Section 302(5)).

The Act sets out four situations where a resolution may not properly be moved as a written resolution (Section 302(2)), namely where the resolution -

(a) if passed, would be ineffective whether by reason of inconsistency with any written law or the constitution;
(b) is defamatory of any person;
(c) is frivolous or vexatious; or
(d) if passed, would not be in the best interest of the company.

The Act also addresses the payment of the expenses incurred by the company for circulating a written resolution proposed by its members. Section 304 provides that such expenses are to be borne by the members who made the request and that the Company is not required to circulate the resolution unless a sufficient sum to cover the expenses has been deposited with the company.

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THE COKE LIGHT OF INJUNCTIONS

Nimalan Devaraja explains the notification injunction

The Mareva injunction ("Mareva") is one of the most potent weapons in the arsenal of a litigator; like the can of invigorating Coca-Cola in your refrigerator. The Mareva strikes fear in the hearts of defendants given its far-reaching and disruptive impact therefore rendering it only being granted by the Courts in rare circumstances. The Mareva restrains a defendant from disposing of, or dealing with, his assets and has been developed into an effective offensive weapon against a defendant who tries to cheat the judicial system by rendering any adverse judgment to be worthless. However, the fact that the Mareva is usually first obtained on an *ex-parte* basis means that the defendant's assets are usually frozen even before he has a chance to oppose the application, thereby rendering it somewhat draconian.

In an attempt to find the middle-ground between a plaintiff's legitimate concerns and a defendant's interest, the English High Court (as usual the trailblazer in developing the common law) has brought to the forefront a new type of injunction, that is, the **notification injunction.**

COCA-COLA LIGHT

A notification injunction is a rather creative form of injunction. Its purpose is to compel a defendant to notify the plaintiff before disposing or dealing with its assets. The reasoning behind the notification injunction is that it would alert the plaintiff of the possible need to apply for a Mareva, if circumstances warrant, before the defendant can dissipate its assets, whether in the notified transaction or otherwise. This differs from the Mareva which immediately restrains the defendant from dealing with the assets before any judgment is obtained (regardless of the purpose of the transaction) and is a less intrusive way of obtaining protection against a defendant who attempts to make himself judgment-proof. In a way, the notification injunction may be the precursor to a Mareva.

The notification injunction is not a new idea in the common law world, as it has been granted before in situations where the plaintiff has failed to meet the requirements for a Mareva. However, the recent case of *Holyoake v Candy* [2016] EWHC 970 (Ch) ("*Holyoake*") is the first time in which it has been issued as a standalone relief. In granting this injunction, the English High Court concluded that it had the jurisdiction to grant freestanding notification injunctions under section 37 of their Senior Courts Act 1981. The High Court found that if it had the power to grant a freezing injunction restraining all asset disposals, it must also have the power to grant the notification injunction, which is less invasive on a defendant's rights.

THE RECIPE

To fully grasp how the decision to issue a standalone notification injunction was reached, we will need to briefly touch on the facts of *Holyoake*. The dispute herein involved a £12 million loan made by CPC Group Limited, a company owned and controlled by the Candy Brothers (Christian and Nicholas), to a property developer, Mark Holyoake, for the purchase and redevelopment of Grosvenor Gardens in London's exclusive Belgravia through Hotblack Holdings Limited, a company owned by Mr Holyoake.

Mr Holyoake allegedly breached the loan agreement due to the alleged deficiencies in the net asset statement which caused the loan to be immediately repayable. Mr Holyoake subsequently alleged that he had been the victim of, amongst others, a conspiracy, duress, and intimidation, particularly that he had been bullied and coerced into entering into a series of further agreements which were highly disadvantageous to him. These arrangements resulted in him having to pay approximately £37 million to CPC for the original £12 million loan and to sell the very property for which he obtained the loan, at a loss. Mr Holyoake did not get to taste even a sip of the Coca-Cola that he had paid for.

The Claimants, Mr Holyoake and Hotblack, applied for a notification injunction to restrain the Defendants from disposing, dealing or otherwise engaging in transactions with their assets in the sum of or to the value exceeding £1 million without giving seven days prior written notice to the Claimants as they had concerns that the Defendants might make it difficult, if not impossible, to enforce any judgment against them.

> **“ the plaintiff has to show a "good arguable case" (and that) there is a risk that the defendant would dissipate assets ”**

It is not known why the Claimants did not seek a Mareva; they only went so far as to say that they sought "*no more relief than they considered reasonably necessary to protect their position, the primary purpose being that if the Defendants should attempt to enter into a transaction or transactions which the Claimants consider seriously damaging to their position, the Claimants will have the opportunity to apply to Court for a freezing injunction or take other steps to protect themselves.*"

THE INGREDIENTS

Unlike the formula for Coca-Cola which is a closely guarded secret known only to a few, the Court in *Holyoake* declared for one and all to know that the test for a notification injunction was to be similar to that of a Mareva, namely that: (i) the plaintiff has to show a "good arguable case"; and (ii) there is a risk that the defendant would dissipate assets.

Good Arguable Case

A "good arguable case" is one which "*is more than barely capable of serious argument, yet not necessarily one which the Judge believes to have a better than a 50 percent chance of success*" (*The Neidersachsen* [1983] 1 WLR 141). It is a higher threshold than the usual requirement for an interlocutory injunction, i.e.

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that there is a "serious issue to be tried".

The Court found that the demonstration of merits required in an application for a Mareva must be applied to a notification injunction despite the latter being less invasive as the plaintiff would ordinarily have no right to know what the defendant's assets are or what he plans to do with them.

The judge was satisfied that the Claimants had a good arguable case based on the serious allegations contained in their Particulars of Claim, amongst which were that Mr Holyoake had been misled by false statements and had faced a series of aggressive threats of an unpleasant and wholly unjustifiable character.

Risk of Dissipation

Just as in the case of a Mareva, there is no requirement for the plaintiff to prove that dissipation either has happened or would happen, but only that such a risk could be inferred from the objective facts.

Importantly, Nugee J took the view that as a notification injunction was less onerous on the Defendants as compared to the Mareva, the degree of risk needed to be shown before the Court would intervene was correspondingly lower.

Based on the following factors drawn from the cause papers, Nugee J was satisfied that there was a risk of dissipation in this case:

(1) The corporate structures used by the Defendants were "unusually complex" and the entities which held their assets were incorporated in jurisdictions with limited reporting requirements; these factors could be abused as they allowed parties to move or hide their assets more easily;

(2) There was no explanation from the Defendants as to the extensive corporate reorganisation that they had undergone since proceedings were first intimated;

(3) Although the Defendants' assets comprised mainly of real property, the judge was of the view that there was no necessity for these assets to be sold in order for their value to be transferred – for example, the shares in the company that owned the property could be sold or a loan secured by the property, drawn down;

(4) No proper explanation was given for the transfer of a row of houses in Regent's Park by one of the Defendants to his wife;

(5) The lavish lifestyle of one of the Defendants was not supported by publicly available information as to his wealth; and

(6) The nature of the allegations levelled at the Defendants was that they were persons who would be prepared to act in a way that is commercially and legally unjustifiable and morally reprehensible.

Despite finding that there was a risk of dissipation, Nugee J did not formulate an exact legal test for this lower threshold for risk of dissipation. It would be interesting to see how the English Courts will develop this position in the future. It is possible that they may leave it to be determined on a case by case basis without setting strict guidelines on the evidential burden.

Balance of Convenience

As always in determining whether an injunction ought to be granted, the Court would also need to consider the balance of convenience to both parties before making a decision.

Nugee J expressed concern that the notification injunction may disrupt the Defendants' business and granted a modified injunction whereby notification of any transaction relating to their UK residential and commercial properties need only be given three days after completion of the transaction.

Undertaking in Damages

Like the Mareva, the plaintiff must give an undertaking in damages in the event that the Court later finds that the plaintiff is not entitled to such a relief. The Court may also order for fortification of the damages if it deems necessary.

However, as the notification injunction is likely to have far less severe consequences, the undertaking in damages should be less onerous on the plaintiff as compared to the Mareva which freezes all the defendant's assets. There is also less risk of having the undertaking fortified as no substantial damage is likely to be incurred by the defendant from mere notification.

COST-BENEFIT ANALYSIS

It is clear as a Coca-Cola is sweet that the notification injunction is far less intrusive on the defendant than a Mareva as it allows a defendant to deal with its assets as long as the plaintiff is notified in accordance with the terms of the Court Order. As such, the defendant would be free to carry on its daily affairs without undue hindrance and the burden would lie on the plaintiff, having weighed all the information at hand upon being notified, to determine if it needs to apply for a Mareva.

This means that the notification injunction should, in theory, be easier for a plaintiff to obtain as compared to the Mareva due to

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CORPORATE INSOLVENCY, CORPORATE REHABILITATION AND RECEIVERSHIP

Lee Shih and Nathalie Ker highlight the main changes to the corporate insolvency and rehabilitation procedures under the Companies Act 2016

The Companies Act 2016 ("Act") was gazetted on 15 September 2016. It will come into operation on a date to be appointed by the Minister, which is expected to be in 2017 and replace the Companies Act 1965 ("Existing Act"). The Act is based on the recommendations made by the Corporate Law Reform Committee ("CLRC") back in 2008 and takes into account feedback received on an exposure draft released by the Companies Commission of Malaysia in 2013.

This article will highlight areas of the Act which will reform the existing areas of receivership, winding up and schemes of arrangement. It will also discuss the new mechanisms of the judicial management scheme and the corporate voluntary arrangement which are being introduced to better promote a corporate rehabilitation framework.

RECEIVERSHIP

Appointment

The receivership provisions in the Act substantially expand on the existing provisions in the Existing Act. Sections 375 and 376 of the Act set out the manner of appointing a receiver or a receiver and manager ("R&M") under an instrument or by the Court.

> “ the common law right to appoint a receiver or R&M has now been expressly preserved ”

Section 375(2) of the Act expressly sets out the agency status of a receiver or an R&M appointed under a power conferred by an instrument. The present legal position is that a receiver or R&M becomes an agent of the debtor company by virtue of the inclusion of provisions to that effect in the debenture under which he is appointed. The codification of the agency status of the receiver and R&M helps to remove some of the present ambiguities on the status of the receiver or R&M.

In the case of a Court appointment, section 376 of the Act lists out three specific grounds upon which the Court may appoint a receiver or R&M, which are essentially where the company has failed to pay a debt due to a debenture holder, or the company proposes to sell the secured property in breach of the charge, or it is necessary to do so to preserve the secured property. The common law right to appoint a receiver or R&M has been expressly preserved by section 376(4) of the Act.

Personal Liability of the Receiver and R&M

Sections 381 and 382 of the Act deal with the liability of the receiver or R&M. The receiver or R&M is to be liable for debts incurred by him or other authorised person in the course of the receivership or possession of assets unless otherwise provided in the instrument appointing the receiver or R&M.

Similarly, a receiver or R&M is personally liable for a contract entered into by him in the exercise of any of his powers unless specifically provided otherwise in his instrument of appointment. The terms of a contract may however exclude or limit the personal liability of the receiver or R&M appointed under an instrument but this is not applicable to a receiver or R&M appointed by the Court.

Powers of Receiver and R&M

Section 383 of the Act introduces a welcomed codification of the express powers of a receiver or R&M which are set out in the Sixth Schedule of the Act. Presently, a receiver or R&M appointed through a debenture derives his powers solely from the provisions of that instrument and it is not uncommon to encounter situations where the powers listed in the debenture are inadequate or ambiguous.

> “ a winding up petition (must) be filed within six months from the expiry date of the statutory demand ”

This codification of a minimum list of default powers exercisable by a receiver or R&M is in line with the approach taken in the United Kingdom, Australia and New Zealand.

WINDING UP

Presentation of a Petition

Section 466(1)(a) of the Act empowers the Minister to prescribe the threshold of the debt for the statutory demand in order for a company to be deemed unable to pay its debts for the purposes of a compulsory winding up. The threshold of RM500.00 under the Existing Act is likely to be increased to RM5,000.00.

Further, section 466(2) of the Act requires a winding up petition to be filed within six months from the expiry date of the statutory demand. The aim of this is to reduce the possibility of the statutory demand being abused and to prevent the threat of a winding up petition from continuing to hang over the debtor company for an inordinately long period of time.

Powers of Liquidators

The powers of the liquidator in a court winding up are set out in section 486 read with the Twelfth Schedule of the Act. Part I

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of the Twelfth Schedule lists out the powers that the liquidator may exercise without the authority of the Court or the committee of inspection ("COI") while Part II of the Twelfth Schedule lists out the powers that may be exercisable only with the aforesaid authority.

In particular, the Act permits a liquidator to carry on the company's business so far as necessary for the beneficial winding up of the company for a period of 180 days after the making of the winding up order. Thereafter, the liquidator must obtain the authority of the Court or the COI to continue with the carrying on of such business. This is a welcomed increase from the present period of only four weeks allowed under the Existing Act.

Termination of Winding Up

Under the Existing Act, the only way in which a winding up order can be brought to an end is through an order for a stay of winding up under section 243. In considering whether to grant a stay, the Court would take into account factors such as the interests of the creditors and liquidator and whether it is conducive or detrimental to commercial morality.

> **"The judicial management mechanism … provides a further option to rehabilitate a financially distressed company"**

In addition to the power to stay a winding up under section 492, the Act introduces a new section 493 which allows the Court to terminate the winding up of a company. In determining whether to terminate a winding up, the Court may consider various factors, such as the satisfaction of the debts, the agreement by both parties, or other facts as it deems appropriate. This allows for an easier and more definitive route to bring to an end the winding up where the debtor company has satisfied the debts owing to the petitioning creditor.

SCHEME OF ARRANGEMENT

The scheme of arrangement provisions remain largely the same except for three of the more significant changes reflected in the Act.

Additional Safeguard of Independent Assessment

Section 367 introduces an additional safeguard to the scheme of arrangement framework by allowing the Court, upon application, to appoint an approved liquidator to assess the viability of a proposed scheme. This would enable an independent professional in the field of insolvency to determine the viability of the scheme and take into account the interests of all stakeholders.

Extension of the Restraining Order

For the extension of a restraining order, section 368(2) provides that the Court may grant a restraining order for a period of not more than three months and may extend this period for not more than nine months if the prescribed requirements are met. This would give effect to the CLRC's recommendation that the maximum period of a restraining order should be a year.

Restraining Order Will Not Extend to Regulators

Section 368(6) makes it clear that a restraining order which restrains further proceedings against the company except by leave of the Court will not apply to any proceeding taken by the Registrar of Companies or the Securities Commission Malaysia. It is not clear if this would extend to restraining delisting proceedings taken by Bursa Malaysia against a public listed company.

JUDICIAL MANAGEMENT

The judicial management mechanism, modeled after the Singapore model, is a new component under the Act to provide a further option to rehabilitate a financially distressed company. It allows a company or its creditors to apply for an order to place the management of a company in the hands of a qualified insolvency practitioner. A moratorium would give the company temporary respite from legal proceedings by its creditors. The moratorium applies automatically from the filing until the disposal of the judicial management application and also while the judicial management order is in force.

Excluded Companies

Section 403 of the Act provides that the judicial management scheme cannot apply to a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by Bank Negara Malaysia or a company which is subject to the Capital Markets and Services Act 2007.

Requirements for the Grant of a Judicial Management Order

The Court is empowered under section 405 of the Act to grant a judicial management order if and only if -

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CORPORATE INSOLVENCY, CORPORATE REHABILITATION AND RECEIVERSHIP

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(a) it is satisfied that the company is or will be unable to pay its debts; and
(b) it considers that the making of the order is likely to achieve one or more of the following purposes -

(i) the survival of the company or the whole or part of its undertaking as a going concern;
(ii) the approval of a compromise or arrangement between the company and its creditors;
(iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

The judicial management order shall, unless discharged, remain in force for 6 months and may be extended on the application of the judicial manager for another 6 months.

Right of Veto

Section 408(1)(b)(ii) of the Act requires the notice of a judicial management application to be provided to any person who has appointed, or may be entitled to appoint, a receiver or an R&M of the whole or a substantial part of the company's property under the terms of any debentures of a company.

Section 409 of the Act requires the Court to dismiss a judicial management application where it is satisfied that a receiver or an R&M referred to in section 408(1)(b)(ii) has been or will be appointed, <u>and</u> where the making of the order is opposed by a secured creditor.

However, the Explanatory Statement of the Bill presented in Parliament explains that section 409 is intended to allow for the dismissal of the judicial management application if the receiver or R&M is or will be appointed <u>or</u> where the application is objected by a secured creditor.

With the present use of the word 'and' in section 409, the exercise of the right of veto requires the debenture holder to appoint a receiver or R&M. It is a mandatory element to trigger the veto. If the word 'or' was used instead, then it widens the right of veto which can be triggered either when the debenture holder has appointed the receiver or R&M, or where there is opposition by a secured creditor (e.g. a secured creditor who holds a fixed charge or mortgage).

Approval of Judicial Manager's Proposal

Section 420 of the Act provides that a judicial manager has 60 days (or such longer period as the Court may allow) to send to the Registrar, members and creditors of the company a statement of his proposal for achieving the purposes for which the order was made and to lay a copy of this statement before a meeting of the company's creditors.

As a meeting of the creditors must be summoned on not less than 14 days' notice, the judicial manager effectively only has a short period of 46 days to come up with the proposal to rehabilitate the company unless he applies to the Court for an extension of that time.

Section 421(2) of the Act requires a judicial manager's proposal to be approved by creditors present and voting who hold 75% in value of the claims which have been accepted by the judicial manager. Once approved by the required majority, the proposal binds all creditors of the company, whether or not they had voted in favour of the proposal.

CORPORATE VOLUNTARY ARRANGEMENT

The corporate voluntary arrangement ("CVA") is modeled after the corresponding provisions of the UK Insolvency Act. The CVA is a procedure which allows a company to put up a proposal to its creditors for a voluntary arrangement. The implementation of the proposal is supervised by an independent insolvency practitioner who would report to the Court on the viability of the proposal. There is minimal Court intervention in the process.

Excluded Companies

In the same vein as section 403 of the Act, section 395 provides that the CVA cannot be carried out in a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by Bank Negara Malaysia, and a company which is subject to the Capital Markets and Services Act 2007.

In addition, the CVA cannot be carried out by a public company or a company which creates a charge over its property or any of its undertaking. The exclusion of the last group of companies may significantly reduce the efficacy of the CVA as a restructuring option as it is likely that many financially distressed companies would have charged some or all of their assets as security for borrowings.

Initiation of CVA

To initiate a CVA, the directors would have to submit to the nominee, being a person who is qualified to be appointed as an approved liquidator, a document setting out the terms of the proposed voluntary arrangement and a statement of the company's affairs.

Under section 397(2) of the Act, the nominee is then required submit to the directors a statement indicating whether or not in his opinion -

(a) the proposed CVA has a reasonable prospect of being approved and implemented;
(b) the company is likely to have sufficient funds available for it during the proposed moratorium to enable the company to

carry on its business; and

(c) the company should convene meetings of its members and creditors to consider the proposed CVA.

Under section 398 of the Act, once the directors have received a positive statement from the nominee, they can then file this statement with the Court together with the other necessary documents, such as the nominee's consent to act and the document setting out the terms of the proposed CVA.

Moratorium and Required Majority to Approve the Proposal

Upon the filing of the relevant documents pursuant to section 398, the Eighth Schedule of the Act provides that a moratorium commences automatically and remains in force for 28 days during which no legal proceedings can be taken against the company. It is meant to give some breathing room for the company from creditors' legal proceedings.

Upon the moratorium coming into force, section 399 of the Act requires the nominee to summon a meeting of the company and its creditors within 28 days of the date of the filing of the documents in Court, as specified in the Eighth Schedule.

At the company's meeting, a simple majority is required to approve the proposed CVA while at the creditors' meeting, the required majority is 75% of the total value of the creditors present and voting. With such approval, the CVA takes effect and binds all creditors. The aim of the CVA is that it should apply only to the restructuring of unsecured debts of a company and cannot affect the right of a secured creditor to enforce its security.

If more time is required for the stakeholders to decide on a proposal, the moratorium period can be extended for a further period not exceeding 60 days with the approval of 75% majority in value of the creditors at a meeting and with the consent of the nominee and the members of the company.

CONCLUSION

The Act will bring many welcomed changes in revamping the corporate insolvency and rehabilitation framework in Malaysia when it comes into force. Companies will have more options in this area that have long been available to companies in foreign jurisdictions such as the United Kingdom and Singapore. It remains to be seen how some areas of the Act will be clarified through case law.

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ANNOUNCEMENTS

ASIAN LEGAL BUSINESS MALAYSIA LAW AWARDS 2016

Our Firm won five awards at the Asian Legal Business (ALB) Malaysia Law Awards 2016. The Firm was named Real Estate Firm of the Year, Arbitration Firm of the Year, Aviation Firm of the Year, Debt Market Deal of the Year (Mid-Size) for the Sri Tanjung Pinang 2 Syndication led by Dato' Philip Chan and the M&A Deal of the Year for the China General Nuclear's acquisition of 1MDB's power assets led by Datin Faizah Jamaludin.

IFLR 1000 2016

The International Financial Law Review 1000 (IFLR 1000) recently released their rankings of law firms in 2016.

The Firm maintains its Tier 1 Ranking in four practice areas, namely Corporate/M&A, Energy, Infrastructure and Oil & Gas. The firm extends its congratulations to our following lawyers who have been listed as leading lawyers in their respective fields:

- Datin Faizah Jamaludin (Competition, Energy and Infrastructure, Mergers & Acquisition)
- Dato' Philip Chan (Energy and Infrastructure, Project Development, Banking, Project Finance, Mergers & Acquisitions, Asset Finance, Real Estate Finance)
- Phua Pao Yii (Investment Funds, Capital Markets: Structured Finance and Securitisation, Mergers & Acquisitions, Asset Finance)
- Quay Chew Soon (Restructuring and Insolvency, Financial Restructuring, Capital Markets: Structured Finance and Securitisation, Mergers & Acquisitions)
- Theresa Chong (Energy and Infrastructure, Project Development, Banking, Project Finance, Mergers & Acquisition, Real Estate Finance)
- To' Puan Janet Looi (Restructuring and Insolvency, Energy and Infrastructure, Financial Structuring, Project Finance, Private Equity, Mergers & Acquisition)

COURT UPHOLDS RIGHT TO CRITICISE PUBLIC ADMINISTRATION

Claudia Cheah and Wong Juen Vei explain a landmark decision by the Court of Appeal

In the recent landmark case of *Utusan Melayu (Malaysia) Berhad v Dato' Sri DiRaja Haji Adnan Bin Haji Yaakob* [2016] 5 CLJ 857 ("Utusan Case"), the Court of Appeal held that government and public officials cannot sue for defamation in their official capacity.

BACKGROUND FACTS

The Plaintiff, Dato' Sri DiRaja Haji Adnan Bin Haji Yaakob, is the elected representative for the State constituency of Pelangai and the Chief Minister of the State of Pahang. The Defendant, Utusan Melayu (Malaysia) Berhad, is the printer and publisher of a newspaper, 'Mingguan Malaysia', which is published every Sunday and available to the general public throughout Malaysia.

The subject matter of the action concerned an article published on 9 November 2014 in a regular news analysis column of the Mingguan Malaysia entitled "*Hebat Sangatkah Adnan*" ("Article"). The Plaintiff claimed that the Article has defamed him as it, *inter alia*, contained allegations which meant and were understood to mean that the Plaintiff had failed to carry out his duties as the Chief Minister of the State of Pahang and that he is unsuited to hold the position as the Chief Minister of that State.

> **" a democratically elected governmental body should be open to uninhibited public criticisms "**

The Defendant applied for an order to strike out the Plaintiff's action on the grounds that it was scandalous, frivolous and vexatious and an abuse of the process of the court. The Defendant argued that the Article was a critique of the Plaintiff's administration as the Chief Minister of Pahang and the Plaintiff lacked *locus standi* to initiate and maintain the action in such official capacity.

DECISION OF THE HIGH COURT

In response to the Defendant's contention that the Plaintiff lacked *locus standi* to initiate and maintain the action in his official capacity, the High Court noted that the Plaintiff's name was cited without reference to his official position as the Chief Minister of the State of Pahang. The High Court also noted that the Plaintiff was referred to as 'Adnan' or '*beliau*' (i.e. he) at least 20 times in the Statement of Claim. On the basis of the foregoing, the High Court held that the Plaintiff was suing in his personal capacity and not his official capacity and dismissed the Defendant's application to strike out the Plaintiff's claim.

The Defendant, dissatisfied with the High Court's decision, appealed to the Court of Appeal.

DECISION OF THE COURT OF APPEAL

The Court of Appeal by a unanimous decision allowed the Defendant's appeal and struck out the Plaintiff's claim.

The Court of Appeal adopted the principle set out by the English House of Lords in *Derbyshire County Council v Times Newspapers Ltd* [1993] 1 All ER 1011 ("Derbyshire Principle").

In the case of *Derbyshire*, the Derbyshire County Council ("Council") sued the Sunday Times Newspaper for defamation in respect of articles published by the newspaper which questioned the propriety of certain investments made by the Council using monies in the superannuation fund. In dismissing the Council's claim, the House of Lords took the view that it is of the highest public importance that a democratically elected governmental body should be open to uninhibited public criticisms and that it would be contrary to public interest to fetter freedom of speech by restraining public critiques of such bodies.

> **" the Derbyshire Principle should apply alike under and be part of Malaysian defamation law "**

The Court of Appeal in the *Utusan Case* held that the Derbyshire Principle should apply alike under and be part of Malaysian defamation law. The Court pointed out that the right of citizens to discuss or criticise the government and public officials is an integral part of the right to freedom of speech and expression which is already well-entrenched in Article 10 Clause (1)(a) of the Federal Constitution. Hence, this fundamental right must be given due recognition and protected as one which is guaranteed by the Federal Constitution and should not be inhibited by the threat of civil actions for defamation.

The Court of Appeal also examined the provisions in the Defamation Act 1957 and found that the said Act does not provide for the government or any individual members in the government who have conduct of public affairs to sue for defamation in their official capacity. Thus, the constitutional guarantee under Article 10 Clause (1)(a) remains intact and every citizen has the right to freedom of speech and expression including the right to discuss the government and public officials, as long as it is exercised within the permissible restrictions imposed by law.

The Court of Appeal also provided a further reason for its conclusion that governments, public offices and bodies have no *locus standi* to sue for defamation. According to the Court, defamation is personal in nature and abates with the death of the complainant plaintiff as provided under section 8(1) of the Civil Law Act 1956. However, governments, public offices and bodies go on, almost forever until and unless there is a change of law.

The Court of Appeal noted that the Derbyshire Principle does not restrict the right of an individual holding public office from suing in a defamation action in his personal capacity where individual reputation is wrongly impaired. On the facts of the case, the Court of Appeal found that the Article, when read as a whole undoubtedly concerned the Plaintiff as the Chief Minister of the State of Pahang. A detailed perusal of the Plaintiff's pleadings also showed that the Plaintiff was suing in his official capacity as Chief Minister in respect of matters relating to the manner in which he conducts the affairs of the State and performs his official functions.

The Court of Appeal agreed with the Defendant's submissions that as an elected representative and Chief Minister, the Plaintiff must be open to public criticism and hence ought to be precluded from suing for defamation in his official capacity.

> **“ the right … is an integral part of the right to freedom of speech and expression which is … well-entrenched in … the Federal Constitution ”**

SAFEGUARDS FOR GOVERNMENT AND PUBLIC OFFICIALS

The Court of Appeal was mindful of the effect of its decision and interposed a note of caution that despite this decision, there are sufficient safeguards to protect the government and public officials from onslaughts on their reputation through malicious statements or falsehoods relating to their official performances.

Where the right of freedom of speech and expression is abused or where any person by speech or writing seeks to calumniate any public authority or officials with malicious falsehood or false statements, the government through the Public Prosecutor could initiate prosecutions under various laws such as the Sedition Act 1948, the Penal Code, the Printing and Presses Publications Act 1984 and the Communications and Multimedia Act 1998. These would, in the opinion of the Court, be a more appropriate recourse to thwart the menace of malicious defamatory publications or words.

According to the Court of Appeal, another recourse available to government and public officials to protect their reputation is to defend themselves by public explanations or rebuttals and through debate in the legislative body. The Court opined that government and public officials would be expected to convene press conferences to respond precisely to such publications. A responsible mainstream media organisation, practising its own


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media ethics with specific ethical principles and media standards, would be duty bound to publish this reaction or response so that the public can have access to a balanced and fair reporting.

With these safeguards in place, the Court of Appeal ruled that their decision is not discriminatory and would not stifle or stultify the rights of the government and public officials to protect their reputation and good name.

COMMENTS

The Court of Appeal's decision in the *Utusan Case* is to be lauded as it recognises and upholds the fundamental right to freedom of speech and expression guaranteed under Article 10 of our Federal Constitution. Democratically elected government and public officials must be ready to accept public critique of their conduct of public affairs from members of the public as well as media organisations.

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Editor's Note: The Plaintiff has applied for leave to appeal to the Federal Court against the decision of the Court of Appeal.

NOW EVERYONE CAN FLY … WITH LESS HEADACHES!

A review of the Malaysian Aviation Consumer Protection Code 2016 by Shannon Rajan

The aviation industry today is increasingly diverse and competitive, with airlines of different business models offering a wide range of fare structures and service levels to suit the different travel needs of consumers. Generally, the market place consists of low cost carriers ("LCCs"), which provide basic, no frills-service at competitive prices and full service carriers ("FSCs"), which offer a comprehensive array of services at premium prices. However, it is increasingly difficult to pigeon-hole airlines into the traditional categories of LCCs or FSCs as airlines of one category have adopted some practices of the other category and evolved their business models over time.

As air travel becomes more accessible to the public, especially with the proliferation of low cost travel options, the issue of safeguarding consumers' interests has attracted increasing attention. The Malaysian Government has chosen to specifically regulate airline service standards by introducing the Malaysian Aviation Consumer Protection Code 2016 ("Code") under the Malaysian Aviation Commission Act 2015, and removing it from the purview of the Consumer Protection Act 1999. The Code, which came into operation on 1 July 2016, aims to strike a right balance between protecting passengers and industry competitiveness.

> **"An airline shall indicate the final price of the air fares to be paid"**

FRAMEWORK OF THE CODE

The Code consists of six Parts, with Parts II to IV containing the core provisions of the Code. The main thrust of these provisions is further examined below.

Part II consists of paragraphs 3 to 9 of the Code, which deal with the minimum service levels and the standards of performance for airlines and aerodrome operators.

Paragraph 3 – Full disclosure of air fare

An airline shall indicate the final price of the air fares to be paid and shall clearly itemise at least the following: (a) government taxes and fees; (b) fees and charges imposed by the Malaysian Aviation Commission ("Mavcom"); (c) passenger service charges; (d) security charges; (e) baggage fees; and (f) fuel charges.

Paragraph 4 - Prohibition on post-purchase price increase

An airline is prohibited from increasing the price of an air fare after it has been sold, unless the increase is due to taxes of fees imposed by the government or fees imposed by Mavcom and the consumer is notified of the potential price increase and has consented to it before completing the purchase.

Paragraph 5 - Prohibition on automatically adding on services

Automatic adding of any optional services to a consumer's purchase is strictly prohibited. Any optional services, such as flight insurance, must be communicated in a clear, transparent and unambiguous way at the start of any reservation process and acceptance must be on an opt-in basis only.

Paragraph 6 - Identity of operating airline

A contracting airline must inform its consumers of the identity of the operating airline during reservations and specify such obligation in its general terms of sale. If there is a change of an operating airline after the reservation for any reason, the contracting airline must take immediate steps to ensure the passenger is informed of the change as soon as practicable.

> **"Any optional services … must be on an opt-in basis"**

Paragraph 7 - Disclosure of terms and conditions

An airline is to disclose all terms and conditions of the contract of carriage to the consumer prior to the purchase of the ticket. These terms and conditions must also be printed or attached to the ticket, boarding pass or incorporated by reference.

Paragraph 8 – Communication of change in flight status

An operating airline shall inform the passengers and the public of any change in the status of a flight (i.e. cancellation of flight, delay of 30 minutes or more or a diversion) as soon as practicable after it becomes aware of the same.

Paragraph 9 – Non-discrimination of person with disability

An airline shall not refuse to: (a) accept a reservation for a flight departing from an aerodrome which is subject to the Code; or (b) embark a person with disability at such aerodrome, if that person has a valid reservation.

However, an airline may refuse to accept the reservation or embark a person with disability if such refusal is to meet safety requirements or the size of the aircraft's doors makes it physically impossible to do so. In such event, the airline is obliged to immediately inform the person concerned of the reasons for the refusal and if requested, provide the reasons in writing within five working days from the request.

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An airline which refuses to accept a reservation or embark a person with disability on one of the permitted grounds stated above must make reasonable efforts to propose an acceptable alternative to the person concerned, failing which that person is to be offered, *inter alia,* compensation and care as prescribed under the First Schedule of the Code.

The Code also sets out specific procedures and timelines on the airlines when they are notified of the need for assistance by a person with disability and places an obligation on the airlines to provide assistance to such person upon arrival or transit at the aerodrome. The Code also requires an aerodrome operator to provide structural amenities and facilities to enable a person with disability to take the flight.

Part III consists of paragraphs 10 to 16 of the Code, which deal with passengers' rights.

Paragraph 10 – Entitlement to claims

The Code defines a person who is entitled to claim compensation and care as a passenger who has a confirmed reservation on the flight and presents himself for check-in at the stipulated time by the airline or has been transferred to another flight by an airline from the flight for which he held a reservation.

“ A decision by Mavcom is registerable and enforceable as a decision of the High Court ”

The instances where a passenger can make a claim for compensation and care are set out below:

(a) *Paragraph 12* – A passenger is entitled to claim compensation and care in certain instances of flight delay or cancellation.

For a flight delay of two hours or more, a passenger is to be offered, free of charge, meals, refreshments, limited telephone calls and internet access. If a flight is delayed for five hours or more, the passenger must be offered, free of charge, hotel accommodation where stay becomes necessary and transport between the airport and the place of accommodation.

Where a flight is cancelled, a passenger is to be offered a choice between: (i) reimbursement, within 30 days, of the full amount of the ticket price (including taxes and fees) for the part of the journey not made and for the part already made, if the latter serves no purpose in relation to the passenger's travel plans; or (ii) re-routing under comparable conditions to his final destination, subject to the availability of seats at no extra cost. Alternatively, if the passenger agrees, the operating airline may provide a flight to an airport alternative to that for which reservation was made, at no extra cost.

(b) *Paragraph 11* - When a passenger has been denied boarding (except on grounds such as health, safety or security, or inadequate travel documentation), he is entitled to claim all of the compensation and care applicable to a flight that has been delayed or cancelled.

(c) *Paragraphs 13 and 16* - Where baggage does not arrive on the same flight as the passenger arrived in, or is destroyed or lost, the liability of the operating airline is limited to 1,131 Special Drawing Rights (a form of monetary currency created by the International Monetary Fund based on a basket of major currencies) for each passenger unless the passenger has made, at the latest at check-in, a special declaration of interest in delivery at destination and has paid a supplementary fee. In such event, the carrier will be liable to pay a higher liability limit. These provisions largely codify the requirements under Article 22 of the Montreal Convention.

(d) *Paragraph 14* - Where mobility equipment or assistive devices of the passenger are lost or damaged, the passenger is to be compensated based on the prevailing market price of the device.

Part IV consists of paragraphs 17 and 18 of the Code, which deal with consumer complaints.

Paragraph 17 – Complaints to airline and aerodrome operator

An airline or aerodrome operator must make available the contact details of the department where a consumer may lodge a complaint pertaining to their services. The airline or aerodrome operator is required to acknowledge receipt of a complaint within 24 hours and to send a substantive written response and provide resolution to the complainant within 30 days from receipt of the complaint.

Paragraph 18 – Complaints to Mavcom

Consumers may lodge a complaint to Mavcom pertaining to any aviation service within one year from the date of the accrual of the cause of complaint.

Mavcom may, within seven days of receipt of the complaint, reject or accept the complaint. Mavcom may reject a complaint

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#YOU'VEBEENSERVED!

Ashley Tan explores the service of legal process in the digital realm

The popularity of social media sites such as Facebook, Twitter, Internet message boards and Instagram have made them an essential part of our daily lives. This article examines some cases where the courts in foreign jurisdictions have embraced social media as a means to effect service of legal documents.

SINGAPORE

The provision governing substituted service in Singapore is Order 62 rule 5 of the Rules of Court (Cap 322, R5, 2014 Rev Ed), in particular, Order 62 rules 5(3) and 5(4), which state that:

"(3) Substituted service of a document, in relation to which an order is made under this Rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

(4) For the purposes of paragraph (3), the steps which the Court may direct to be taken for substituted service of a document to be effected include the use of such electronic means (including electronic mail or Internet transmission) as the Court may specify."

In *Storey, David Ian Andrew v Planet Arkadia Pte Ltd and others* [2016] SGHR 7, the plaintiff obtained leave to serve the writ on the defendant personally in Australia but was unable to do so. The plaintiff thereafter sought an order for substituted service. The Assistant Registrar of the Singapore High Court granted an order for substituted service of the cause papers on the defendant through Skype, Facebook and Internet message boards. The reasons of the Assistant Registrar are as follows:

- The "*language of Order 62 Rule 5 is wide enough to encompass service through Skype, Facebook and internet message boards*". The use of the expression "*including*" indicates that electronic mail and internet transmission are not meant to be exhaustive examples of service by electronic means.
- The Rules Committee cannot foretell exactly which electronic platform would be in vogue. "*Users that were using MSN Messenger and Friendster in the past would today be using Skype and Facebook*". It made sense for the Rules Committee to merely state that substituted service could be effected electronically, but without descending into the details as to which platforms of the applications were permissible and which were not.
- The impracticability of personal service is a prerequisite for substituted service; flowing from this the proposed method of service must in all reasonable probability, if not certainty, be effective to bring knowledge of the writ to the defendant.
- Foreign case law has allowed substituted service through electronic means other than email.
- The Supreme Court of Singapore had in a consultation paper, "*Use and Impact of Social Media in Litigation*", concluded that substituted service is the most appropriate manner of engaging social media and there is no reason why substituted service by social media should not be considered as it is permissible under the laws of Singapore.

AUSTRALIA CAPITAL TERRITORY, AUSTRALIA

Rule 6460(3) of the Court Procedures Rules 2006 (Australian Capital Territory) provides that a Court can make an order for substituted service if it is satisfied that:

(1) It is impracticable, for any reason, for the document to be served in the authorised way; and

(2) The alternative way is reasonably likely to bring the document to the attention of the person to be served.

Substituted service through Facebook was permitted in *MKM Capital Pty Ltd v Corbo & Poyser*. In this case the defendants had failed to keep up with repayments on a loan from the plaintiff and did not appear in Court to defend the action. The plaintiff then applied to the Supreme Court Judge for an order to serve the default judgment on the defendants by substituted service.

The plaintiff led evidence to show that service in the authorised way would be impracticable and submitted that an alternative means of service by Facebook would bring the documents to the defendant's attention. In particular, the plaintiff produced evidence which showed that the dates of birth and email addresses displayed on the Facebook profiles matched those of the two defendants and the "friend" list on the Facebook profiles showed that the defendants were friends with each other.

On the basis of this evidence, the ACT Supreme Court concluded that it was reasonably likely that the document would be brought to the defendants' attention and ordered the default judgment to be served by substituted service by (i) leaving a sealed copy at their last known address; (ii) sending a copy to a specified email address; and (iii) sending a private message to the defendants' respective Facebook pages to inform them of the entry and terms of the judgment.[1]

CANADA

Rule 4-4(1) of the Supreme Court Civil Rules ("SCCR"), *inter alia*, allows the court to make an order for service by an alternate method if it is impracticable to serve a document by personal service or if the person to be served by personal service cannot be found after a diligent search or is evading service.

In *Burke v John Doe* [2013] BCSC 964, the plaintiff sought an order for substituted service in accordance with Rule 4-4(1) of the SCCR on seven defendants who had published defamatory statements on various Internet message boards. The plaintiff suggested that a private notification be sent to the message board account of the defendants, informing them that they had

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been named as defendants in the plaintiff's defamation action and that they could access the notice of civil claim and a copy of the substituted service order at a dedicated page on the website of the plaintiff's lawyers.

The Supreme Court granted the order as personal service on the defendants was impracticable as there were no cost-effective means of discovering their location. In addition, even if their email addresses were obtained through internet service provider records, there was no certainty that those addresses would be current. Furthermore, "*it was reasonably likely, or probable, that notice of the proceedings will come to the attention*" of the defendants by the proposed method as the defendants "*regularly log into the very accounts on which they posted the allegedly defamatory statements and use message boards and the Internet as a regular means of communication.*"

UNITED KINGDOM

Civil Procedure Rule 6.15 provides that the Court may make an order permitting service by an alternative method or at an alternative place where it appears there is "*good reason*" to authorise that service.

In 2009, a Twitter user impersonated Mr Blaney, a political blogger, on Twitter. Mr Blaney obtained an injunction against the impersonator. Given that the Twitter user was anonymous, the High Court granted an order for the injunction to be served on the impersonator through Twitter.[2]

In a High Court case brought by AKO Capital LLP and Master Fund Limited against three defendants, namely, TFS Derivatives ("TFS"), Fabio De Biase, and Anjam Ahmad, the plaintiffs claimed that TFS had significantly overcharged commission and sought to recover funds from TFS. However, TFS denied the plaintiffs' allegations and contended that if TFS was liable, it should be able to claim some of the funds from Ahmad and De Biase.

TFS served its claim on De Biase at his last known address but sought an order from the Court to serve him through Facebook as there were doubts as to whether De Biase still lived there. The High Court gave permission for the claim to be served through Facebook as the High Court was satisfied that the Facebook account belonged to De Biase and that he was in the habit of checking it.[3]

MALAYSIA

Order 62 rule 5 of the Malaysian Rules of Court 2012 provides for substituted service of legal documents:

"5. Substituted service (O. 62 r. 5)

(1) If, in the case of any document which in accordance with these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order in Form 133 for substituted service of that document.

(2) An application for an order for substituted service shall be made by notice of application supported by an affidavit in Form 134 stating the facts on which the application is founded.

(3) A substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served."

There are currently no reported Malaysian cases where the court has allowed substituted service to be effected by social media. As seen from the cases discussed above, the courts in the United Kingdom, the Australian Capital Territory and Canada have allowed court documents to be served through social media notwithstanding the absence of an express provision in the procedural rules of the respective jurisdictions that allows this method of substituted service.

Given that the objective of substituted service is to draw the attention of a party to the fact that legal proceedings have been initiated against him, it is submitted that Order 62 rule 5(3) of the Rules of Court 2012 can be given a wide interpretation to allow substituted service by social media if the applicant is able to satisfy the Court that service by such means is the most likely method of drawing the attention of a party to the existence of the proceedings.

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Endnotes –

[1] http://www.mondaq.com/australia/x/155192/Social+Media/The+Impact+of+Social+Media+in+the+Legal+Arena
[2] http://news.bbc.co.uk/2/hi/technology/8285954.stm
[3] http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/9095489/Legal-claims-can-be-served-via-Facebook-High-Court-judge-rules.html

ANTI-COUNTERFEITING MEASURES IN MALAYSIA

Richgopinath Salvam explains the tools to fight counterfeiters

INTRODUCTION

It is unfortunate that counterfeits are still rampant in Malaysia despite strict laws and active enforcement actions by government agencies and brand owners. Brand owners have been combating counterfeiters in this unceasing war, only to be challenged with new methods adopted by the latter.

To make matters worse, brand owners must now consider allocating resources to combat counterfeiters on the online platforms. This is especially so when some online merchants advertise their counterfeit goods as genuine, misrepresenting to prospective purchasers that the goods are parallel imports.

Due to this recent trend of counterfeits being available online, it is no surprise that brand owners are anxiously waiting for the decision of the US courts in the suit initiated by a group of luxury goods manufacturers against Alibaba Group Holdings Ltd. A recent development in the case saw Judge P. Kevin Castel of the Southern District of New York dismiss parts of the lawsuit on the ground that the claimants have "failed to allege the existence of a conspiracy" between Alibaba and its merchants ("U.S. Judge Dismisses Parts of Lawsuit Against Alibaba", *Wall Street Journal*, 5 August 2015). The other parts of the lawsuit remain unaffected and a judgment on those parts is highly anticipated by most brand owners.

Anti-counterfeiting measures may differ from jurisdiction to jurisdiction. This article highlights the various anti-counterfeiting measures available in Malaysia and when a particular measure may be preferred. These measures may be resorted to contemporaneously or one after another.

GROUNDWORK

Once an alleged infringer is identified, the brand owner is advised to obtain and preserve the evidence of infringing acts by conducting trap purchases, or appointing a private investigator to conduct an investigation on the *modus operandi* of the alleged infringer. The brand owner should also conduct a company or business search to obtain details of the alleged infringer such as the company or business registration number, as well as its registered and business addresses. These steps would enable the brand owner to initiate civil proceedings without undue delay if such proceedings are required.

CEASE & DESIST LETTER

A cease and desist letter is a form of letter of demand, where the brand owner requires the alleged infringer to immediately stop its infringing activities and to abstain from further acts of infringement.

This method is preferred where the alleged infringers are retailers, online platform operators or distributors of the trademark proprietor, as this could be the most cost effective method of enforcement. The rationale for adopting this measure against this class of alleged infringers is due to the high likelihood that they will comply with the demand.

CIVIL LITIGATION

Civil litigation is the preferred course of action when:

(1) the alleged infringer does not respond to a cease and desist letter;
(2) there is a likelihood that if notice is given, the alleged infringer is likely to destroy evidence of infringement and there is therefore a need to obtain an Anton Piller Order to prevent such destruction;
(3) damages suffered by the brand owner will be irreparable and there is therefore a need to obtain an interlocutory injunction;
(4) there is a danger that the alleged infringer will dissipate its assets beyond the jurisdiction of the courts and a Mareva Injunction is required to prevent it from doing so;
(5) the infringing mark is not identical to the brand owner's registered trademark; or
(6) a Court decision would deter future acts of infringement by a similar class of infringers, e.g. existing or former distributors of the brand owner.

> "A brand owner … will not have any control over the administrative action"

It is important to note that delay in seeking an interlocutory order, such as an Anton Piller Order, a Mareva Injunction or an interlocutory injunction, may be fatal. Hence, if the brand owner encounters a situation where such interim relief is required, it should commence legal proceedings and seek such relief as soon as possible.

ENFORCEMENT RAID

An enforcement raid in essence is an administrative action taken by a public authority entrusted with powers to enforce intellectual property rights where the penalty is usually criminal in nature. In Malaysia, the relevant public authority is the Enforcement Division of the Ministry of Domestic Trade Cooperatives and Consumerism (MDTCC). Such action is usually initiated upon the request of the brand owner through a formal complaint lodged with the Enforcement Division.

It is the preferred method when:

(1) the counterfeit goods are identical or nearly identical to the brand owner's marks;
(2) the alleged infringers are street vendors without permanent addresses or where entities owning the said premises cannot be ascertained and where civil litigation may not be suitable;

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(3) putting an immediate stop to the infringing acts is a priority; or
(4) compensation for damages is not a priority.

The Enforcement Division would usually require proof of a trap purchase or private investigator's report to be lodged with the complaint before it carries out a raid.

The Enforcement Division will usually agree to conduct an enforcement raid only if the counterfeits bear marks which are identical or very similar to the brand owner's marks. Otherwise, they may require the brand owner to obtain a trade description order, i.e. an order of the court declaring that the infringing mark is a false trade description in its application to such goods under the Trade Descriptions Act 2011, before proceeding with a raid.

The brand owner's representative is required to attend the raid to conduct a preliminary on-site verification as to whether the goods are counterfeits. The brand owner will then be required to furnish a written verification report to the Enforcement Division within two weeks from the date of the raid which sets out details of the differences between the genuine goods and the counterfeits.

The Enforcement Division will then conduct its investigation and forward its investigation report to the Deputy Public Prosecutor for a decision as to whether the alleged infringers should be charged in Court or be required to compound the offence by paying a fine.

A brand owner should note that it will not have any control over the administrative action and the subsequent criminal prosecution. However, this does not preclude the brand owner from pursuing a civil action against the alleged infringers.

BORDER MEASURES

The Trade Marks Act 1976 contains Border Measures provisions which enable a registered trademark owner to apply to the Registrar of Trade Marks for a restriction on importation of counterfeit trademark goods. This measure is helpful only if the information as to the exact shipment of the counterfeits into Malaysia is available. In seeking recourse to border measures, a trademark owner must be willing to initiate trademark infringement proceedings in court against the importer.

An application to restrict the importation of counterfeit goods must be made to the Registrar and be supported by an affidavit containing specific information such as the name of the vessel carrying the infringing products and the exact location and time when the vessel would be arriving in Malaysia. The information must be supported by relevant documents which relate to the goods.

The Registrar must, within a reasonable time, inform the applicant whether the application has been approved. The time required by the Registrar depends on the complexity of the matter. Once approval is given, the Registrar will require the applicant to deposit with the Registrar a security, the amount of which is at the Registrar's discretion and will only be determined upon his receipt of the application.

The approval will remain in force for 60 days from the day the approval is given. During this period, the importation of any counterfeit goods into Malaysia will be prohibited. The Registrar has the onus to immediately take necessary measures to notify the authorised officer, i.e. a qualified officer under the Customs Act or a person duly appointed under the Trade Marks Act 1976 to undertake border measures, to enable him to seize any counterfeits.

Once the counterfeits are seized, the authorised officer must give the Registrar, the applicant and the importer a written notice specifying the goods seized and their whereabouts. The notice will also specify a deadline for the applicant to initiate a trademark infringement action. If the applicant does not do so within the specified time, the seized goods will be returned to the importer who may then apply to court to obtain compensation from the applicant.

There is also a provision under Section 70O of the Trade Marks Act 1976 for *ex-officio* action, i.e. an enforcement action undertaken by the Customs on its own accord, without any prompting by the brand owner. However, this provision does not impose an obligation on the Customs to carry out such action.

CONCLUSION

With the above arsenal at the disposal of brand owners, one can only hope that the counterfeiters' defence can be breached and that prospective counterfeiters will be deterred from engaging in this illegal means of profiteering.

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POKÉMON GO-LYMPICS

Strategic Advertisers' Dream or Brand Owners' Nightmare?
Grace Teoh elaborates

The summer (or winter for those south of the Equator) of 2016 has seen the launch of two of the biggest 'games' of the year: the 2016 Summer Olympics in Rio and the augmented reality game developed by Niantic Inc., Pokémon Go. Both games have generated fevered passion in fans everywhere, and accordingly, both have provided unparalleled marketing opportunities for business proprietors due to the size of the marketable audience. However, both games have vastly different methods of profiting from these opportunities.

The International Olympics Committee (IOC) and its licenced business proprietors have cashed in on these opportunities through conventional licensing activities. Conversely, Niantic and business proprietors have a symbiotic relationship; the game requires its players to visit 'Pokéstops' or 'Gyms', which are based on real-world locations. It has been reported that premises that are marked as, or are nearby, 'Pokéstops' or 'Gyms' have seen improved sales, and the more convenient it is for players to play the game, the more players the game would have, and accordingly, the more likely it is for Niantic to profit from the in-game purchases.

> **“ the causes of action available to brand owners are limited ”**

Consequently, Niantic would likely benefit, whereas the IOC would suffer an enormous loss, in profits from 'ambush marketing' activities. Ambush marketing, or strategic advertising, broadly refers to businesses that utilise marketing techniques to form unauthorised associations with a particular brand, without having to pay any licensing fees. These techniques may be legal or otherwise, depending on the law of each jurisdiction.

In Pokémon Go, examples of such techniques include occasions where the business, which is not associated with Niantic in any way, advertises that if a player provides proof of playing the game within the business premises, the player will receive goods or services at a discounted rate.

As for the Olympic Games, it was reported that certain electronics, sports apparel, and swimwear apparel companies, which had not obtained licences from the IOC, had utilised loopholes to provide products to athletes, in anticipation that the latter would be inadvertent walking advertisements during the Olympic Games.

While there may be benefits to such marketing techniques in certain situations, such as generating healthy competition and providing a symbiotic relationship for all parties involved, these techniques are more likely to interfere and hinder commercial relationships instead. Licensees would be displeased that others are benefitting from the brand without having to pay the licence fees, and rightly so.

Malaysian jurisprudence has been slow to address this, likely due to the lack of pressing necessity as Malaysia has yet to host a major international event in recent times. Consequently, the causes of action available to brand owners are limited and may not necessarily impede obstinate strategic marketers.

TRADEMARK INFRINGEMENT

If a brand owner has a registered trademark in Malaysia, there may be a cause of action for trademark infringement where the business proprietor utilises the trademark in the course of trade. Generally, the crux of an action for trademark infringement is the obstacle in proving that the antagonist had used the trademark "in the course of trade".

However, the Federal Court had recently delivered a decision in support of brand protection in its interpretation of "in the course of trade" in *Mesuma Sports Sdn Bhd v Majlis Sukan Negara Malaysia (Pendaftar Cap Dagangan Malaysia, interested party)* [2015] 6 MLJ 465. While the respondent was a non-trading entity, it was held that the respondent had still used the trademark "in the course of trade", as "trade" included activities other than provision of goods and services, e.g. licensing and merchandising activities, or according to the *Concise Oxford Dictionary*, business conducted for profit.

> **“ The brand owner may be able to institute proceedings for copyright infringement ”**

In light of the Federal Court's decision in *Mesuma Sports*, sub-sections 38(1)(b) and (c) of the Trade Marks Act 1976 could be interpreted such that trademark infringement includes circumstances where the use of a trademark in relation to advertisements results in the impression that the business proprietor has the right to use the trademark vis-à-vis the proprietor's goods or services, even if the proprietor's goods or services are not the same as the brand owner's, and even if the brand owner is not considered an end trader.

Hypothetically, a blogger who uses variations of a registered "Pokémon Go" trademark to attract more advertisers to his site could be liable to the brand owner for infringement of trademark even though the trademark is not used to indicate the source of goods or services, but to attract attention as the activities of the blogger are ultimately conducted to increase his profits.

WELL-KNOWN MARKS AND DEFENSIVE REGISTRATION

Section 70B of the Trade Marks Act 1976 provides for the protection of 'well known' trademarks under the Paris Convention or TRIPS Agreement, or the essential part of such marks, which have not been registered in Malaysia. However, the protection is limited to unauthorised use in relation to the same goods or services in respect of which the well-known trademark is used, such that it causes confusion or deception.

A brand owner may consider obtaining extended protection for its trademarks by applying for 'defensive registrations' under section 57 of the Trade Marks Act for goods and services which the brand owner does not intend to trade in, to minimise the risks of opportunistic unauthorised uses in non-related goods and services in a parasitic attempt to ride on the awareness of the brand. Once the brand owner obtains defensive registrations, it may then have a cause of action against the opportunists for trademark infringement.

However, the threshold for a successful defensive registration is extremely high, and rightly so, given that defensive registrations are immune to expungement applications on the grounds of non-use. To obtain defensive registrations, the brand owner would have to prove that (i) the trademark consists of an invented word or words; and (ii) the trademark fulfils the criteria in regulation 13B of the Trade Marks Regulations 1997 as a 'well-known' trademark.

PASSING OFF

Where brand owners do not have a registered trademark, they may have a claim under the tort of passing off. The difficulty here usually lies in the brand owner's ability to prove that the Malaysian public has been deceived or confused by the strategic marketer.

In cases where the wily marketer has made oblique references to well-known brands, e.g. where the business proprietor utilises a sufficiently small but recognisable part of the brand such that the public wryly acknowledges that the proprietor is merely riding the brand's coat-tails, the brand owner may be at a loss to protect its rights. Malaysian jurisprudence has refused to embrace trademark dilution, a concept which enables brand owners to prevent others from utilising their marks in such a way as to blur, tarnish, or otherwise reduce the uniqueness and value of the marks, without the brand owner having to prove that the public was deceived or confused.

GRACE TEOH WEI SHAN

Grace is an Associate in the Intellectual Property Division of SKRINE. She graduated from the University of Nottingham in 2010.

In *McCurry Restaurant (KL) Sdn Bhd v McDonalds Corporation* [2009] 3 MLJ 774, the Malaysian Court of Appeal had implicitly declined to consider trademark dilution when it firmly reiterated that proof of misrepresentation is an essential element of the tort of passing off.

COPYRIGHT INFRINGEMENT

The brand owner may be able to institute proceedings for copyright infringement, provided that the owner is able to prove that (i) the work is a copyrightable work pursuant to the Malaysian Copyright Act 1987; (ii) the business proprietor had copied a substantial part of the work; and (iii) the proprietor does not have a defence, such as fair dealing, incidental inclusion, or parody, under section 13(2) of the Copyright Act.

Copyright is presumed to be the 'catch-all' protection for brand owners, as the threshold for a particular work to be eligible for copyright is relatively low. The challenges in infringement suits generally lie in proving the infringement, not copyrightability, of the work and refuting the defendants' claims to an absolute defence under section 13(2) of the Copyright Act.

One issue a brand owner may face is in proving that there was substantial qualitative reproduction of the work. In a hypothetical example, Pokémon Go players may be familiar with the audio aspect of the game, e.g. the background music or the audio clip played when the player is in the proximity of a Pokéstop or a 'wild' Pokémon. In this example, a business proprietor may have used two seconds of the background music in a radio advertisement. Niantic would have to prove that (i) the advertisement replicated a substantial part of the copyrighted work, in terms of quality rather than quantity; and (ii) the business proprietor does not have a defence as mentioned above.

ADVERTISEMENT CODES

Conventional advertisements are governed by the Malaysian Advertising Code of Practice, which is enforced by the Malaysia Advertising Standards Advisory. The Advisory is an independent body empowered to withhold advertising space from recalcitrant business proprietors, largely due to the collective agreement of its members which are industry associations.

Broadcast media, online services, and other telecommunications and electronic media are subject to the Malaysian Communications and Multimedia Content Code, which is enforced by the Communication and Multimedia Content Forum

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A REVIEW OF THE COMPANIES ACT 2016 – PART 2

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The company need not circulate a member's written resolution if the court, upon an application by the company or an aggrieved person, is satisfied that the rights under Section 302 are being abused by the member (Section 305(1)). The court may further order the member who requested the circulation of the written resolution to pay the company's costs of such application even if that member is not a party to the application (Section 305(2)).

Procedure signifying agreement

The procedure for signifying agreement to a proposed member's written resolution is set out in Section 306 of the Act which stipulates that a member signifies his agreement when the company receives an authenticated document from the said member which identifies the relevant resolution and indicates his agreement to the resolution (Section 306(1)).

The document may be sent to the company in hard copy or electronic form (Section 306(2)). A member's agreement to the written resolution, once signified, is irrevocable (Section 306(3)). A written resolution will be passed when the requisite majority of members have signified their agreement to it (Section 306(4)).

Section 307(1) states that, unless otherwise provided in the constitution, a proposed written resolution circulated upon the request of a member under Section 302 will lapse if it is not passed within 28 days from the circulation date. Any agreement of a member obtained after the expiry of the 28-day period for such resolution will not be effective.

Section 293(1)(a)(i) of the Act provides that in relation to a member's written resolution, every member is to have one vote for every share or stock held by him. As the Act does not contain provisions that address a situation where a company's constitution confers different voting rights on the holders of different classes of shares, it appears that Section 293(1)(a)(i) would override such provisions of the constitution when the company seeks recourse to a member's written resolution.

CONCLUSION

The "No AGM Regime" and the new requirements relating to member's written resolutions under the Act will undoubtedly promote a more efficient framework for the administration of private companies in Malaysia.

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THE COKE LIGHT OF INJUNCTIONS

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the lower risk of dissipation needed to be shown. Thus it is ideal for situations where the Mareva could be seen to be draconian.

The flexibility of the notification injunction also means that any concerns about confidentiality of transactions or expediency can be allayed by framing the order to require notification only for transactions that exceed a specified financial threshold, or after the transaction has been completed, or imposing a confidentiality ring over the notifications.

The freestanding notification injunction introduced in *Holyoake* is a welcomed addition to a litigator's toolkit. Just as one may sometimes prefer Coca-Cola Light to the stronger taste of Coca-Cola Classic, a plaintiff now has the option to apply for an injunction which is less invasive than a Mareva.

ARE WE READY FOR THE REAL THING?

Just as Coca-Cola is advertised and regarded by many as "*the real thing*", *Holyoake* has made it clear that freestanding notification injunctions are for real.

Our Supreme Court in *Aspatra Sdn Bhd & Ors v Bank Bumiputra Malaysia & Anor* [1988] 1 MLJ 97 held that section 50 of the Specific Relief Act 1950 read together with Order 29 of the Rules of the High Court 1980 (substantially reproduced in Order 29 of the Rules of Court 2012) and paragraph 6 of the Schedule of the Courts of Judicature Act 1964 was sufficient to confer jurisdiction on the Malaysian Courts to issue a Mareva. It will be interesting to see if the Malaysian Courts will apply the same legal basis to grant a notification injunction.

Perhaps the Malaysian Courts can draw inspiration from Lord Nicholls in *Mercedes Benz AG v Leiduck* [1996] AC 284, 308 where his Lordship said:

"… the jurisdiction to grant an injunction, unfettered by statute, should not be rigidly confined to exclusive categories by judicial decision. The court may grant an injunction against a party properly before it where this is required to avoid injustice … The court habitually grants injunction in respect of certain types of conduct. But that does not mean that the situations in which injunctions may be granted are now set in stone for all time."

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NOW EVERYONE CAN FLY … WITH LESS HEADACHES!

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which: (i) it finds to be frivolous or vexatious; or (ii) does not relate to the civil aviation industry; or (iii) is subject to court proceedings which was commenced before the complaint was lodged with Mavcom; or (iv) has been decided by the court.

If Mavcom accepts a complaint, it will forward the same to the aviation service provider, with instructions to provide a substantive written response to the complainant which sets out a resolution within 30 days from the receipt of the forwarded complaint by the aviation service provider. Mavcom may order the aviation service provider to provide a remedy to the complainant if the aviation service provider does not respond to the complaint or its written response is inadequate or insufficient to address the complaint.

A decision by Mavcom is registerable and enforceable as a decision of the High Court pursuant to section 73 of the Malaysian Aviation Commission Act 2015.

> **“ The Code is a welcomed addition to consumer protection in Malaysia ”**

CONCLUSION

The provisions of the Code are in line with the core principles formulated by the International Air Transport Association (IATA), which include the following: (a) that regulations should be clear; (b) that passengers are always kept informed; (c) that efficient complaint handling procedures are to be established; and (d) that a passenger's entitlements are to be proportional in a situation of service breakdown.

The Code is a welcomed addition to consumer protection in Malaysia. It has been reported that consumers are unhappy that Mavcom is considering charging up to RM1 per passenger to fund its operations in the near future (“Mavcom Decisions Legally Binding but Consumer Groups Aren't Happy”, *The Star*, 19 July 2017). While it is understandable that consumers would prefer not to pay, the proposed sum may be a small price to pay for the additional protection under the Code. True to AirAsia's iconic tagline, “*Now Everyone Can Fly*” with less headaches.

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POKÉMON GO-LYMPICS

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of Malaysia under the purview of the Malaysia Communication and Multimedia Commission. The Forum is authorised to issue a reprimand, impose a fine, and direct the removal of the offending advertisement.

Both Codes stipulate that advertisements should not take unfair advantage of the goodwill attached to the mark, name, brand, advertising campaign, symbol, etc. of another proprietor, and that advertisement should not be so similar that it misleads or causes confusion.

However, it should be noted that the sanctions imposed by both the Advisory and the Forum would not compensate the brand owner for the damage caused by the offender; in fact, the sanctions currently available to these authorities are akin to a slap on the wrist for the offender and are unlikely to deter future recurrence.

UNLAWFUL INTERFERENCE WITH TRADE

An action for unlawful interference with trade is a supplemental cause of action as opposed to a primary one. This may be a particularly difficult cause of action as there are two intangible elements: (i) there must be proof that the business proprietor had deliberately interfered with the owner's interests; and (ii) it was done by unlawful means. The latter condition consequently requires the brand owner to have a cause of action for infringement of an intellectual property right, a tort, or breach of a contractual right, or otherwise prove that the business proprietor's actions constitute a criminal act, before the cause of action can even exist.

Where the brand owner successfully proves this cause of action, the owner may be awarded damages. However, it may not be a necessary conclusion that the Malaysian courts would automatically award punitive damages.

CONCLUSION

In stark contrast to the quick reactions of many enterprising business proprietors, from travel agencies to property developers and hamburger joints, cashing in on the Pokémon Go craze, Malaysian jurisprudence has been slow in considering extended brand protection to “catch ‘em all”, whether in the enactment of new laws or extending currently available common law principles. This inertia may consequently affect the decision by brand owners to expand into the Malaysian market.

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INTER-FLOOR CHARITY

Skrine's Social Responsibility Unit organised its first ever Inter-Floor Charity Bake Off in support of Teach for Malaysia (TFM) as one of its social responsibility events for 2016. The Bake Off sought to raise funds for TFM and foster bonds within the Firm over our common love for deliciously baked goodies.

Each floor (8th, 9th, 10th and 12th) was tasked with preparing a beautifully laid-out table of delectable baked items. The baked items were then sold to our staff and lawyers, and all sale proceeds collected were donated to TFM. Each floor competed for the glory of the "*Overall Tastiest*", "*Best Decorations*", "*Highest Sales*" and "*Best Participation*" titles. An esteemed panel of eight judges, comprising of lawyers and staff, were selected to taste and determine the winners for some of these categories.

On 18 July 2016, the 8th and 9th floors went head-to-head with both floors putting their best table forward. The 8th floor opted for a flamboyant Mad Hatter's Tea Party theme whilst the 9th floor produced a stylish rustic picnic display. The 10th and 12th floors' faced-off on 25 July 2016, having had the benefit of observing the bake sale in the previous week. The 10th floor

BAKE OFF 2016

evoked nostalgia by curating a classic *kampong* theme, while the 12th floor went all out with a playful school-yard display. The number of patrons for each floor was overwhelming.

The representatives of TFM were invited for a small prize-giving ceremony on 4 August 2016 to announce the winners for each category and the proceeds collected. The 8th floor emerged as winners for the "*Overall Tastiest*" and "*Best Participation*" categories; the 10th floor won the "*Highest Sales*" while the 12th floor won the "*Best Decorations*" award. All participants were handed a "Skrine Bake Off" apron as a token of appreciation and the winners were presented with ribbon badges in recognition of their success.

The Inter-floor Charity Bake Off raised a sum of RM13,778.25 for TFM. The event was an unqualified success and we hope to organise similar events in future to raise funds for worthy causes.

The Partners of the Firm extend a heartfelt note of appreciation to the Social Responsibility Unit for organising the event and to all participants and patrons who contributed to the success of the event.

LEGAL INSIGHTS

A SKRINE NEWSLETTER

This newsletter is produced by the LEGAL INSIGHTS' Editorial Committee. We welcome comments and feedback on LEGAL INSIGHTS. You may contact us at skrine@skrine.com for further information about this newsletter and its contents.

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THE FIRM HAS DEVELOPED OVERSEAS TIES THROUGH ITS MEMBERSHIP OF INTERNATIONAL ORGANISATIONS SUCH AS LEX MUNDI, PACIFIC RIM ADVISORY COUNCIL, THE INTER-PACIFIC BAR ASSOCIATION, THE ASEAN LAW ASSOCIATION, THE INTERNATIONAL TRADEMARKS ASSOCIATION AND THE INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

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