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Introduction



Throughout the year, we have been keeping you up to date on noteworthy developments across the region with our Regional Round-up Publications. As we enter 2022, we are pleased to share with you our *2021 year-in-review of the Regional Round-up* for our Regional Offices in the Rajah & Tann Asia network.

In each jurisdiction, we recount the key milestones in the path that has been travelled in 2021, as well as consider the terrain of the road that lies ahead in 2022. In the "**Looking Back: 2021**" section, we take stock of the past year and highlight the key legal and regulatory developments affecting each jurisdiction in 2021. In the "**Gazing Into: 2022**" section, we look ahead to some key areas of development that you should take note of in the year to come, referencing the legal and business trends shaping up potential legislative and regulatory changes in each jurisdiction.

We hope that this year-in-review edition of the Regional Round-up provide some perspective and insight into the legal landscape of the jurisdictions across the region. As always, please feel free to contact our lawyers in our Regional Offices if you have any queries or for further discussions.

Please click on the links below to access the full collection of our country-specific *2021 year-in-review of the Regional Round-up*:

- [Cambodia](#)
- [China](#)
- [Indonesia](#)
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Looking Back: 2021

Following the Malaysian Government's consistent efforts in 2020 to provide temporary relief and enact legislation to address the challenges and changes brought about by the **COVID-19 pandemic**, 2021 has seen a shift of emphasis to address different issues. These include early precedents on recently enacted laws and noteworthy case law involving high profile cases. These developments include:

- the precedent on the **liability of online intermediary platforms for third-party content**;
- the precedent on **what constitutes criminal breach of trust and money laundering**;



- the precedent on the **first corporate liability charge** under the Malaysian Anti-Corruption Act 2009;
- developments in the **Competition Law** following a decision by the Malaysian Competition Commission; and
- **enforcement trends for accounting fraud** under the Capital Markets and Services Act 2007.

There have also been several **cross-border legal updates** in the areas of **admiralty, shipping, and energy laws**, such as:

- the implementation of the **Protocols on Court-to-Court communication and cooperation in Admiralty, Shipping and Cross-Border Insolvency matters**; and
- the issuance of the second edition of the **Guide for Cross-Border Electricity Sales**.

On the employment law front, the **Industrial Relations (Amendment) Act 2020** and **Employment (Amendment) Bill 2021** have led to discussions on the practicalities of their implementation and enforcement – something all organisations should be aware of.

The introduction of the **Malaysia Digital Economy (MyDIGITAL) Blueprint** is also expected to trigger a series of legal changes in the coming years including in the areas of **personal data protection, telecommunications, competition, and intellectual property**, starting with the revamp of the Content Code in the area of **telecommunications law**.

Summaries of the key developments relating to the above areas are set out below.

Technology, Media & Telecommunications / Data Protection – The Malaysiakini Decision: Liability of Online Intermediary Platforms for Third-Party Content

On 19 February 2021, the Federal Court in the case of *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Another* (Case No. 08(L)-4-06/2020) held – in a 6-1 decision – that Mkini Dot Com Sdn Bhd, the owner and operator of the Malaysian online news portal "Malaysiakini" ("**Malaysiakini**"), was liable for contempt of court for third-party comments that were posted on their website based on section 114A(1) of the Evidence Act 1950 ("**EA 1950**"). This raised the legal presumption that Malaysiakini, as the news portal owner, was the publisher of the said comments. The editor of Malaysiakini, however, was found not guilty of publication of the comments. The Federal Court's decision may have serious ramifications on the liability of online intermediary platforms for third party content.

Click [here](#) for an analysis on the Federal Court's findings about the liability of online intermediary platforms as the presumed publisher under section 114A of the EA 1950, and an examination of its potential impact on content regulation in Malaysia.

Corporate Governance – A Trial Extraordinaire that Breached Malaysia's Legal Frontiers – The SRC Trial

In a landmark decision on 28 July 2020, Justice Mohd Nazlan Mohd Ghazali, sitting in the High Court of Malaya, found former premier Datuk Seri Najib Razak ("**DS Najib**") guilty of seven counts of abuse of power, criminal breach of trust, and money laundering in relation to RM42 million belonging to SRC International Sdn Bhd ("**SRC**"). DS Najib is the most senior member of the executive branch of the Government to be charged in Malaysian history.

Click [here](#) for a discussion on how the above-mentioned offences were construed, and the key takeaways from this judgment.

Corporate Governance – First Corporate Liability Charge under the Malaysian Anti-Corruption Act 2009 – What Directors Need to Know

The Malaysia Anti-Corruption Commission ("**MACC**") has charged a company providing ship rental services under section 17A of the Malaysian Anti-Corruption Commission Act 2009. This is the first charge under the provision which came into force on 1 June 2020.

Section 17A imposes liability on a company and its officers holding managerial positions where persons associated with the company offer bribes to third parties for the company's benefit. The maximum penalty is a fine of up to RM1 million or 10 times the value of the bribe (whichever is higher), or up to 20 years' imprisonment, or both.

Click [here](#) for a brief background of the case, and the key issues directors and management should consider when accepting or performing their roles in an organisation.

Competition & Antitrust – Dominant Businesses Beware: MyCC Imposes RM10.3 Million Fine Against National Single Window Monopoly, Dagang Net, for Abuse of Dominance

The Malaysian Competition Commission ("**MyCC**") recently imposed a RM10.3 million fine against Dagang Net Technologies Sdn Bhd ("**Dagang Net**") for abuse of dominance. Dagang Net is the Government's sole service provider of online trade facilitation services for *Sistem Maklumat Kastam* (SMK) under the National Single Window (NSW) system.

Click [here](#) for more information.

White Collar Crime – The Enforcement of the Accounting Fraud Under the Capital Markets and Services Act 2007

There is a growing global recognition that healthy capital markets require an effective regime for financial reporting. Disclosures in a listed company's financial statements provide critical information relating to the company's affairs. For this reason, the law has clear provisions addressing the disclosure of false or misleading information to the regulators and the public.

Click [here](#) for more insights on some of the actions taken by the Securities Commission Malaysia for false or misleading disclosures made by public listed companies in Malaysia.

Restructuring & Insolvency / Shipping & International Trade - Singapore and Malaysia Announce Protocols for Court-to-Court Cooperation in Cross-Border Insolvency and Shipping

On 5 October 2021, the Supreme Court of Singapore and the Federal Court of Malaysia announced the implementation of Protocols on Court-to-Court communication and cooperation in Admiralty, Shipping and Cross-Border Insolvency matters ("**Protocols**"). The Protocols put in place a framework for cooperation and communication between the two Courts to facilitate the efficient and timely coordination and administration of prescribed types of cases.

Click [here](#) for highlights on the key features of the Protocols and how they impact cross-border commercial disputes.

Energy & Natural Resources - Update on Guide for Cross-Border Electricity Sales Issued by Energy Commission

Cross-border electricity trade is one way to effectively utilise regional energy resources. It enables the demands of a region to be met in a cost-efficient manner, and creates opportunities for diverse natural resources to be utilised to meet the sustainability goals of individual countries. As part of the Malaysian government's initiatives to achieve such goals, Malaysia has, since the 1980s, integrated its electricity supply system with two neighbouring countries, Singapore and Thailand.

On 25 October 2021, the Energy Commission of Malaysia ("**EC**") issued the second edition of the Guide for Cross-Border Electricity Sales ("**Revised EC Guide**"), revising the original Guide for Cross-Border Electricity Power Sales issued on 31 December 2020.

Click [here](#) for further information on the key changes in the Revised EC Guide.

Employment & Benefits - Industrial Relations (Amendment) Act 2020

The Industrial Relations Act 1967 ("**IRA**") is a piece of social legislation aimed to promote and maintain industrial harmony and regulate relations between employers and workmen, and their trade unions.

Click [here](#) for highlights of the amendments to the IRA which came into force on 1 January 2021, and the potential impact changes will have on employers and their workmen.

Employment & Benefits - Employment (Amendment) Bill 2021

In the past few years, there was great anticipation about the proposed amendments to be made to the existing Employment Act 1955 in Malaysia. The Employment (Amendment) Bill 2021 ("**Bill**") was tabled in Parliament for the first reading on 25 October 2021. Although the **proposed** changes set out in the Bill are less wide-ranging than previously envisaged, there are notable proposed changes that may affect certain industries.

Click [here](#) for a summary of the material proposed amendments.

Employment & Benefits - COVID-19 Vaccination: What Employers Need to Know

Malaysians are bracing for a new phase of the COVID-19 pandemic, and the Government has stepped up efforts to encourage Malaysians to be vaccinated in phases. Efforts have been made by the Government to secure adequate vaccination doses to achieve herd immunity. Most frontliners were vaccinated by early 2021, and the Government has moved on to the subsequent phases of the vaccination programme. This is expected to continue over the next few months.

Notwithstanding the efforts, the Government commented that voluntary registration by the public for vaccination was still low (as compared to other developed countries), and there have been suggestions to review the current vaccination programme to achieve the Government's aim.

Click [here](#) for a brief guide for employers to better understand the current vaccination framework in Malaysia from an employment law perspective.

Technology, Media & Telecommunications – The Malaysia Digital Economy (MyDIGITAL) Blueprint

On 19 February 2021, the Government introduced the Malaysia Digital Economy Blueprint (also known as the "**MyDIGITAL initiative**"), which outlines the strategic roadmap to transform Malaysia into a digitally-driven nation and a regional leader in the digital economy. The said strategic roadmap broadly includes (i) driving digital transformation in the public sector; (ii) boosting economic competitiveness through digitalisation; (iii) building enabling digital infrastructure; (iv) building agile and competent digital talent; (v) creating an inclusive digital society; and (vi) building a trusted, secure and ethical digital environment. The MyDIGITAL initiative also touches on the need to review the existing legal and regulatory framework including personal data protection, telecommunications, competition, and intellectual property to materialise the MyDIGITAL initiative.

Intellectual Property – Content Forum Commences Public Consultation on the Revamped Communications and Multimedia Content Code 2021

The Malaysian Communications and Multimedia Content Code ("**Content Code**") outlines procedures for self-regulation and contains governing standards and best practices for content dissemination within the communications and multimedia industry in Malaysia. The Communications and Multimedia Content Forum of Malaysia ("**Content Forum**") is designated by the Malaysian Communications and Multimedia Commission ("**MCMC**") pursuant to the Communications and Multimedia Act 1998 ("**CMA**") to govern and oversee the implementation and enforcement of the Content Code.

In September 2021, the Content Code was reviewed to address gaps caused by the advancement of technology, the internet, and social media, and to facilitate the self-regulation by consumers and industry players. Following this review, the Content Forum initiated a nationwide Public Consultation exercise as part of the process to update the Content Code 2021. This Public Consultation is intended to provide the public with the opportunity to contribute to the new version of the Content Code, as it will continue to be a reference for the interpretation of offences under sections 211 and 233 of the CMA.

Click [here](#) for more information on the Public Consultation exercise.

Gazing Into: 2022

In 2022, we expect to see developments in several areas of law including the following:

Employment & Benefits – Employment (Amendment) Bill 2021

We expect the proposed changes set out in the Employment (Amendment) Bill 2021 to come into force once it receives the Royal Assent and is published in the Federal Gazette.



Intellectual Property – Patent (Amendment) Bill 2021, the Copyright (Amendment) Bill 2021 and the Geographical Indications Bill 2021

In December 2021, Parliament passed three bills related to Intellectual Property Law, namely the Patent (Amendment) Bill 2021 ("**Patent Bill**"), the Copyright (Amendment) Bill 2021 ("**Copyright Bill**") and the Geographical Indications (Amendment) Bill 2021 ("**GI Bill**").

Both the Patent Bill and the GI Bill were enacted taking into consideration Malaysia's commitments in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. In particular, the Patent Bill is implemented to comply with the Regional Comprehensive Economic Partnership Agreement (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and is in line with the proposal for Malaysia to become a member of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of the Patent Procedure.

The Copyright Bill was enacted to, among others, address copyright piracy issues and strengthen provisions related to the online or digital environment by introducing new offences for the infringement of copyright by a person who manufactures, imports, sells, or lets for hire, illicit streaming devices. This is aimed at eradicating new forms of copyright piracy that have arisen with the advent of streaming technology. This also applies to a person who provides or shares access to an online location that makes available infringing content. The Copyright Bill is also intended to prepare Malaysia to join the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired Or Otherwise Print Disabled (Marrakesh Treaty) to acknowledge the rights of visually-impaired individuals to obtain works in accessible format.

Technology, Media & Telecommunications – Licensing Requirements Imposed on the Provision of Cloud Services in Malaysia

In line with an initiative in the Malaysia Digital Economy (MyDIGITAL) Blueprint to shift towards a cloud-first strategy and to enhance usage of cloud services nationally, on 15 October 2021, the Malaysian Communications and Multimedia Commission ("**MCMC**") issued the "Advisory Notice on Cloud Service Regulation Introduced to Increase Accountability for User Data Security and Sustainability of Services" ("**Advisory Notice**"). The Advisory Notice states that MCMC will implement the light touch licensing requirement, which is the Applications Service Provider Class ("**ASP (C)**") licence, for the provision of cloud services in Malaysia, where "cloud service" is defined as *"any service made available to end users on demand via the internet from a cloud computing provider's server"*.

In assessing the applicability of licensing requirements to cloud service providers, MCMC had further issued an "Information Paper on Regulating Cloud Services" on 17 December 2021 ("**Information Paper**"), which provides, among others, that only cloud service providers that are locally incorporated or local data centres that provide cloud services to end users will be required to be registered under the ASP (C) licence.

Although the licence requirement has come into effect on 1 January 2022, the Information Paper prescribes a grace period of three months, or until 31 March 2022, during which MCMC will accept voluntary registration from cloud service providers. The licence requirement will come into force on 1 April 2022.

Click [here](#) for more information on the licensing requirement for the provision of cloud services in Malaysia.

Competition & Antitrust – Amendments to the Competition Act 2010 and the Competition Commission Act 2010

The exercise to amend the Competition Act 2010 ("**Act**") has been in the works for the past few years. In March 2021, it was reported that the Domestic Trade and Consumer Affairs Minister had announced that the proposed amendments would be presented by the end of 2021, but to-date no draft has been presented. In December 2021, the Malaysia Competition Commission

("MyCC") in its Strategic Plan for 2021 – 2025 ("**Strategic Plan**"), again confirmed its intention to amend the Act.

In its Strategic Plan, MyCC stated that the proposed amendments are mainly to address loopholes in the law and to provide clearer provisions, as these loopholes and the lack of clarity are currently hindering MyCC from performing its functions effectively. The amendments will include, among others, the introduction of a merger control regime where mergers that substantially lessen competition in the relevant market in Malaysia will be prohibited. MyCC indicated that these amendments are important as M&A transactions are expected to increase post-pandemic. MyCC further indicated that it will establish a dedicated merger control unit/team to enforce the proposed merger control regime. As such, one can expect MyCC to hit the ground running once the amendments are passed into law.

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