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# CONTENTS

Introduction	3
Looking Back: 2022	4
Gazing Into: 2023	8
Key Contacts	10
Regional Contacts	12

# Introduction



Throughout 2022, we have been keeping you up to date on noteworthy developments across the region with our Regional Round-up Publications. As we start 2023, we are pleased to share with you our *2022 year-in-review of the Regional Round-up* for our Offices in the Rajah & Tann Asia network.

In each jurisdiction, we recount the key milestones along the path in 2022, as well as consider the terrain of the road that lies ahead in 2023. In the "**Looking Back: 2022**" section, we highlight the key legal and regulatory developments affecting each jurisdiction in 2022. In the "**Gazing Into: 2023**" 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 the potential legislative and regulatory changes in each jurisdiction.

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

Please click on the links below to access the full collection of our country-specific *2022 year-in-review of the Regional Round-up*.

- [Cambodia](#)
- [China](#)
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## Looking Back: 2022

The recent downtrend of daily COVID-19 cases has led to the **gradual opening up of businesses and workforce returning to offices in Malaysia**. 2022 saw various amendments to the law and new regulations coming into force, and some notable case law developments and enforcement trends are as follows:

- new licensing requirement on the **provision of cloud services**;



- **extension of Part IV of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 to initial exchange offerings, digital custodians and digital asset advisors**, and explicit broadening to equity crowdfunding, crowdfunding, peer-to-peer lending and other recognised market operator platforms;
- **new guidelines on personal data protection notices** under the Personal Data Protection Act 2010;
- **new edition of the Communications and Multimedia Content Code**;
- **the Malaysian Franchise (Amendment) Act 2020**;
- **the new Geographical Indications Act 2022**;
- **the Malaysia Digital initiative** which is a new digital economy initiative that replaces the Multimedia Super Corridor agenda; and
- **case law trends** on how the Malaysian courts have dealt with **insider trading** under the Capital Markets and Services Act 2007.

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

### Technology & Telecommunications – New Licensing Requirement on the Provision of Cloud Services

Pursuant to the the Advisory Notice on Cloud Service Regulation Introduced to Increase Accountability for User Data Security and Sustainability of Services, and the Information Paper on Regulating Cloud Services issued by the Malaysian Communications and Multimedia Commission ("**MCMC**"), the new licensing requirement on the provision of cloud services came into force on 1 April 2022.

Under this requirement, the following cloud service providers are required to register under the Applications Service Providers Class ("**ASP(C)**") licence:

- (a) local data centres assisting foreign cloud providers to provide their Platform-as-a-Service ("**PaaS**") or Infrastructure-as-a-Service ("**IaaS**") cloud services to end-users in Malaysia; and
- (b) locally incorporated companies providing PaaS or IaaS cloud services to end-users in Malaysia.

Where an ASP(C) licence is required, cloud service providers must immediately apply for this and put in place relevant measures to ensure compliance with all such instruments, guidelines, technical standards, and regulatory policies as may be imposed by MCMC from time to time. Click [here](#) for more information.

### **Anti-money Laundering & Anti-terrorism – Extension of Part IV of AMLA to Initial Exchange Operators, Digital Custodians and Digital Asset Advisors, and Explicit Broadening to Equity Crowdfunding, Crowdfunding, P2P and other Recognised Market Operator Platforms**

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Invocation of Part IV) Order 2021 and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Amendment of First and Second Schedules) Order 2021 came into effect on 24 December 2021. These extend the application of Part IV of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") to various fintech players.

Part IV of AMLA deals with reporting obligations of reporting institutions, including the duties for record-keeping, customer due diligence, having a compliance programme, and other requirements related to disclosure, tip-off, and investigation or protection of reporting persons and institutions.

For digital asset players (i.e. digital asset exchanges (DAX) and initial exchange operators ("**IEOs**")), the language has been widened to include intermediaries, and those involved in the provision of advisory services related to the offer or sale of digital currencies or digital tokens. There is now clarity that digital tokens are also included. Previously, reference was only made to digital

currencies. This means digital asset custodians are also now bound by Part IV of AMLA.

The amendments also enlarge the definition of a "reporting institution" to include other fintech players such as equity crowdfunding (ECF), peer-to-peer (P2P), property crowdfunding and e-services platforms. IEOs which facilitate the issuance of digital tokens are now also included. The amendments are unlikely to cause much operational concern for these players as they must already comply with AMLA requirements via guidelines imposed by the Securities Commission of Malaysia and Bank Negara Malaysia. However, this is now more clearly grounded in primary legislation.

### **Data Protection – Latest Guidelines on Personal Data Protection Notices under the Personal Data Protection Act 2010**

Pursuant to Section 7 of the Personal Data Protection Act 2010 ("**PDPA**") (Notice and Choice Principle), the Personal Data Protection Department (*Jabatan Perlindungan Data Peribadi* or "**JPDP**") recently issued the Guide to Prepare Personal Data Protection Notice ("**Guidance Note**"). The Guidance Note provides guidance to data users on how to prepare simple comprehensive personal data protection notices ("**privacy notices**") which are aligned with the current business ecosystem and the personal data protection landscape in Malaysia.

Click [here](#) for a brief summary of the Guidance Note, which among others, clarifies the existing requirements on privacy notices under the PDPA, and provides for additional requirements for the preparation and implementation of privacy notices. While it has not been expressly stated whether the requirements under the Guidance Note are compulsory or recommended best practices, all data users should review and re-assess their existing privacy notices and make necessary amendments to ensure they are in compliance with the Notice and Choice Principle under the PDPA as well as the Guidance Note.

## Technology, Media & Telecommunications – Revamped Communications and Multimedia Content Code Published

On 30 May 2022, the Third Edition of the Communications and Multimedia Content Code ("**New Content Code**") was released and registered with Malaysian Communications and Multimedia Commission. The key changes under the New Content Code are as follows:

- (a) expansion of the application of the previous Content Code to include online service providers;
- (b) introduction of new provisions about the advancement of technology, such as online abuse, gender-based violence, protection of persons with disabilities, etc.;
- (c) improvement of the scope, standards and guidelines of the regulation of advertisements and consumer protection; and
- (d) refinement of various provisions in the previous Content Code, such as (i) the meaning of indecent content; (ii) the use of women, children, religion, cosmetic, financial products and intoxicating liquor in advertisements; and (iii) specifying the complaints procedure about content disseminated over electronic networked mediums.

All media industry players are strongly encouraged to review their existing practices and procedures in light of the extensive amendments introduced, as the New Content Code will be a reference for the interpretation of offences under section 211 and section 233 of the Communications and Multimedia Act 1998. Click [here](#) for more information.

## Intellectual Property – Malaysian Franchise (Amendment) Act 2020: Key Changes

The franchise industry in Malaysia is governed by the Franchise Act 1998. The Franchise (Amendment) Act 2020 ("**Amendment Act**") came into force on 28 April 2022 and imposes more stringent requirements for the registration of both franchisors and franchisees, and relating to the provisions of franchise agreements. The Amendment Act largely clarifies specific aspects of the franchise registration regime, and will hopefully promote the growth of the Malaysian franchise industry. Click [here](#) for more information.

## Intellectual Property – The New Geographical Indications Act 2022: Key Changes

A geographical indication ("**GI**") is a sign or geographical term used on products to indicate the place of origin and corresponding qualities and characteristics of the products that are attributable to the place of origin, e.g. Sarawak Pepper, Sabah Tea, and Scotch Whisky. Malaysia's new Geographical Indications Act 2022 ("**new GI Act**") came into operation on 18 March 2022 and repeals the previous Act. The new GI Act provides wider protection to GI proprietors and greater clarity about the examination procedures for the registration of GIs. Click [here](#) for more information .

## Corporate Governance – Insider Trading: What Directors of Public Listed Companies Need to Know

Insider trading has received increased regulatory scrutiny in the Malaysian market over the past decade, posing several important questions for those who are privy to confidential information.

Some of the most common issues facing directors of Public Listed Companies (PLCs) include:

- (a) What are the specific "rules that govern their share trading?"
- (b) When can Directors buy or sell shares of companies on whose boards they sit?
- (c) Can a Director be in breach of insider trading laws even if they individually do not trade but instead share confidential information with others?
- (d) Are Directors the only ones at risk of being in breach of insider trading prohibitions?

These are issues that often confront those who deal with inside information, particularly directors and company advisers such as lawyers and investment bankers. The two-part article provides an insight into the law governing insider trading under the Capital Markets and Services Act 2007 ("**CMSA**") which will enable Directors and other corporate insiders to stay on the right side of the law.

The article discusses (i) how the Malaysian courts have dealt with materiality of information for purposes of the CMSA; (ii) when information is regarded as generally available; and (iii) how tipping is regarded in law, even when the tipper himself does not trade. An analysis is also provided on the interface between the CMSA and Bursa Malaysia's rules on closed period trading. Given that both civil and criminal action can be taken for breaches of the law, this article includes case updates on how the law has been applied by the courts. Click [here](#) for Part 1 and [here](#) for Part 2 of the article.

### Technology, Media & Telecommunications / Data Protection – Launch of Malaysia Digital Initiative

On 4 July 2022, the Government of Malaysia launched a new digital economy initiative – the Malaysia Digital ("**Malaysia Digital Initiative**"), which replaces the 25-year-old Multimedia Super Corridor agenda, to become the primary national strategic initiative on the digital economy in Malaysia.

This initiative was established by the Ministry of Communications and Multimedia, through its digital economy agency, the Malaysian Digital Economy Corporation ("**MDEC**"). The vision is to accelerate economic growth in nine areas: (i) digital trade; (ii) digital agriculture; (iii) digital services; (iv) digital cities; (v) digital health; (vi) digital finance; (vii) digital content; (viii) digital tourism; and (ix) Islamic digital economy.

As part of this initiative, the Government of Malaysia, through MDEC, will award Malaysia Digital Status ("**MD Status**") to eligible companies that participate in and undertake any of the prescribed activities under the Malaysia Digital Initiative. Some of the eligible activities include fintech, data centre and cloud services, artificial intelligence, and robotics.

MD Status companies will be entitled to incentives, rights and privileges from the Government, subject to obtaining the necessary approvals and compliance with applicable laws and regulations. These benefits are collectively termed as the MD Bill of Guarantees ("**BoGs**").

The BoGs represent the manifestation of the Government's intention to facilitate the growth and development of MD Status companies. Under the BoGs, MD Status companies are eligible to apply for and/or enjoy certain benefits including tax incentives and

exemption, and greater flexibility to source for capital and funds globally, among others. To facilitate the application process, MDEC has also launched the [Malaysia Digital Platform](#) to consolidate and ease the application procedure for all interested entities. Click [here](#) for more information.

# Gazing Into: 2023

*Following a change of Government in November 2022, Malaysia expects to see significant developments in several areas of law including the following:*

- ***Energy & natural resources;***
- ***Technology, media & telecommunications;***
- ***Data protection;***
- ***Employment & benefits; and***
- ***Competition & antitrust.***



## **Energy & Natural Resources – National Energy Policy 2022-2040 Launched**

The sustainable use of energy has been given increasing priority in Malaysia in recent years. One of the latest initiatives is the National Energy Policy 2022 – 2040 ("NEP"). The NEP recognises the energy sector as a key source of national income and sets out targets, action plans and initiatives with the aim of future-proofing the energy sector in Malaysia, to reap the economic advantages arising out of the structural shift in the trend of energy systems towards cleaner sources of energy.

The NEP sets out specific targets which include efforts to: (i) increase the total installed capacity of renewable energy; (ii) increase the amount of renewable energy supply as a percentage of the total primary energy supply in the country; (iii) increase the percentage of electric vehicle share in the country; (iv) increase the percentage of residential, commercial and industrial energy efficiency savings, and (v) reduce the percentage of coal use in installed capacity. These targets are intended to usher the nation toward becoming a low carbon nation by 2040.

These strategies cover the (i) optimisation of energy resources; (ii) stimulation of growth and market opportunities; and (iii) enhancement of environmental sustainability in the use of energy. They are aimed at ensuring fiscal sustainability and energy security (i.e. the uninterrupted availability of energy sources at an affordable price).

The NEP also outlines 12 strategies and 31 action plans to implement its objectives. These action plans include measures which involve enhancing solar, hydroelectric and bioenergy resources, and enhancing access to renewable energy by businesses. Click [here](#) for more information.



## Data Protection – Updates to the Proposed Amendments to the Malaysian Personal Data Protection Act

In February 2020, the Personal Data Protection Commissioner issued the public consultation paper titled "[Public Consultation Paper No. 01/2020 on Review of the PDPA](#)" about the proposed amendments to the Personal Data Protection Act 2010 ("PDPA").

Following this, on 4 July 2022, the Personal Data Protection Department (or "JPDP") provided updates on the proposed amendments to the PDPA, where representatives of JPDP stated that they had shortlisted the proposed amendments to the PDPA and submitted the same to the Attorney General's Chambers of Malaysia for further review.

Some key shortlisted proposed amendments to the PDPA are as follows:

- (a) imposing a requirement for all data users to appoint at least one Data Protection Officer;
- (b) introducing a mandatory data breach notification requirement;
- (c) extending the scope of application of the PDPA (which currently only applies to data users) to data processors;
- (d) introducing a right of data portability, which is the right of data subjects to obtain and reuse their data for other purposes across different services; and
- (e) introducing a "black-list" regime whereby data users will generally be allowed to transfer personal data to other countries subject to compliance with certain minimum criteria specified in the amended PDPA or its regulations, save for jurisdictions that have been specifically black-listed by the Minister of Communications and Multimedia.

In addition to this, JPDP has indicated that several minor amendments have been approved by the relevant Ministers, and will likely be tabled in Parliament in 2023, together with the said principal amendments. Click [here](#) or more information.

## Employment & Benefits – Employment (Amendment) Act 2022

There has been great anticipation about the proposed amendments to be made to the existing Employment Act 1955 in Malaysia. The Employment (Amendment) Act 2022 was passed in the Parliament in March 2022 and came into force on 1 January 2023. Click [here](#) for a summary of the material proposed amendments.

## Competition & Antitrust – Public Consultation on Proposed Amendments to Competition Act 2010: Introduction of Merger Controls in Malaysia

On 25 April 2022, the Malaysia Competition Commission ("MyCC") issued for public consultation the salient terms of its proposed amendments to the Competition Act 2010 ("Salient Terms"). The Salient Terms indicate that the proposed amendments will include, among others, the introduction of an economy-wide merger control regime which makes the notification of anticipated mergers (i.e. mergers which meet prescribed thresholds for competition assessment by MyCC) mandatory. Mergers or anticipated mergers which do not satisfy the prescribed thresholds may be voluntarily notified to MyCC as well. These proposed amendments may be subject to change given that they have not been approved in Parliament and are currently in draft form based on the public consultation. MyCC has indicated that the proposed introduction of merger control is expected to take place in Q4 of 2023. Click [here](#) for more information.

## Technology – BNM Issues Policy Document on Electronic Money

On 30 December 2022, Bank Negara Malaysia ("BNM") issued the Policy Document on Electronic Money (e-money) ("PD on E-Money") which sets out the requirements and guidance for electronic money issuers ("EMI") approved pursuant to section 11 of the Financial Services Act 2013 and the Islamic Financial Services Act 2013. The PD on E-Money outlines requirements aimed to ensure the safety and reliability of e-money issued by EMI, and preserves confidence of customers and merchants in using or accepting e-money for the payment of goods and services. While most of the PD on E-Money provisions have come into force, certain provisions such as minimum capital funds for non-bank EMI, and outsourcing arrangement requirements, will only come into force on 30 December 2023.

## KEY CONTACTS

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**Christopher Lee**  
Partner

T +603 2267 2672

[christopher.lee@christopherleeong.com](mailto:christopher.lee@christopherleeong.com)

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**John Mathew**  
Partner

T +603 2273 1919

[john.mathew@christopherleeong.com](mailto:john.mathew@christopherleeong.com)

---



**Yon See Ting**  
Managing Partner

T +603 2273 1919

[see.ting.yon@christopherleeong.com](mailto:see.ting.yon@christopherleeong.com)

---



**Kuok Yew Chen**  
Partner

T +603 2272 1919

[yew.chen.kuok@christopherleeong.com](mailto:yew.chen.kuok@christopherleeong.com)

---



**Deepak Pillai**  
Partner

T +603 2273 1919

[deepak.pillai@christopherleeong.com](mailto:deepak.pillai@christopherleeong.com)

---



**Sri Sarguna Raj**  
Partner

T +603 273 1919

[sri.sarguna.raj@christopherleeong.com](mailto:sri.sarguna.raj@christopherleeong.com)

---



**Kelvin Kho**  
Partner

T +603 2272 1919

[kelvin.kho@christopherleeong.com](mailto:kelvin.kho@christopherleeong.com)

---



**Jack Chor**  
Partner

T +603 2273 1919

[jack.chor@christopherleeong.com](mailto:jack.chor@christopherleeong.com)

---



**Tracy Wong**  
Partner

T +603 273 1919

[tracy.wong@christopherleeong.com](mailto:tracy.wong@christopherleeong.com)

---



**Intan Haryati**  
Partner

T +603 273 1919

[intan.haryati@christopherleeong.com](mailto:intan.haryati@christopherleeong.com)

---



**Lim Siaw Wan**  
Partner

T +603 273 1919

[siawwan.lim@christopherleeong.com](mailto:siawwan.lim@christopherleeong.com)

---

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## REGIONAL CONTACTS

R&T SOK & HENG | *Cambodia***R&T Sok & Heng Law Office**

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

## RAJAH &amp; TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China***Rajah & Tann Singapore LLP****Shanghai Representative Office**

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia***Assegaf Hamzah & Partners****Jakarta Office**

T +62 21 2555 7800

F +62 21 2555 7899

**Surabaya Office**

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.id

RAJAH & TANN | *Lao PDR***Rajah & Tann (Laos) Co., Ltd.**

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia***Christopher & Lee Ong**

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

RAJAH & TANN | *Myanmar***Rajah & Tann Myanmar Company Limited**

T +951 9345 343 / +951 9345 346

F +951 9345 348

mm.rajahtannasia.com

## GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines***Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**

T +632 8894 0377 to 79/ +632 8894 4931 to 32

/ +632 8552-1977 to 78

F +632 552 1978

www.cagatlaw.com

RAJAH & TANN | *Singapore***Rajah & Tann Singapore LLP**

T +65 6535 3600

F +65 6225 9630

sg.rajahtannasia.com

RAJAH & TANN | *Thailand***R&T Asia (Thailand) Limited**

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam***Rajah & Tann LCT Lawyers****Ho Chi Minh City Office**

T +84 28 3821 2382

F +84 28 3520 8206

**Hanoi Office**

T +84 24 3267 6127

F +84 24 3267 6128

www.rajahtannlct.com

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