



Shearn Delamore & co.

## Legal Updates

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## Dispute Resolution

### Wide order of injunction sought against online marketplace operator refused in the High Court

E-commerce has become an indispensable part of the country's economy particularly with the Covid-19 pandemic. With its growing demand come legal challenges which are novel to Malaysia.

Recently, our Dispute Resolution Partners [K. Shanti Mogan](#) and [Lilien Wong](#) and legal associate, [Yiew De Quan](#), successfully acted for one of the largest e-commerce players in the country in resisting an interim interlocutory injunction requiring the defendant to, amongst others, prevent products to be sold by third parties on the Shopee e-commerce platform.

In the High Court decision of **A & M Beauty Wellness Sdn Bhd v Shopee Mobile Malaysia Sdn Bhd**, the Court acknowledged, amongst others, that:

- (a) Shopee provides a platform for users to facilitate the process of buying and selling of products on the platform. It was not a seller of the products in question.
- (b) The platform's reporting system ought to be availed of by complainant to raise any concerns it has in respect of listings on the Shopee platform.
- (c) A wide order of injunction to require Shopee to stop third party sellers from selling products undermines the operation of e-commerce platforms and should not be granted.

Interestingly, the case also discussed whether a manufacturer may preclude resellers from selling products at a price lower than the fixed resale price. The Court echoed the position of the Malaysia Competition Commission (MyCC), recognising that resale price maintenance may fall foul of section 4 of the **Competition Act 2010**. This is one of the few cases involving competition law issues in commercial litigation which does not arise from the enforcement decision of the MyCC.

As online businesses grow, we are likely to see more disputes involving online marketplace operators or online business owners. Issues such as consumer interest, competition law, intellectual property, contractual disputes will be very much relevant in the context. Legal developments in the online marketplace environment is a development that will court keen interest and is to be keenly followed.

**CONTACT US FOR FURTHER INFORMATION REGARDING DISPUTE RESOLUTION MATTERS.**

# Intellectual Property

## Compounding of Criminal Offences under the new Trademarks Act 2019

The **Trademarks Act 2019** came into force in late December 2019, paving the way for new and stronger tools for criminal enforcement against trademark infringements.

One thing was, however, incomplete — the details of how offences could be compounded. Whilst section 136 (2) of the Act grants the Controller with the power to compound offences, neither the Act nor the Trademarks Regulations 2019 shed any light on the mechanism behind compounding of offences.

On 28 August 2020, the Trademarks (Compounding of Offences) Regulations 2020 was published, which supplements the above provision by providing further details on the types of compoundable offences and the procedures involved.

Essentially, the Regulations make it clear that the Controller may only compound the offences listed in the First Schedule of the Regulations, with the written consent of the Public Prosecutor. Once such consent has been obtained, the Controller may at any time before a charge is instituted, make a written offer to compound to the person reasonably suspected of having committed the offence. Once the offer is accepted, payment may be made through various channels accepted under the Regulations, or if the compound is not paid within the time specified in the offer,

prosecution for the offence may be instituted any time thereafter without any notice to the offender. Once the offence has been compounded and the payment is made, it is treated as a settlement of the matter in lieu of prosecution of the offence.

**CONTACT US FOR FURTHER INFORMATION  
REGARDING INTELLECTUAL PROPERTY LAW  
MATTERS.**

# Tax and revenue

## Income tax

The operational guideline on [Pengemukaan Anggaran Cukai Yang Kena Dibayar Di Bawah Seksyen 107C Akta Cukai Pendapatan 1967](#) (available in Malay language only) has been published on 22 December 2020 on the [Inland Revenue Board of Malaysia's official website](#).

## Tourism tax

The **Tourism Tax (Amendment) Act 2021** has been gazetted on 2 February 2021. This Amendment Act will come into operation on a date to be appointed by the Minister of Finance by notification in the Gazette.

**CONTACT US FOR FURTHER INFORMATION REGARDING TAX AND REVENUE LAW MATTERS.**



