Price Control and Anti-Profiteering Laws In Malaysia

The Price Control Anti-Profiteering Act 2011 ("PCAP") was passed in an effort to alleviate concerns among Malaysian consumers to ensure that local traders and suppliers will not unreasonably increase prices of goods and services in anticipation of the introduction of the Goods and Services Tax ("GST") regime in Malaysia.

Application of PCAP

The PCAP makes it an offence to profiteer and seeks to protect consumers from unreasonable price increases in goods and services. To this end, the PCAP permits the Price Controller to impose a maximum, minimum or fixed price for the manufacture, production, wholesale or retail of any goods, classes of goods including charges for services in relation to such goods. Any prices determined under the PCAP must include all government tax, duties and any other charges.

Offence To Profiteer

Under the PCAP, it is an offence for a person to make an unreasonably high profit ("profiteering") from the sale or supply of goods or services in the course of a trade or a business. The PCAP empowers the Minister of Domestic Trade and Consumerism ("MDTCC") to prescribe the formulation to determine whether profit is unreasonably high by taking into account factors such as supplier’s costs, market supply and demand, conditions of the geographical or product market and corresponding imposition of any taxes.

In its current form, the PCAP already prescribes for onerous penalties for the commission of offences. At present, individuals who fail to adhere to the prescribed prices or engage in profiteering may face a maximum fine of RM 100,000, imprisonment for a maximum of three years or both, and a maximum fine of RM 250,000, imprisonment for a maximum term of five years or both for every second or subsequent offence. Bodies corporate which commit an offence face a maximum fine of RM 500,000 with a maximum fine of RM 1,000,000 for every second or subsequent offence.

Determinaton of Unreasonably High Profits

Recently, the Price Control and Anti Profiteering (Mechanism To Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 ("Regulations 2014") has been passed by Parliament. The Regulations 2014 specify that the period for the determination of unreasonably high profits is from 2 January 2015 up to 31 March 2015 as well as from 1 April 2015 up to 30 June 2016. During these periods, there must be no increment in the net profit margin of any goods or services.
The Regulations 2014 provide a formula to determine whether there has been an increment in the net profit margin of any particular goods sold or offered for sale, or services supplied or offered for supply within the period from 2 January 2015 to 31 March 2015 and from 1 April 2015 to 30 June 2015.

Proposal To Increase Profiteering Penalties

The MDTCC has recently indicated that the existing maximum fine of RM 100,000 and RM 250,000 is not effective enough to curb profiteering and has proposed for the penalties under the PCAP to be increased up to the range of RM 1 million and RM 2 million in 2015. The increase in penalty has been agreed to by the Cabinet and approved by the House of Representatives (Dewan Rakyat) and the Senate (Dewan Negara). The amendments to the penalties are expected to be gazetted within the early part of 2015. At the time of preparing this alert, the amendments have not yet been gazetted.

Enforcement

The PCAP empowers the MDTCC to conduct an investigation where there are reasonable grounds to suspect that an offence is or will be committed, or where a complaint in relation to the commission of an offence is received. These powers include the right to access at all times any place or premise to collect or monitor the prices of goods or services and the powers of entry, search and seizure of a premise with and without a warrant. Further, as part of an investigation, an individual may be ordered to produce any document, to state where the document may be found or to identify the last person who had custody of the document and where that person may be found.

Review of Pricing Policies

When reviewing pricing policies businesses should take into account the provisions of the PCAP and related regulations to ensure that they do not breach any of the provisions under the PCAP. This is crucial in light of the tough penalties for offences committed under the PCAP and the anticipated higher level of scrutiny by the MDTCC on increases in prices of goods and services in 2015.