

Client Alert

June 2016

Anti-Profiteering Malaysia: Extension of Time Frame for Existing Anti-Profiteering Mechanism

On 24 June 2016, the Price Control and Anti Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Amendments Regulations 2016 ("PCAP Amendment Regulations 2016") was passed by the Minister of Domestic Trade, Cooperation and Consumerism ("MDTCC").

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The PCAP Amendment Regulations 2016 seeks to introduce an amendment to the existing Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 ("PCAP Regulations 2014"). As it stands, the PCAP Regulations 2014 provides 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, in the application of a prescribed formula, there must be no increment in the net profit margin of any goods or services sold in Malaysia.

The PCAP Amendment Regulations 2016 amends the PCAP Regulations 2014 by extending the period for determining unreasonably high profit margin formula beyond 30 June 2016. This means that the existing prescribed formula set out in the PCAP Regulations 2014 is maintained in force and will continue to be in force up to 31 December 2016.

Anti-profiteering Legislative Framework in Malaysia

The Price Control Anti-Profiteering Act 2011 ("PCAP") was passed with the objective of protecting consumers in Malaysia against unreasonable increase in prices of goods and services following the implementation of Goods and Services Tax ("GST") in Malaysia. Under the PCAP, profiteering is a statutory offence. The PCAP together with its subsidiary legislations and statutory orders are administered by the MDTCC.

Earlier in June 2016, the MDTCC proposed to introduce a new-anti profiteering mechanism to replace the existing mechanism with effect from 1 July 2016. However, following protracted discussions and consultation sessions with the various stakeholders and businesses in the consumer goods industry, chambers of commerce, and trade and retail associations, the introduction of a new mechanism has been deferred and the timeframe for the existing mechanism is now extended.

Implications of Extension

The consequence of the extension is that price increases will be continued to be examined on a stock keeping unit basis up to 31 December 2016. There is a need for businesses to analyse any planned price increases by examining its net profit margin before and after the planned price increase. An increase to prices must be substantiated with appropriate documentation and proper justifications, failing which, the substantial penalties prescribed under the PCAP will be applicable.

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