



# Corporate & Commercial Law Update

- ▶ BURSA MALAYSIA LISTING REQUIREMENTS
- ▶ CONSUMER PROTECTION (AMENDMENT) ACT 2010

## ▶ Bursa Malaysia Listing Requirements

With effect from **January 28, 2011**, Chapter 10 of the Bursa Malaysia Listing Requirements have been amended by the insertion of a **new Part F(A)** entitled "PART F(A) – MAJOR DISPOSAL OF ASSETS RESULTING IN LISTED CORPORATIONS NO LONGER SUITABLE FOR LISTING" and a new term "**Major Disposal**", which is defined as "a disposal of all or substantially all of a listed corporation's assets which may result in the listed corporation being no longer suitable for continued listing on the Official List".

1. A listed corporation which intends to undertake a Major Disposal must:
  - (a) appoint a main adviser, who is a Principal Adviser, before the terms of the Major Disposal are agreed upon;
  - (b) appoint an independent adviser who is a corporate finance adviser within the meaning of the Principal Adviser Guidelines of the Security Commission ("SC");
  - (c) include additional information set out in Part I of Appendix 10A and Part J of Appendix 10B respectively, in the announcement of the Major Disposal to Bursa Malaysia, and the circular issued to the shareholders; and
  - (d) convene a general meeting and obtain shareholder approval of **at least 75% in value of the shareholders** present and voting either in person or by proxy at the meeting for such Major Disposal.
2. The main adviser must, in relation to the Major Disposal –
  - (a) ensure that the Major Disposal complies with the relevant laws, regulations or guidelines, where applicable; and
  - (b) ensure full disclosure of all information required to be disclosed in the announcement and circular.
3. The independent adviser must, in relation to the Major Disposal –
  - (a) comment as to whether the Major Disposal and its related proposals (if any) are fair and reasonable in so far as the shareholders are concerned. Such opinion must set out the reasons for, the key assumptions made and the factors taken into consideration in forming that opinion. In arriving at such opinion, the independent adviser should comply with the relevant provisions of Chapter 12 of the Guidelines on Contents of Applications Relating to Take-Over and Mergers on Independent Adviser's Recommendation issued by SC;
  - (b) advise the shareholders on whether they should vote in favour of the Major Disposal and its related proposals (if any); and
  - (c) take all reasonable steps to satisfy itself that it has a reasonable basis to make the comments and advice in subparagraphs (a) and (b) above.
4. If in Bursa Malaysia's opinion, an independent adviser is not independent, Bursa Malaysia may disallow such independent adviser to be appointed or continue to act as an independent adviser.



## ► Consumer Protection (Amendment) Act 2010

The amendments to the Consumer Protection Act 1993 contained in the Consumer Protection (Amendment) Act 2010 came into force on **February 1, 2011**. As highlighted in our Corporate & Commercial Update 4-2010, there is now in the Consumer Protection Act 1993a new Part IIIA relating to “**Unfair Contract Terms**”, which is expressed to apply notwithstanding the provisions of any other law for the time being in force, including the Contracts Act 1950, the Specific Relief Act 1950 and the Sale of Goods Act 1957. For ease of reference, we reproduce below a short summary of Part IIIA.

An “**unfair term**” is defined as “a term in a consumer contract which, with regard to all the circumstances, causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer”. The amendments deal with “procedurally unfair terms” and “substantively unfair terms”.

A contract term is “**procedurally unfair**” if it results in an unjust advantage to the supplier or unjust disadvantage to the consumer on account of the conduct of the supplier or the manner or circumstances that the contract is entered into between the supplier and the consumer. The circumstances that may be considered in determining whether the contract or term was procedurally unfair include :

- (a) the knowledge and understanding of the consumer in relation to the meaning of the terms of the contract or their effect;
- (b) the bargaining strength of the parties to the contract relative to each other;
- (c) whether or not, prior to or at the time of entering into the contract, the terms of the contract were subject to negotiation or were part of a standard form contract;
- (d) whether expressions contained in the contract are in fine print or are difficult to read or understand;
- (e) the extent, if any, to which the provisions of the contract or a term of the contract or its legal or practical effect was accurately explained by any person to the consumer who entered into the contract;
- (f) whether the consumer relied on the skill, care or advice of the supplier or a person connected with the supplier in entering into the contract.

A contract or a term of a contract is “**substantively unfair**” if it is harsh, oppressive, unconscionable, excludes or restricts liability for negligence, or excludes or restricts liability for breach of express or implied terms of the contract without adequate justification. The circumstances that may be taken into account include:

- (a) whether or not the contract or a term of the contract imposes conditions—
  - (i) which are unreasonably difficult to comply with; or
  - (ii) which are not reasonably necessary for the protection of the legitimate interests of the supplier who is a party to the contract;
- (b) whether the contract is oral or wholly or partly in writing;
- (c) whether the contract is in standard form;
- (d) whether the contract or a term of the contract is contrary to reasonable standards of fair dealing;



- (e) whether the contract or a term of the contract has resulted in a substantially unequal exchange of monetary values or in a substantive imbalance between the parties;
- (f) whether the contract or a term of the contract—
  - (i) requires manifestly excessive security for the performance of contractual obligations;
  - (ii) imposes penalties which are disproportionate to the consequences of a breach of contract;
  - (iii) denies or penalizes the early repayment of debts;
  - (iv) entitles the supplier to terminate the contract unilaterally without good reason or without paying reasonable compensation; or
  - (vi) entitles the supplier to modify the terms of the contract unilaterally.

Where a contract or a term of a contract is either procedurally or substantively unfair or both, the court or the Tribunal for Consumer Claims may declare the contract or the term of the contract as unenforceable or void.

A court may grant judgment, and the Tribunal may make an award, notwithstanding that the contract has been wholly or partly executed and for that purpose the court or Tribunal may consider—

- (a) whether and to what extent restitution is possible in the facts and circumstances of the case; and
- (b) where such restitution is not possible, either wholly or partly, whether any compensation is payable.

If a contract or a term of a contract excludes or restricts liability, or excludes rights, duties and liabilities, it is for the supplier relying on such exclusion or restriction to prove that it is not without adequate justification.