



IN THIS ISSUE

**Force Majeure At Sea: Lessons From The Suez Canal
And The Strait Of Hormuz - 2**

.....
**When Is a Drink Not a Beverage? High Court
Rules on Yakult's Tariff Classification - 9**

.....
**Post-IPO Governance: Reality Check
After The Listing - 14**

.....
**Power, Water And The Grid: The Realities Of
Utility Intensive Investment In Peninsular Malaysia - 22**

.....
**Strengthening Worker Protection And Employer Readiness:
An Overview Of The Proposed Amendments To
Malaysia's Labour Legislation - 29**

.....
**Leap Market 2.0: Widening Fundraising Access
For MSMEs, Mid-Tier Companies
And Retail Investors - 36**

.....
**Artificial Intelligence And Intellectual Property
Recent Global Developments And Malaysia's Proposed
Copyright Act 1987 Reforms - 45**

"Copyright © 2024 Rosli Dahlan Saravana Partnership. All rights reserved. This publication is only intended to provide general information on the subject matter and does not, and is not intended to, substitute for legal or professional advice. Rosli Dahlan Saravana Partnership accepts no liability for any errors or omissions in the contents of this publication."

KDN: PP 19637/12/2020 (035236)

.....
Printed by: Percetakan Jiwabaru Sdn Bhd
No. 2, Jalan P/8, Kawasan Miel Fasa 2,
43650 Bandar Baru Bangi, Selangor
(KDN: PQ1780/427)

FORCE MAJEURE AT SEA: LESSONS FROM THE SUEZ CANAL AND THE STRAIT OF HORMUZ

by Nagarajah Muttiah & Chelsea Ho

Few doctrines in shipping law are as commercially consequential, and as frequently misunderstood, as force majeure. In an era of sanctions regimes, chokepoint congestion and geopolitical instability, parties to charterparties and contracts of affreightment are invoking force majeure clauses with growing frequency.

Yet the scope of the ubiquitous "reasonable endeavours" proviso, which typically qualifies a party's right to rely on force majeure, remained surprisingly uncertain until the United Kingdom Supreme Court's decision in *MUR Shipping BV v RTI Ltd* (*MUR Shipping*).¹

This article examines that decision and considers its practical implications for two of the most significant sources of shipping disruption today: the disruption to the Strait of Hormuz arising from the US-Iran conflict, and the ongoing Houthi attacks on vessels transiting the Red Sea and the Suez Canal approaches it feeds. While neither of those chokepoints was in issue in *MUR Shipping* itself, the case's reasoning, the authors submit, is now the starting point for any analysis of whether, and how far, a party affected by such disruption must go before it can validly suspend performance.

(A) MUR Shipping

A.1 The facts

MUR Shipping BV (*MUR*), the owner, and *RTI Ltd* (*RTI*), the charterer, entered into a contract of affreightment on an amended Gencon form for the carriage of bauxite from Conakry, Guinea to Dneprobugsky, Ukraine, over a two-year period from 2016 to 2018. Freight was payable by RTI to MUR in US dollars. Clause 36 of the contract was a force majeure clause providing that neither party would be liable for loss, damage, delay or failure in performance caused by a force majeure event, defined to include, among other things, restrictions on monetary transfers, provided that the event "cannot be overcome by reasonable endeavors [sic] from the Party affected".

In April 2018, the US Office of Foreign Assets Control imposed sanctions on RTI's parent company, United Company Rusal plc. Although RTI itself was not listed, it was subject to the same restrictions as a majority-owned subsidiary. MUR served a force majeure notice, asserting that the sanctions prevented RTI from making US dollar payments and that performance was accordingly suspended. RTI rejected

¹ [2024] 2 WLR 1350. This decision was considered by the Malaysian High Court in *Blastone Asia Sdn Bhd & Anor v Tunas Rakyat Sdn Bhd* [2025] MLJU 1203 (HC) at [108]:

"In *MUR Shipping BV v RTI Ltd* (SC(E)) [2024] 2 WLR 1350, the Supreme Court in the United Kingdom held: "Force majeure clauses relieve a party from its obligation to perform under a contract on the occurrence of a specified event or state of affairs. Such clauses commonly provide, expressly or impliedly, that the clause cannot be relied upon if the effects of what would otherwise be a force majeure event or state of affairs could be avoided by the exercise of reasonable endeavours by the party affected."

the notice and offered to pay freight in euros instead, undertaking to bear any conversion costs or exchange losses. MUR refused, maintaining its contractual entitlement to payment in US dollars, and suspended the nomination of vessels. RTI was forced to charter replacement tonnage and claimed damages for the additional cost.

A.2 The central issue and the courts below

The dispute turned on a single question of principle: does the exercise of "reasonable endeavours" to overcome a force majeure event require the affected party to accept an offer of non-contractual performance from its counterparty? The arbitral tribunal held that it did on these facts, reasoning that MUR could have accepted euro payment without detriment, and awarded RTI damages in excess of USD2 million.

On MUR's appeal under Section 69 of the Arbitration Act 1996, *Jacobs J* in the Commercial Court reversed the tribunal, holding that reasonable endeavours did not extend to accepting a different mode of performance, or rather, a performance direction to achieving a different result which formed no part of the parties' agreement. The Court of Appeal, by majority (Males and Newey LJ), Arnold LJ dissenting), restored the tribunal's approach, holding that a force majeure event is "overcome" if its adverse consequences are completely avoided, even by non-contractual means causing no detriment to the party invoking the clause.

A.3 The Supreme Court's decision

The Supreme Court unanimously allowed MUR's appeal, restoring *Jacobs J*'s judgment. Lord Hamblen and Lord Burrows, with whom the remaining Justices agreed, rejected the Court of Appeal majority's characterisation of the appeal as one of narrow contractual interpretation turning on the word "overcome". Instead, the Court treated the case as raising a question of general application: whether, absent clear wording, a reasonable endeavours proviso requires acceptance of non-contractual performance.

The Court's reasoning rested on several established principles of English contract law:

First, the object of a reasonable endeavours proviso is to secure the continuation or resumption of contractual performance, not some substitute for it; the causal inquiry is to be assessed by reference to the contract's own terms.

Second, freedom of contract encompasses the freedom not to contract, and a party cannot be compelled to accept a bargain it did not make.

Third, clear words are required before a party is treated as having given up a valuable contractual right, here, the right to payment in the specified currency.

Fourth, and of particular importance in this context, certainty and predictability of outcome are paramount values in English commercial law; a test turning on open-ended assessments of "detriment" to the counterparty

would generate exactly the kind of factual dispute and litigation risk that force majeure clauses are meant to avoid.

Notably, the Supreme Court also addressed, and rejected, an analogy drawn by RTI from the historic "Suez cases" on the doctrine of frustration, namely *The Massalia*,² *The Eugenia*³ and *The Captain George K*,⁴ all arising from the 1956 and 1967 closures of the Suez Canal. RTI argued that, just as those cases held that charterers were bound to accept the longer route via the Cape of Good Hope rather than treat the contract as frustrated, MUR should have been bound to accept euro payment as an alternative means of performance.

The Court disagreed, for two reasons. First, frustration and force majeure address different questions: frustration is a narrow common law doctrine with the drastic consequence of automatic termination, whereas a force majeure clause can cover a far wider range of circumstances with more flexible consequences, including temporary suspension, so the two bodies of case law cannot simply be read across. Second, and in any event, the Suez cases did not actually hold that the charterers had to accept a non-contractual substitute; rather, the courts found that the contract had never required passage via the Suez Canal specifically, only via the customary route at the time of performance, so sailing via the Cape was itself contractual performance, not a substitute for it.

The result is now settled English law: absent clear wording to the contrary, a reasonable endeavours proviso in a force majeure clause does not require the affected party to accept an offer of non-contractual performance, however commercially sensible that offer may appear, and however slight the detriment to the party invoking the clause.

(B) Practical Implications

B.1 The Suez Canal Corridor (Red Sea Disruption)

Since late 2023, Houthi attacks on commercial vessels transiting the Red Sea and the approaches to the Suez Canal have caused sustained disruption, with numerous carriers suspending Red Sea transits or rerouting via the Cape of Good Hope.⁵ This has generated exactly the type of dispute *MUR Shipping* now governs. Where a charterparty or bill of lading contains a force majeure clause referencing war, hostilities, terrorism, blockade or governmental restriction, and an owner invokes it to justify suspension, delay or rerouting, *MUR Shipping* confirms that the owner's reasonable endeavours obligation is confined to steps that secure the contractually agreed performance. It does not require the owner to accept, or offer, some different mode or route of performance merely because that alternative would avoid the disruption at little or no cost to the counterparty.

This has particular force where the charterparty specifies a route or where, as in many liner trades, the Red Sea passage is the customary route at the time of fixing. The Supreme Court's decision in *The Polar*, concerning a general average contribution following the seizure of a vessel by Somali pirates in the Gulf of Aden, illustrates a related but distinct tension.⁶ There, the Court held that because the charterparty specifically

² *Societe Franco Tunisienne D'Armement v Sidermar SpA, The Massalia* [1961] 2 QB 278.

³ *Ocean Tramp Tankers Corp v V/O Sovfracht, The Eugenia* [1964] 2 QB 226.

⁴ *Palmco Shipping Inc v Continental Ore Corp, The Captain George K* [1970] 2 Lloyd's Rep 21.

⁵ Denamiel T., et al. (2024, January 22). *The Global Economic Consequences of the Attacks on Red Sea Shipping Lanes*. Center for Strategic & International Studies. Site accessed from

<https://www.csis.org/analysis/global-economic-consequences-attacks-red-sea-shipping-lanes>; on 19 th Aug 2026.

provided for the voyage to proceed via Suez, and the risk of piracy in the Gulf of Aden was well known and specifically contracted for at the time of fixing, the shipowner could not have invoked the general war risks clause to refuse to transit that route. Read together with *MUR Shipping*, the two decisions point to the same underlying principle: reasonable endeavours and war risk provisions are assessed strictly by reference to the bargain the parties actually struck, not by reference to what a tribunal might, with hindsight, consider a more prudent or convenient course. An owner who fixes a charterparty for the Red Sea route after the Houthi attacks became widely known may accordingly find it harder to invoke force majeure or war risk in respect of that same risk than an owner whose charterparty predates the crisis. *MUR Shipping* strengthens the position of the party invoking force majeure or war risk provisions in the latter case by making clear that reasonable endeavours is not a backdoor mechanism for compelling acceptance of a bargain the parties did not make, but it does not assist a party seeking to escape a risk it specifically agreed to bear.

That said, the decision cuts both ways for disputes lawyers advising in this space. Because the Court's reasoning is explicitly anchored to the absence of clear wording, parties who wish to impose a broader obligation, for example, requiring a shipowner to accept a reasonable alternative route, port or currency of payment when disruption arises, remain free to do so by express drafting. The post-*MUR Shipping* generation of force majeure clauses, and BIMCO's own updated model clauses, increasingly spell out what "reasonable endeavours" is and is not intended to capture, precisely to avoid the interpretative uncertainty that plagued three tiers of the English courts in this case. Advising on the drafting, and later the interpretation, of such bespoke clauses is likely to be a significant source of instructions as Red Sea disruption persists.

B.2 The Strait of Hormuz

The Strait of Hormuz presents the more acute of the chokepoints considered in this article. Since late February 2026, escalating conflict between the United States, Israel and Iran has led to a de facto closure of the Strait, with the Islamic Revolutionary Guard Corps (IRGC) issuing warnings that transit is forbidden, hundreds of vessels anchoring on both sides of the waterway, and reports of Iran operating a selective passage regime under which transit is permitted only with IRGC approval, reportedly on payment of a substantial fee.⁷ Several major producers and traders, including state-owned entities and long-term liquefied natural gas suppliers, have declared force majeure across a broad range of contracts, from charterparties to commodity sale agreements and offtake arrangements.⁸

As with the Red Sea, the critical point of English law is that the Strait remains technically navigable, at least as a matter of international law, since United Nations Convention on the Law of the Sea (UNCLOS) does not permit Iran to obstruct transit passage through an international strait, and UK and US maritime authorities have expressly stated that VHF broadcasts purporting to close the Strait are not legally binding.⁹ This creates the same structural difficulty *MUR Shipping* addresses: a party invoking force majeure must show not merely that the region is dangerous or that costs have risen sharply, but that the specific event falls within the clause's defined triggers and has actually prevented, or sufficiently

⁶ *Herculito Maritime Ltd and others v Gunvor International BV and others, The Polar* [2024] UKSC 2.

⁷ Meade, R., Diakun, B., & Raanan, T. (2026, March 18). Iran establishes 'safe' shipping corridor for approved and paid for transits. *Lloyd's List*. Site accessed from <https://www.lloydslist.com/LL1156656/Iran-establishes-safe-shipping-corridor-for-approved-and-paid-for-transits>; on 18 th Aug 2026.

⁸ Chow, E. & Rashad M. (2026, July 23). QatarEnergy extends LNG force majeure and charters out tankers into October, sources say. *TheEdge*. Site accessed from <https://theedgemalaysia.com/node/811835>; on 18 th Aug 2026.

⁹ Ship & Bunker News Team. (2026, February 28). Ships Being Warned Strait of Hormuz 'Has Been Closed': UKMTA. Ship & Bunker. Site accessed from <https://shipandbunker.com/news/world/540728-ships-being-warned-strait-of-hormuz-has-been-closed-ukmta>; on 18 th Aug 2026.

hindered, the particular obligation in question, and that reasonable endeavours to overcome that impediment, properly understood by reference to the contractually agreed performance, have been exhausted.

MUR Shipping is directly relevant to two recurring issues in the current Hormuz disruption. First, where a charterer or buyer proposes an alternative means of performance, for example, discharge at a different Gulf or Indian Ocean port, payment of the reported IRGC transit fee to preserve the contractual route, or acceptance of a different delivery mechanism, *MUR Shipping* confirms that the party invoking force majeure is not obliged to accept that alternative merely because it would avoid the disruption, unless the clause's wording, or a separate cooperation obligation of the kind considered in *Gravelor Shipping Ltd v GTLK Asia M5 Ltd*, requires it.¹⁰ Owners and sellers relying on force majeure should resist any suggestion that paying a ransom-like transit fee to a party such as the IRGC forms part of their reasonable endeavours obligation, not least because doing so may itself raise sanctions and illegality concerns entirely separate from the force majeure analysis. Second, and conversely, counterparties seeking to resist a force majeure declaration should scrutinise whether any reasonable, contractually consistent alternative was actually available and improperly refused, since *MUR Shipping's* reasoning still permits an argument that reasonable endeavours were not exhausted where the alternative would have secured the same contractual performance rather than a substitute for it.

It is worth noting, in passing, that the availability of US military escort for commercial vessels passing through the Strait¹¹ raises its own reasonable endeavours question. The authors will only submit that reasonable endeavours must be assessed by reference to what is genuinely reasonable in the circumstances, particularly given the IRGC's demonstrated willingness and capability to strike escorted vessels. It would therefore be unreasonable to require a party to accept protection from a foreign navy as a precondition to invoking force majeure, particularly where that protection has itself proven capable of failure.

The Hormuz disruption also illustrates why *MUR Shipping's* emphasis on certainty is likely to be tested most severely at the margins. Many force majeure clauses are drafted with discrete events at the loading or discharge port in mind, not disruption occurring mid-voyage in transit, and causation disputes are already emerging as to whether performance was truly prevented or merely rendered more difficult, slower or more expensive, a distinction *MUR Shipping's* insistence on contractual, rather than commercial, impossibility makes decisive. Strict compliance with notice provisions, often a condition precedent to reliance on the clause at all, is proving to be an equally significant source of dispute. Given the scale of the disruption and the number of contracts affected, the Strait of Hormuz is likely to generate the next wave of English law force majeure litigation and arbitration applying *MUR Shipping's* framework, and dispute resolution practitioners should expect these issues to be tested in the Commercial Court and in LMAA arbitration.

(C) Applying The Lessons Learned: The Straits Of Malacca And Singapore (SOMS)

The Straits of Malacca and Singapore present a structurally different, but increasingly

¹⁰ [2023] EWHC 131 (Comm).

¹¹ Christou, W. (2026, July 31). Iran strikes tankers under US escort in Hormuz strait as Trump gathers cabinet to discuss war. *The Guardian*. Site accessed from <https://www.theguardian.com/world/2026/jul/31/iran-strikes-tankers-us-escort-hormuz-strait-trump-gathers-cabinet>; on 19 th Aug 2026.

pressing, risk profile; one that is bound up with the geopolitical stakes of the strait itself. Since 2003, Chinese strategists have referred to the “Malacca Dilemma,” a term coined by then President Hu Jintao to describe China’s strategic vulnerability arising from its heavy reliance on the Strait of Malacca. In particular, over 83% of China’s oil imports passes through the Straits of Malacca, being the shortest and most cost-effective sea route connecting East Asia to the Middle East and Africa.¹² This strategic chokepoint is one that the US has long sought to dominate, for it would signal, to a large extent, control of the lifeline of China’s petroleum supply.¹³

Now, unlike the Red Sea or the Strait of Hormuz, there has been no single dramatic closure event; the strait remains open and, as an international strait under UNCLOS, coastal states cannot lawfully suspend transit passage. The live legal risk instead arises from the cumulative effect of chronic congestion and a marked resurgence in piracy and armed robbery. More than 102,500 vessels transited the strait in 2025, up sharply from the prior year, and the SOMS recorded a rising number of piracy and armed robbery incidents in 2025, with reports of a near-tripling of incidents compared with the same period in 2024 as vessels are forced to slow down or wait in congested anchorages, making them easier targets.¹⁴ Congestion has itself been aggravated by the diversion of Red Sea traffic into Asian transshipment hubs such as Singapore, Port Klang and Tanjung Pelepas, compounding the two risks.

These conditions do not, on their own, constitute the kind of discrete prevention event that classic force majeure clauses are drafted around. Congestion and slow transit typically sound in demurrage and laytime disputes rather than force majeure: as English authorities confirm, laytime does not commence without a valid notice of readiness¹⁵ and once a vessel is on demurrage, the “once on demurrage, always on demurrage” principle generally continues time running even through subsequent delay, save where the charterparty expressly excepts force majeure or a defined event from the computation.¹⁶ Piracy incidents, by contrast, may be capable of engaging force majeure, war risk or safe port provisions, though this depends entirely on the specific wording of the clause in question. The leading standard clauses, namely the BIMCO Force Majeure Clause 2022, defines force majeure events to include acts of piracy and/or violent robbery and/or capture/seizure, a formulation which should, in principle, extend to the lower-level armed robbery incidents that dominate current SOMS statistics.¹⁷ However, whether a given incident is in fact captured still turns on the precise wording adopted, more so since the risk of piracy in SOMS is now well known and, following *The Polar*, parties fixing charterparties for SOMS trades today can less readily argue that such risk was unforeseen or fell outside the bargain they struck.

Applying *MUR Shipping*’s reasoning to this setting produces a coherent, if commercially demanding, framework. First, an owner facing congestion-related delay or a piracy incident in the Straits cannot treat reasonable endeavours as open-ended; the inquiry remains fixed to what is needed to secure the contractually agreed performance,¹⁸ for example, the agreed route, port or timetable, not to whatever alternative a tribunal might later consider commercially sensible with hindsight. This approach finds a close parallel in Malaysian and Singaporean jurisprudence, which requires that an obligor act reasonably to procure the contractually stipulated outcome, and which recognises that very much falls on to

12 Dosson, R. (2025, July 8). *The Malacca Dilemma: China’s Achilles’ Heel*. *Modern Diplomacy*. Site accessed from https://modern diplomacy.eu/2025/07/08/the-malacca-dilemma-chinas-achilles-heel/ on 19 th Aug 2026.

13 Academy of Chinese Studies. (2026, March 3). *What is the “Malacca Dilemma”?* | *China Petroleum VI*. *Our China Story*. Site accessed from https://www.ourchinastory.com/en/16563/What-is-the-“Malacca-Dilemma”/ on 19 th Aug 2026.

14 London Maritime Academy. (2026, January 17). *Armed Robberies & Piracy Reach a 19-Year High in the Straits of Malacca & Singapore*. *London Maritime Academy*. Site accessed from https://lmitac.com/news/piracy-and-robbery-surge-in-malacca-singapore/ on 18 th Aug 2026.

15 *Glencore Grain Ltd v Flacker Shipping Ltd, The Happy Day* [2002] EWCA Civ 1068.

16 *Union of India v Compania Naviera Aeolus SA, The Spalmatori* [1962] 2 Lloyd’s Rep 175.

17 BIMCO. (n.d.). *Force Majeure Clause 2022*. BIMCO. Site accessed from https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/force-majeure-clause-2022/ on 19 th Aug 2026; *Steamship Insurance Management Services Ltd*. (2025, April 28). *Piracy & Sea Robbery – Straits of Malacca & Singapore (SOMS)*. *Steamship Mutual*. Site accessed from https://www.steamshipmutual.com/publications/articles/piracy-sea-robbery-straits-malacca-singapore-soms/ on 19 th Aug 2026; *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)*. (n.d.). *Classification of Piracy and Armed Robbery against Ships Incidents*. ReCAAP ISC. Site accessed from https://www.recaap.org/classification_of_incidents/ on 19 th Aug 2026.

18 *Intan Payong Sdn Bhd v Goh Saw Chan Sdn Bhd* [2005] 1 MLJ 311 (HC): “It is trite that a party relying upon a force majeure clause...must further prove that...there were no reasonable steps that he could have taken to avoid or mitigate the event or its consequence (*Chitty on Contracts* (28th Edition) Vol 1 at 273-274).”

the words of the clause, what was present to the minds of the parties, and what is necessary to give the clause sensible legal and practical effect.¹⁹

Second, where a charterer proposes an alternative performance to avoid delay, for example, discharge at a different, less congested port, or acceptance of a different notice of readiness protocol, *MUR Shipping* confirms the owner is not obliged to accept that alternative merely because it would reduce or eliminate the disruption, unless the charterparty's force majeure or exceptions clause expressly says so. Third, and conversely, disputes lawyers acting for charterers exposed to demurrage accruing during a piracy-driven slowdown should scrutinise the precise wording of any force majeure or exceptions clause for language broader than *MUR Shipping*'s default position, since only clear wording will assist a charterer seeking to argue that the owner should have taken some alternative reasonable step.

Given that Singapore and London remain the principal seats for maritime arbitration in disputes touching this region, whether under Singapore Chamber of Maritime Arbitration or LMAA terms, *MUR Shipping*'s emphasis on certainty and predictability is likely to be persuasive before tribunals applying English law even where the seat is Asian. Parties trading regularly through the Straits would be well advised to review their standard force majeure, laytime exception and safe port clauses now, before a serious incident forces the issue, and to consider whether bespoke wording is needed to allocate the risk of the region's specific hazards, congestion, piracy and the possibility of coastal state action, rather than relying on the default position *MUR Shipping* now confirms.

Conclusion

MUR Shipping resolves a long-standing uncertainty in the interpretation of reasonable endeavours provisos, restoring a bright-line position that favours contractual certainty over ad hoc fairness assessments. For dispute resolution practitioners in shipping, its significance extends well beyond the sanctions context in which it arose. As Red Sea and the Strait of Hormuz disruptions continue and as congestion and piracy in the SOMS intensify, *MUR Shipping* will be the first port of call whenever a party's entitlement to rely on force majeure, or a counterparty's insistence that some alternative performance should have been accepted, is in dispute. The decision does not resolve every question these chokepoints raise, particularly where congestion, rather than a discrete prevention event, is the source of delay, or where a risk such as piracy in the SOMS has become so well known that a party may struggle to characterise it as unforeseen or outside the bargain it struck, but it supplies the interpretative framework within which those questions must now be argued, and a strong incentive for parties to address these risks expressly in their contracts rather than leave them to the default position the Supreme Court has now settled.

¹⁹ *The New Straits Times Press (M) Bhd v Aideah Communication Sdn Bhd* [2025] 3 MLJ 240 (FC) at [79]-[81], [120]; *Ng Koon Yee Mickey v Mah Sau Cheong* [2022] SGHC(A) 33 at [104].

Nagarajah Muttiah | Partner
Dispute Resolution
naga@rdslawpartners.com

Chelsea Ho | Associate
Dispute Resolution
chelsea@rdslawpartners.com

WHEN IS A DRINK NOT A BEVERAGE? HIGH COURT RULES ON YAKULT'S TARIFF CLASSIFICATION

by S. Saravana Kumar, Amira Ahmad Azhar & Rita Soong

In a recent decision, the High Court allowed the judicial review application filed by Yakult (Malaysia) Sdn Bhd (the Company) and set aside the Royal Malaysian Customs Department's (Customs) decision to reclassify the Company's manufactured products, namely "Yakult Ace" and "Yakult Ace Light" (the Products), from fermented milk to beverages.

The reclassification carried potentially significant fiscal consequences. Based on the applicable rates, classification as beverages would have increased the sales tax rate from 5% to 10% and the import duty rate from 0% to 20%. The High Court held that the addition of water and the Products' ready-to-drink form did not alter their essential character as fermented milk products.

The decision is significant for manufacturers of functional foods, dairy products and other goods whose physical form or composition changes during production. It demonstrates that water content and presentation should not be considered in isolation. Tariff classification must be undertaken in accordance with the General Rules for the Interpretation of the Harmonised System (General Rules), having regard to the terms of the relevant headings and the product's objective characteristics.

Background

The Company is a wholly-owned subsidiary of Yakult Honsha Co Ltd, a Japanese multinational corporation. It manufactures probiotic fermented milk products containing over 30 billion live Shirota strain bacteria per 80ml bottle, together with skimmed milk powder, sugar, glucose, and permitted flavouring. The Products are marketed and consumed as probiotic fermented milk products intended to support gut health.

Under the manufacturing licence issued by the Customs on 4 November 2003, the Products were initially classified as "other fermented or acidified milk" under the Customs Duties Order 2002. Following the repeal of that Order, the Products continued to be classified under tariff code 0403.90.9000 also as "other fermented or acidified milk", under the Customs Duties Order 2022. This treatment remained undisturbed for approximately 20 years before Customs decided that the Products should instead be classified under tariff code 2202.99.5000 as "other non-aerated beverages ready for immediate consumption without dilution". The Company challenged that decision by way of judicial review.

The two competing tariff classifications were as follows:

Heading / Tariff Code	Description	Sales Tax	Import Duty
04.03	Yogurt; buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa.		
0403.90.9000	Other	5%	0%
22.02	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit, nut or vegetable juices of heading 20.09.		
2202.99.5000	Other non-aerated beverages ready for immediate consumption without dilution	10%	20%

The Dispute

The central issue before the High Court was whether the Products were properly classified as fermented milk products under tariff code 0403.90.9000 or as beverages under tariff code 2202.99.5000. The dispute centred on whether the addition of water and the Products' ready-to-drink form changed their character for tariff classification purposes.

Under paragraph 4(1) of the Customs Duties Order 2022, tariff classification is governed by the General Rules for the Interpretation of the Harmonised System (General Rules). The General Rules therefore provided the legal framework for determining which of the two competing tariff classifications applied to the Products.

Against this framework, Customs submitted that the Products were properly classified under heading 22.02 because their manufacturing process, composition and finished form showed that they were ready-to-drink beverages rather than fermented milk products falling under heading 04.03. In particular, Customs relied on the addition of more than 56% sterile water after fermentation, which it argued had altered the Products' essential character from fermented milk to a "drink based on fermented milk". Customs also relied on the Products being labelled and marketed as "cultured milk drinks" and being ready for immediate consumption without further dilution.

Customs further submitted that the classification could be determined under Rule 1 by reference to the wording of headings 04.03 and 22.02. Alternatively, Customs contended that heading 22.02 provided the more specific description under Rule 3(a), while Rule 6 supported classification under tariff code 2202.99.5000. Customs also relied on the Codex Alimentarius standard for fermented milk and the Ministry of Health's view that the Products were cultured milk drinks rather than yoghurt.

The Company's Case

The Company's position was anchored principally on Rule 3(a). It submitted that heading 04.03 provided the more specific description because it expressly covered "other fermented or acidified milk", whereas heading 22.02 covered the broader category of non-alcoholic beverages.

In *Ketua Pengarah Kastam v Amaire Auto Sdn Bhd & Anor* [2025] CLJU 2018, the High Court held that classification under Rule 3(a) requires the heading providing the most specific description to be preferred to a heading providing a more general description.

If classification could not be determined under Rule 3(a), the Company relied alternatively on Rule 3(b). It contended that the Products retained the essential character of fermented milk when assessed by reference to their composition, primary function and intended use.

In *Jindar Sdn Bhd v Director General of Customs, Royal Malaysian Customs Department & Anor* [2025] MLJU 2879 the High Court explained that, where classification turns on essential character, the inquiry may focus on the function and intended use of the goods rather than physical form alone.

The Company also relied on *Ketua Pengarah Kastam v Power Root (M) Sdn Bhd & Ors* (Rayuan Sivil No.: W-01(1M)-441-10) in which the Court of Appeal upheld the High Court's decision. The Court observed the absurdity of equating water content with beverage classification, noting that products containing substantially higher water content cannot be classified as beverages where their intended use and consumers' expectations are not for thirst-quenching or refreshment, but for health and nutritional purposes. Their essential character remains unchanged, whether presented in powdered form or as a ready-to-drink liquid form.

In the present matter, each 80ml bottle contained more than 30 billion live Shirota strain bacteria. The small serving size, composition, marketing and intended purpose were relied upon as evidence that they are consumed principally as a functional fermented milk product for gut health, rather than as a conventional beverage to quench thirst. The Company further emphasised that consumption of the Products in liquid form does not transform the Products into beverages for tariff classification purposes.

Moreover, the World Customs Organisation's (WCO) Explanatory Notes to heading 04.03 also state that products under this heading may be in liquid, paste or solid form and may be concentrated or preserved. The Explanatory Notes therefore recognise that the physical form of fermented milk products may vary and the addition of water would not automatically render the Products as a beverage.

Consistency And Uniformity In Tariff Classification Treatment

The Company also highlighted the Customs' inconsistent classification practice including the fact that a similar probiotic dairy drink manufactured by a competitor continued to be classified under heading 04.03, rather than as a mere beverage, notwithstanding that both products contained comparable water content.

The Company further submitted that its proposed classification was consistent with the treatment of the Products in other WCO member states, including Singapore and United Arab Emirates. The Harmonised System exists to promote uniformity and consistency in classification of goods across member states so as to facilitate international trade.

This approach has been endorsed by the High Court in *Howe Keat Sdn Bhd v Ketua Pengarah Kastam, Jabatan Kastam Diraja Malaysia* [2024] MLJU 1537 and by the Federal Court in *Nike Sales (M) Sdn Bhd v Jabatan Kastam Diraja Malaysia & Ors* [2013] 5 MLJ 21. Those decisions recognised that customs classification should not be approached as an entirely isolated domestic exercise and that due regard may be given to international and comparative practice.

Moreover, the long-standing classification of the Products under heading 04.03 over 23 years, supported by the manufacturing licence issued by the Customs, gave rise to the Company's legitimate expectation that the Customs could not depart from its established position without proper justification.

The High Court's Ruling

The High Court allowed the Company's judicial review application and set aside Customs' reclassification decision. The Court held that the Products had a strong basis to be characterised as fermented milk and should properly fall under tariff code 0403.90.9000, noting that the heading 04.03 expressly includes "*yoghurt... and other fermented or acidified milk and cream.*"

The Court recognised that the core composition of the Products remains that of fermented milk containing live bacteria cultures, skimmed milk powder, sugar and flavouring, notwithstanding the addition of water.

Crucially, the Products retained the essential character of fermented milk associated with gut health benefits rather than that of a conventional thirst-quenching beverage. The Court further observed that, from the perspective of the ordinary consumer, the name "Yakult" is associated with a fermented milk product for gut health rather than an ordinary beverage consumed casually.

Accordingly, the High Court concluded that the addition of water during the manufacturing process did not displace the essential character of the Products as fermented milk. The Products should therefore remain properly classified under tariff code 0403.90.9000.

Why This Decision Matters

First, the decision confirms that tariff classification is not determined merely by a product's physical form or presentation. The classification exercise must follow the General Rules and consider the terms of the competing headings. Where Essential character becomes relevant, the product should be assessed holistically, by reference to its composition, function, intended use and consumer perception.

Secondly, the addition of water or presentation in ready-to-consume form does not necessarily alter a product's tariff identity. This is particularly relevant to manufacturers of functional foods and dairy products, which may be diluted or sold in liquid form to facilitate consumption without losing their underlying character.

Thirdly, the decision illustrates the practical importance of consistency and proper justification in tariff administration. Although Customs may reconsider an earlier classification in the exercise of its statutory functions, a departure from treatment maintained over many years should be supported by a careful application of the General Rules and the relevant technical material.

The decision also has implications beyond the dairy industry. Many manufactured products undergo dilution, blending, concentration or other changes before reaching their final form. Businesses should therefore retain technical documents explaining a product's composition, manufacturing process, function and intended use, together with relevant overseas rulings and historical correspondence with Customs. These materials may become important if an established tariff classification is subsequently reviewed.

From a compliance perspective, businesses should also avoid relying solely on product labels or marketing descriptions. A label may be relevant evidence, but it does not replace the legal classification exercise. Product specifications, laboratory reports, ingredient ratios, manufacturing flow charts, relevant Section and Chapter Notes, and the World Customs Organization's Explanatory Notes should be considered together before a tariff position is adopted or revised.

Where Customs proposes to depart from a long-standing classification, taxpayers should identify the precise change said to justify the new treatment. This may include a change in the product's formulation, the applicable tariff legislation, the relevant Explanatory Notes or the technical evidence available to the decision-maker. If none of those matters has materially changed, the basis for treating the same product differently should be clearly explained.

Ultimately, the decision provides a useful reminder that tariff classification must reflect what a product objectively is, rather than simply how it is presented or consumed. A change in physical form, the presence of water or the ability to consume the product immediately should not, without more, displace its substantive identity.

S. Saravana Kumar | Partner
Tax, SST & Customs
sara@rdslawpartners.com

Amira Ahmad Azhar | Partner
Tax, SST & Customs
amira@rdslawpartners.com

Rita Soong | Pupil
Tax, SST & Customs
rita@rdslawpartners.com

POST-IPO GOVERNANCE: REALITY CHECK AFTER THE LISTING

by Michele Kythe Lim & Lam Yee Yao

Getting a company listed on Bursa Malaysia is, for most boards, the culmination of years of planning. The prospectus has been verified, the roadshow completed, the bell rung. What tends to receive far less attention is the morning after, which is the moment a private company, often run informally by a small circle of founders and family shareholders, wakes up as a public-listed company (PLC) subject to a dense and continuing web of statutory, regulatory and quasi-regulatory obligations.

This article looks candidly at what changes the day a company lists, why the gap between IPO-readiness and post-IPO reality catches so many boards off guard, and what the Companies Act 2016 (CA 2016), the Capital Markets and Services Act 2007 (CMSA), the Bursa Malaysia Main Market and ACE Market Listing Requirements (Listing Requirements or LR), and the Malaysian Code on Corporate Governance 2021 (MCCG 2021) actually require once the confetti has settled.

From Private Company To Public Accountability

Under the Companies Act 2016, every company, whether private or public, is managed by or under the direction of its board of directors, and every director owes the company statutory duties to act in good faith, for a proper purpose, and in its best interests. What changes on listing is not the source of the duty but its intensity and its audience. Where a private company's directors answer to a handful of familiar shareholders, a newly listed issuer's directors answer to public shareholders, institutional funds, retail investors, research analysts, financial journalists and two regulators simultaneously: the Securities Commission Malaysia (SC) and Bursa Malaysia. It is noted that PLCs are subject to enhanced governance and materially more stringent requirements under the Listing Requirements than the CA 2016 alone imposes on private companies.

This is the first reality check. Many founders treat the listing exercise itself, the prospectus, the due diligence, the SC approval, as the finish line. In truth it is closer to a starting gun. The board that assembled a nomination committee, an audit committee and a remuneration committee purely to satisfy the eligibility requirements for listing must now operate those committees as living, functioning parts of the business, indefinitely, under continuous public scrutiny.

Director's Duties After Listing

When it comes to director's duties, one should not run away from Section 213 of the CA 2016 which requires a director to exercise his powers, for a proper purpose and in good faith, in the best interest of the company, with reasonable care, skill and diligence.

To note, these are not IPO-specific duties; they apply to every Malaysian company.

What changes after listing is the practical texture of compliance. The same duty of care that once meant approving a handful of related-party loans now means overseeing continuous disclosure obligations, quarterly reporting deadlines, and a compliance calendar that runs all year.

Moreover, Boards should make sure the company has strong internal controls and regularly reviews them. These include financial controls, internal audits, cybersecurity, whistleblowing systems and risk management. Cybersecurity is especially important as cyberattacks and data breaches can cause financial loss, legal implications and potential damage to the company's reputation plus inviting queries from the public eg investors and stakeholders.

Despite the measure of protection through the business judgment rule in Section 214 of the CA 2016, it is, however, not a shield against governance failure. It protects considered commercial judgment, not neglect of statutory or listing obligations. In practice, D&O insurance becomes close to indispensable cover once a company lists, precisely because the exposure a director carries multiplies with the number of stakeholders who can be harmed by a governance lapse.

The Continuing Obligations Of The Listing Requirements

The Listing Requirements set out what a listed issuer must continue to do for as long as it remains listed.

• Restrictions on Dealings

Chapter 14 of the Listing Requirements restricts a listed company's directors, principal officers and in certain cases, their connected persons (collectively referred to as "Affected Persons") from dealing with the company's securities during the closed periods.

Even during 'outside closed periods', such Affected Persons are still required to comply with notification and reporting procedures, by announcing any intended or completed transactions to the company secretary for public dissemination. The volume of such notifications released daily on Bursa Malaysia's website shows how routine, and how closely monitored, this obligation is in practice.

• Conflict of Interests Management

Under Section 221 of the CA 2016, directors are legally required to address conflicts of interest by providing immediate, full written disclosure of any direct or indirect interests. Further, under Section 222, an interested director is generally expected to abstain from deliberating and voting on conflicted matters. While the CA 2016 is framed for all companies generally, it takes on a sharper edge once a company is listed, given the volume and variety of related-party dealings, and the population of minority shareholders whose interests the disclosure and abstention rules exist to protect.

The Listing Requirements and the Securities Commission's 'Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries' reinforce and particularise this obligation for PLCs. Directors are required to establish, and to operate under, policies and procedures for managing potential conflicts of interest. Moreover, a director acting as a nominee of a particular shareholder must act in the best interest of the corporation rather than of the nominating shareholder where the two interests diverge.

• Composition Requirements

Paragraph 15.02 of the Listing Requirements requires that at least two directors, or one-third of the board, whichever is higher, be independent directors, and this composition must be maintained continuously, not merely demonstrated at the point of listing.

An Audit Committee of at least three members, all non-executive, with a majority independent, and at least one member holding recognised accounting qualifications or equivalent experience.²⁰ Under Chapter 15, an issuer must also maintain functioning nomination and remuneration committees.

• Disclosure Obligations

The disclosure obligations are similarly relentless. A listed issuer must announce material information to Bursa Malaysia promptly, publish quarterly financial results, and issue an annual report, including audited financial statements and the directors' and auditors' reports, within four months of the financial year end for Main Market issuers (five months for ACE Market issuers), with the annual general meeting to follow within six months of the financial year end. These are not aspirational timelines as missing them triggers enforcement consequences.

Acknowledging the importance of accurate, consistent and transparent disclosure, Paragraph 15.26(b) of the Listing Requirement requires directors to prepare a mandatory Statement on Risk Management and Internal Control (SORMIC) for inclusion in their annual reports. In 2025, the Institute of Internal Auditors Malaysia updated the "SORMIC Guidelines for Directors of Listed Companies" to better facilitate and assist Boards in preparing the SORMIC. Based on the guidelines, the SORMIC requires, among others, details the board's oversight of the enterprise risk management framework, internal control procedures, and CEO/CFO assurances,

²⁰ Paragraph 15.09, Listing Requirements

while undergoing external auditor review. For a newly listed company, the SORMIC is therefore not a one-off narrative drafted for the first annual report; it is a recurring, auditor-tested disclosure that requires the board to maintain, and be able to evidence, a functioning risk management and internal control system year on year.

In 2023, Bursa Malaysia had publicly reprimanded Serba Dinamik Holdings Bhd and ten of its directors for breaches of the Main LR, imposing total fines on the directors ranging from RM355,200 to RM1,376,000, in what Bursa Malaysia described as a “serious dereliction of duties”. To note, this incident was a product of corporate governance failures, particularly the failure to ensure proper and timely disclosure of material information. As such, Boards should be aware that Bursa Malaysia will pursue individual directors for breaches of the Listing Requirements, including those who have since resigned.

Companies are advised to maintain strong internal controls to ensure that important information is reported accurately and on time, allowing the company to remain compliant with the law and maintain the confidence of investors.

• Related-Party Transactions: The Governance Discipline That Never Ends

One of the sharpest adjustments facing a newly listed founder-controlled company concerns related-party transaction (RPTs). Many pre-IPO businesses run on informal arrangements: a management fee paid to a director-controlled entity, a lease with a family member, a loan from a substantial shareholder. Chapter 10 of the Listing Requirements sets a continuing obligation, whereby any recurrent RPT above the prescribed materiality threshold requires a shareholder mandate obtained by ordinary resolution at the annual general meeting, and shareholders who are party to or connected with the transaction must abstain from voting. It is worth noting that it is an annual discipline that persists for as long as the arrangement continues, and it requires the board, and in particular the Audit Committee, to keep contemporaneous arm's-length pricing evidence rather than reconstructing it defensively after a regulator asks questions.

Malaysian regulators now expect directors to exercise active oversight of conflicts of interest and RPTs as part of their fiduciary duties, not as a compliance formality delegated wholesale to company secretaries. Boards that treat RPT management as a listing-day exercise rather than an ongoing governance function are the ones most likely to find themselves explaining departures from the MCCG 2021, or worse, defending an SC or Bursa Malaysia enquiry.

The MCCG 2021: Apply Or Explain Is Not Optional Window-Dressing

The MCCG 2021, issued by the SC, operates on an “apply or explain an alternative” basis. A listed company must either apply each Practice or explain, meaningfully, what alternative measure it has adopted to achieve the same governance outcome. Under the Listing Requirements, every listed issuer must publish, alongside its annual report, a ‘Corporate Governance Overview Statement’

and a 'Corporate Governance Report' addressing each MCCG Practice in turn, explaining any departures and the alternative measures adopted. This CARE (Comprehend, Apply and Report) approach means the first post-listing annual report is not a formality, but rather, the first occasion on which the market, and the regulators, test whether the governance architecture built for the prospectus was real or cosmetic.

However, one would probably realise that the MCCG 2021 is not legally binding unlike how a breach under Section 213 of the CA 2016 is as a company can simply depart from a Practice. But the market, investors, institutional shareholders, and increasingly the regulators themselves, treat a poorly reasoned or boilerplate explanation as a governance red flag in its own right.

Boards should also be alive to the fact that the MCCG itself is under review. The Securities Commission has indicated that the MCCG, last updated in 2021, is due for its fifth revision in 2026, with the incoming MCCG 2026 expected to move away from a purely voluntary, principles-based approach and to make certain practices mandatory where doing so is considered likely to improve corporate behaviour and outcomes. In July 2026, the SC issued the Public Consultation Paper No. 1/2026 on proposals to strengthen the corporate governance ecosystem, covering, among other things, board oversight of technology and artificial intelligence, including disclosures on how a listed issuer uses and governs AI, as well as measures to strengthen the oversight of company secretaries through new requirements aimed at improving their professionalism and effectiveness in advising boards.

Newly listed companies should treat these proposals as a signal of the direction in corporate governance. While the MCCG operates fundamentally as a voluntary best-practice guide, its core principles have been systematically codified into primary capital market regulations via the Listing Requirements.

The Cost Of Getting It Wrong

Perhaps the most sobering reality check available to any newly listed board is Practice Note 17 (PN17) of the Listing Requirements, which classifies an issuer as financially distressed once specified triggers are met, such as shareholders' equity falling below a prescribed percentage of paid-up capital. A PN17 company must submit a regularisation plan within the prescribed timeframe or face suspension and eventual delisting.

PN17 is not, strictly speaking, a corporate governance mechanism. It is rather a financial distress classification. But the boards that end up there are disproportionately the same boards that treated governance as a listing formality rather than an operating discipline: weak internal controls, related-party arrangements that drained cash from the listed entity, and Audit Committees that rubber-stamped rather than interrogated.

The Serba Dinamik saga began in 2021 when the company's external auditor, KPMG, raised red flags over unverified transactions and trade receivables exceeding RM4.5 billion. According to subsequent enforcement findings by Bursa Malaysia, the

company's Audit Committee and board of directors failed to properly scrutinise, probe, question, and challenge management on the numerous audit issues raised by the auditor. Rather than confronting the mounting crisis, several independent directors resigned. Subsequently, the Securities Commission compounded the company, its group managing director and chief executive officer, and three other senior executives a total of RM16 million for submitting a false statement to Bursa Malaysia involving revenue of RM6.01 billion. The company's shares were suspended from trading, classified as a PN17 company, and it was ultimately delisted from Bursa Malaysia in 2024. This incident illustrates a trajectory that began with a governance failure long before it became a balance sheet failure.

Sustainability Governance

Boards that listed even three or four years ago face a governance landscape that has moved substantially since. PLCs are now required to disclose in the annual report how it oversees environmental, social and governance (ESG) risks and opportunities, including climate-related risk, and every listed issuer must publish a sustainability statement describing its governance mechanisms for managing material economic, environmental and social risks.

Layered on top of this, the National Sustainability Reporting Framework, launched jointly by the SC, Bank Negara Malaysia and Bursa Malaysia in September 2024, requires phased adoption of IFRS S1 and IFRS S2 sustainability and climate disclosure standards: Main Market issuers with a market capitalisation of RM2 billion or more from financial years beginning 1 January 2025, the remaining Main Market issuers from 1 January 2026, and ACE Market issuers from 1 January 2027. For a newly listed company crossing the RM2 billion threshold, this is not a distant compliance date. It is an immediate obligation to establish credible board-level oversight of ESG risk and a defensible greenhouse gas measurement baseline, work that typically takes twelve to eighteen months to do properly and cannot be assembled retrospectively in the weeks before an annual report is due.

Two Regulators, Two Sets Of Teeth

A private company's directors answer, in the ordinary course, to no one but their fellow shareholders and, in the worst case, to a liquidator.

A listed issuer's directors answer to two distinct regulators with overlapping but distinct enforcement toolkits. The SC is empowered with broad supervisory and enforcement functions over the securities laws, including the power to investigate and to compel production of documents. Bursa Malaysia, for its part, enforces the Listing Requirements directly through public reprimands, fines, and, in the most serious cases, suspension or delisting, without needing to go through the criminal courts at all.

A director who has only ever operated a private company can find this dual exposure, criminal and regulatory liability running in parallel, disorienting. It is precisely why induction and ongoing training for newly appointed directors of a PLC is not a courtesy but increasingly a practical necessity.

Furthermore, the rapid expansion following an IPO often places considerable pressure on internal governance systems. Processes that were sufficient for a privately owned company may no longer be adequate for a listed issuer operating under the greater regulatory scrutiny. Therefore, boards should treat cybersecurity as a key governance responsibility. Similarly, companies should develop effective crisis management and business continuity plans to ensure resilience during unforeseen events.

Managing Post-IPO Growth, Business Risks And Long-Term Corporate Success

Many companies use the money raised from the IPO to expand their business, enter new markets or acquire other companies. Although growth creates new opportunities, it also brings new risks such as higher operating costs, foreign exchange fluctuations, integration challenges after acquisitions and different legal requirements in other countries. To manage these risks, companies should establish strong risk management systems and conduct regular internal audits. The board and management should identify potential risks early, monitor them continuously and take appropriate action to reduce their impact. This helps protect the company's assets, reputation and long-term performance.

Listed companies must ensure that directors, senior management and employees do not misuse confidential or non-public information for personal gain. Insider trading occurs when a person buys or sells shares while possessing material information that has not been made public, such as financial results, major transactions or proposed mergers, giving that person an unfair advantage over other investors and undermining confidence in the capital market. Under the Capital Markets and Services Act 2007 (CMSA), insider trading is a serious offence that may result in substantial penalties and enforcement action by the Securities Commission Malaysia.

Pros And Cons

Although post initial public offering governance requires more effort, it provides many long-term benefits. Good corporate governance helps the board make better decisions because independent directors can provide different views and challenge management when necessary. It also increases the confidence of investors, banks and other financial institutions, which can make it easier for the company to raise funds and helps lower the cost of funding. Strong governance can improve the company's reputation and attract more investors. It also helps reduce business risks through better internal controls, financial reporting, audits and risk management. In addition, rules on insider trading and related party transactions help protect minority shareholders and ensure that they are treated fairly.

However, post initial public offering governance also creates additional challenges. Listed companies have higher compliance costs because they must meet ongoing reporting and disclosure requirements and maintain proper board, audit and compliance structures. Decision-making may also take longer because some matters require board committee review or shareholder approval. Founders and

controlling shareholders may have less control because decisions must consider the interests of all shareholders. Continuous disclosure may also reveal business information to competitors, while regular financial reporting can create pressure to focus on short-term results.

None of this is intended as an argument against listing. Bursa Malaysia remains one of the more established and liquid capital markets in the region, and the capital access, market visibility and succession planning benefits of listing are real. The point, rather, is that the governance structures put in place to satisfy the Listing Requirements at the point of listing are the beginning of an operating discipline, not the end of a compliance exercise.

Boards that internalise this early, that treat the audit committee's quarterly review of financial statements as a genuine test rather than a rubber stamp, that document related-party pricing contemporaneously rather than reconstructively, that recruit independent directors who are willing to challenge management rather than simply lend the board a veneer of independence, tend to be the boards that are still trading, still compliant, and still credible with institutional shareholders five years after listing.

Conclusion

In conclusion, becoming a listed company is not the end of the IPO process but the beginning of greater governance responsibilities. After listing, companies must comply with Bursa Malaysia's Listing Requirements, provide timely and accurate information, protect shareholders, maintain strong internal controls and manage financial, tax and business risks effectively. Directors and management must also act responsibly and ensure that the interests of minority shareholders are protected. Although post initial public offering governance may increase compliance costs and make some decisions more difficult, it helps build investor confidence, reduce risks and improve the company's reputation. Therefore, strong corporate governance should not be viewed only as a legal requirement, but as an important part of achieving the company's long-term success, sustainability and growth.

POWER, WATER AND THE GRID: THE REALITIES OF UTILITY INTENSIVE INVESTMENT IN PENINSULAR MALAYSIA

by Sharifah Sazita S. Hamzah & Mike Chan

Peninsular Malaysia is attracting a new generation of large-scale investments. Hyperscale data centres are proliferating in Johor and Selangor, and semiconductor manufacturers continue to expand across Penang, Kedah and the Northern Corridor. These projects are expanding the country's industrial and digital infrastructure, bringing significant capital and creating new opportunities for economic growth.

But these investments also bring demands that are very different from those of many conventional industrial projects.

A utility-intensive facility does not simply require a suitable site. It requires substantial and reliable supplies of electricity and water, often over decades. It may require new substations, transmission connections, water infrastructure and other supporting facilities before it can therefore be as important to the viability of a project as the land on which it is built.

This is changing the way utility-intensive investments need to be considered.

For investors and developers, securing access to power and water is increasingly a fundamental part of site selection, project structuring and long-term risk management. A connection may be available, but will it be available when the project needs it? How will the cost of the network expansion be allocated? What happens if supply is interrupted or curtailed? And what level of physical and contractual protection is required when the facility itself is subject to demanding commitments to its customers and lenders?

For governments and the States that host these developments, there is another set of questions. Significant investments can bring capital, infrastructure and economic activity, but they can also place substantial demands on scarce resources and public infrastructure. The question is therefore not simply how much investment a project brings, but what value it creates for the wider economy and the communities in which it operates.

These considerations do not diminish the importance of attracting investment. Rather, they point to a more complex reality: as utility-intensive projects become larger and more resource-dependent, the interests of investors, utilities, governments and communities become increasingly interconnected.

Understanding that reality – and the legal and regulatory framework that sits behind it – is becoming an essential part of developing utility-intensive facilities in Peninsular Malaysia.

The Site Is More Than Land

For investors, the first lesson is perhaps the simplest: a site is no longer just a piece of land.

Land, location and connectivity remain important. So do incentives, logistics and access to labour. But for a utility-intensive facility, the attractiveness of a site may ultimately turn on something that is not visible from the site itself – the capacity and resilience of the infrastructure around it.

Electricity illustrates the point.

The question is not merely whether the grid reaches the site. A developer needs to understand how much capacity can be made available, when that capacity can be delivered, what network reinforcement may be required and how the arrangement will accommodate future expansion. A connection that is technically possible but cannot be delivered within the project's development programme may be of little practical value.

Malaysia has responded to this challenge with initiatives intended to accelerate the delivery of power infrastructure to major developments. The Green Lane Pathway, for example, is designed to run key elements of the connection process in parallel, with the objective of reducing what historically could be a lengthy connection period. For large investors working on an aggressive construction timetable, that can make a material difference.

The Corporate Renewable Energy Supply Scheme, or CRESS, addresses a different part of the equation. It gives eligible corporate consumers a route to procure renewable electricity from third-party generators through the existing grid. For businesses with significant sustainability commitments, that can be an important component of their overall energy strategy.

But neither mechanism removes the fundamental issue.

A connection is not the same thing as certainty of supply.

That distinction matters greatly to a data centre or other facility whose own customers may expect exceptionally high levels of availability. The operator may have promised continuity of service to its customers, while the utility framework may not provide an equivalent level of protection for the consequences of an interruption.

That is where the legal and commercial realities begin to intersect.

When The Utility Fails, Where Does The Risk Go?

This is one of the less obvious issues for a first-time investor.

It is tempting to think of the utility agreements as the place where the risk of an interruption is dealt with. In practice, the position can be complicated.

The Electricity Supply Act 1990 gives the licensee statutory protection in certain circumstances where electricity supply is reduced or interrupted. The *Water Services Industry Act 2006* contains comparable protections on the water side. Standard utility arrangements may also limit the losses for which the utility can be held responsible.

The significance of these provisions is not so much the statutory language itself. It is the mismatch they can create further down the contractual chain.

A hyperscale operator may have contractual obligations to its customers to keep its facilities operating with very little interruption. If a failure in the electricity supply causes the facility to go offline, the operator may therefore face claims or other financial consequences from its customers, as well as potential consequences under its financing arrangements. Yet the operator may have limited ability to recover those losses from the utility responsible for supplying the electricity.

The risk has not disappeared. It has simply moved.

For a project of this nature, the consequences can extend well beyond the immediate cost of an outage. They can affect how the project is financed, the extent to which the facility needs to be equipped with backup systems and other measures to minimise the impact of an interruption, and the protections the operator seeks in its contracts with customers. They may also change the way an investor evaluates a site in the first place: a location with an apparently attractive utility connection may be less attractive if the terms of that connection leave the project exposed to risks it cannot readily manage.

This is why the legal analysis cannot sensibly be separated from the engineering and commercial analysis. If the utility contract does not provide sufficient protection against an interruption in supply, the developer may need to build that protection into the facility itself – for example, through backup power, alternative sources of water or other measures designed to keep the facility operating when the primary supply is disrupted.

That may mean dual-circuit power connections, separate substations, battery storage or on-site generation. On the water side, it may mean storage, recycling or alternative sources.

In other words, what cannot be secured contractually may have to be secured physically.

Water Is A Different Kind Of Constraint

Water presents a different challenge.

The regulatory framework reflects the division between federal and State responsibilities. The Water Services Industry Act 2006 and the SPAN Act 2006 govern the regulated water services framework, including treated water and public sewerage, while raw water resources remain within State authority.

For a developer, that distinction is more than constitutional architecture.

It can determine who the developer needs to deal with, what approvals may be required and whether an apparently straightforward water requirement

involves several different regulatory and institutional arrangements.

A facility's water requirements will also depend on how it is designed. Cooling technology, water efficiency, recycling and treatment can all affect the volume of water required. That makes water strategy partly a question of engineering, but it also makes it a question of site selection.

The questions need to be addressed early: where is the water coming from, and how secure is that source?

The question becomes more important where a project contemplates direct abstraction of raw water. The developer may then need to navigate State-level requirements alongside the federal regime governing treated water and public water services.

There is a wider consideration too.

Water is not simply another commodity waiting to be allocated to the highest-value industrial use. Rivers, catchments and groundwater support households, agriculture, existing industries and future development. The allocation of water to major utility-intensive facility therefore sits within a much larger system.

The strengthening of Malaysia's water pollution regime under the Water Services Industry (Amendment) Act 2024 is a reminder of this wider concern. The law now provides for substantially higher penalties for certain forms of contamination, reflecting the importance of protecting water resources and supply systems.

For developers, the practical lesson is straightforward. Water should be considered at the same time as land and electricity, not after them.

The questions are familiar but important: Is the source sufficient? Is it sustainable? What happens if it is disrupted? How much storage is required? How much can be recycled? Is there a credible alternative?

These questions may influence the design of the facility long before the first foundations are laid.

Someone Has To Pay For The Infrastructure

There is another reality that can be obscured by the headline value of an investment.

A large facility does not arrive at an empty site with all the infrastructure it needs already waiting for it. A new development may require substations, transmission connections, water mains, treatment capacity or other network reinforcement.

That infrastructure has to be funded.

The commercial arrangements used to support it can have significant consequences for the investor. Take-or-pay mechanisms, for example, can require a customer to commit to a minimum level of consumption, with a payment becoming due even where actual usage falls below that level.

For a project that will be developed in phases, this matters.

A data-centre development or hyperscale campus may ultimately require substantial capacity, but its demand may build over several years. A long-term commitment based on ultimate requirements can therefore create a significant financial burden during the early years of operation.

This is not necessarily an unreasonable allocation of risk. The utility may have incurred substantial capital expenditure specifically to serve the project and needs some certainty of recovery.

But it does mean the developer needs to understand the commitment as part of the project's economics, rather than treating it as a contractual detail to be negotiated after the investment decision has been made.

The same question arises with network expansion.

If a new transmission line or water infrastructure is required because of the project, who pays for it? If the project is delayed, scaled back or never reaches its projected demand, who carries the resulting risk?

These are questions that should be visible in the financial model.

They can also affect the attractiveness of one site over another. A site with a slightly higher land cost may prove more economical if the surrounding infrastructure is already available. Conversely, a seemingly attractive site may become considerably less attractive once the cost and timing of utility infrastructure are properly understood.

The Other Side Of The Equation

Up to this point, the discussion has largely been from the investor's perspective.

That is understandable. Without reliable power and water, the project cannot operate. But there is another side to the equation.

For the State in which a utility-intensive facility is located, a major investment can bring obvious benefits. There may be substantial capital expenditure, construction activity, tax revenues, new infrastructure and wider economic activity.

But there may also be significant demands.

The project may consume large quantities of electricity and water. New infrastructure may have to be developed to support it. Land that might otherwise have been used for another purpose is committed for the long-term.

And once the facility is operational, the number of permanent jobs may be relatively modest compared with the size of the capital investment. This raises a question that is becoming increasingly relevant as utility-intensive investments grow in scale:

Is the value of an investment adequately captured by the amount of money invested in it? The answer will depend on the nature of the project.

A data centre, for example, may not be a major employer in the conventional sense, but it can support digital infrastructure, connectivity, technology services and a wider ecosystem of businesses. A semiconductor facility may have a very different employment and supply-chain profile.

The point is not to rank one form of investment above

the another. It is that capital expenditure is only one measure of economic value.

There may be good reason for a State to look more closely at what sits behind the headline investment number: local procurement, supplier development, skills and training, technology transfer; infrastructure, tax revenues and the extent to which local businesses and communities participate in the economic activity generated by the project.

This is not necessarily about imposing additional obligations on investors. It is about understanding the investment in its full context.

For governments, the question is becoming not simply whether a project can be accommodated, but whether the resources committed to it produce the wider economic value that the State is seeking.

For investors, understanding that perspective early may be equally important.

The Bargain Has To Work Both Ways

The conversation, however, cannot be one-sided. If a State expects a major investment to generate wider economic value, the investor will reasonably expect the State to provide a sufficiently certain environment in which the investment can succeed.

That means clarity around land and approvals, but also confidence that the power and water infrastructure will be delivered within the required timeframe. It means understanding how tariffs and infrastructure costs will be allocated. It means knowing what happens when the system is under stress.

For the investor, certainty has a value. A project may be commercially attractive on paper, but the economics can change materially if a grid connection is delayed, if water capacity cannot be secured, if infrastructure costs are higher than anticipated or if the operator is exposed to losses for which it has no effective recourse.

The same is true for the relevant utility provider. The utility provider cannot be expected to absorb every risk associated with a customer's business model. Where substantial infrastructure has been built to serve a particular customer, the utility provider needs reasonable certainty that its investment will be recovered.

The objective, therefore, is not to eliminate risk. It is to understand where the risk belongs and to allocate it to the party best placed to manage it. That is ultimately what good project structuring is about.

When The Contract Cannot Absorb The Risk, The Project Must Be Designed To Withstand It

Long-term utility contracts cannot solve every problem. There will be event that are outside the reasonable control of the parties: grid emergencies, curtailment, regional transmission failures, contamination, equipment failure and other events that may interrupt supply.

The legal protections available to the utility providers make it particularly important for a utility-intensive facility to consider what happens if the contractual remedy is limited.

The answer may be to build greater resilience into the facility itself. For electricity, that may involve dual-circuit connections, connections to separate substations, battery storage and on-site generation. The appropriate configuration will depend on the facility and the level of availability required, but the principle is straightforward: the more critical the supply, the less sensible it is to rely on a single point of failure. There is greater need for reliable backup arrangements.

Water requires its own approach. On-site storage, recycling and more efficient cooling technologies can reduce dependence on external supply. Where feasible, alternative sources may provide another layer of protection.

These measures come at a cost. But the cost of resilience needs to be considered alongside the cost of failure – including lost revenue, customer claims, financing consequences and reputational damage.

There is also a timing issue. It is considerably easier to incorporate resilience into the design of a facility than to retrofit it after commissioning. Decisions on power redundancy, water storage and recycling therefore belong in the development phase, when they can still be properly engineered and priced.

The Risk Does Not Disappear. It Moves.

The same principle applies to contractual structure. A utility interruption may begin as a problem between the utility and the developer. But the financial consequences may ultimately fall elsewhere. The developer may have financing obligations. It may have entered into master services agreements with cloud tenants. Those customers may themselves have stringent service-level requirements.

If the upstream utility agreement provides limited recourse, but the downstream customer agreement imposes significant liability for an outage, the

developer can find itself carrying a risk it is unable to pass through. This is why the utility contract should never be considered in isolation.

Take-or-pay commitments, deficiency payments, curtailment provisions and force majeure clauses need to be considered alongside the obligations assumed downstream, where possible, the contractual treatment of events such as grid curtailment, load shedding, regional transmission failures or upstream water contamination should be considered carefully.

The same applies to CRESS arrangements. Renewable procurement may support a corporate sustainability strategy, but the physical electricity still travels through a grid that remains subject to its own operational constraints. The commercial structure therefore needs to take account of the relationship between renewable supply, grid access, firming capacity and applicable charges.

The important point is not that every risk can be negotiated away. It cannot. It is that the risk should be visible. A project is much easier to finance and operate when the parties understand what happens if something goes wrong, rather than discovering the allocation of risk only after interruption has occurred.

Before The Ground Is Broken

The most consequential decisions in a utility-intensive project are often made before construction begins. By the time the project has been designed, financed and contracted, many of the important choices will already have been made.

Where is the project located? How much power and water will it require? When will that capacity be needed? What infrastructure must be built? Who will pay for it? What happens if supply is interrupted? What level of backup and resilience is appropriate? And what does the host State expect from the investment?

None of these questions sits comfortably within a single discipline. They involve engineering, finance, commercial strategy, regulation and contract. That is precisely why they need to be considered together.

A project that looks attractive from a land or investment-incentive perspective may look rather different once the full cost of securing and protecting its utility supply is taken into account. Equally, a project that appears demanding from the perspective of resource consumption may create substantial wider economic value when its supply chain, skills development and infrastructure impact are properly understood.

The earlier those questions are asked, the more room there is to make sensible choices.

Looking Beyond The Connection

Peninsular Malaysia has good reason to remain ambitious about attracting utility-intensive investment. The country has built a strong proposition for data centres, semiconductors and other advanced industries, and the regulatory and infrastructure environment continues to evolve in response to growing demand.

But the realities of these investments extend beyond the connection point. Power and water can determine where a project can be built, when it can become operational and what it will cost. The terms on which those utilities are supplied can determine where financial risk ultimately sits. And the resources required to support the project inevitably have implications beyond the project itself.

That is where the conversation between investors and governments is likely to become more interesting.

Investors need certainty. Utilities need sustainable economics. Governments need to make responsible decisions about scarce resources and infrastructure. Communities, ultimately, will want to understand what the investment means for the places in which they live and work.

There is no single formula that will reconcile all of those interests. But there is value in recognising that they are connected. For an investor, power and water should therefore be considered long before the facility is ready to switch on. They belong in the site-selection process, the financial model, the engineering design and the contract negotiations.

For governments, the question is broader: not simply whether an investment can be accommodated, but whether the resources committed to it are likely to produce enduring value.

And perhaps that is the most important reality of all.

The connection may make the project possible. But it is everything that comes before – and everything that comes after – that determines whether the investment succeeds.

Sharifah Sazita S. Hamzah | Partner
Project, Infrastructure & Energy
sharifah@rdslawpartners.com

Mike Chan | Associate
Project, Infrastructure & Energy
mikechan@rdslawpartners.com

STRENGTHENING WORKER PROTECTION AND EMPLOYER READINESS: AN OVERVIEW OF THE PROPOSED AMENDMENTS TO MALAYSIA'S LABOUR LEGISLATION

by Rajeswari Karupiah & Sarah Idris

The proposals unveiled at the Konvensyen Perburuhan 2026 represent the next phase of Malaysia's labour-law reform. They range from increased annual leave and stronger forced-labour protection to new powers over worker accommodation, industrial disputes and trade-union governance. Their common objective is a fairer, more transparent and inclusive labour framework. Yet, the proposals do not all operate in the same direction. Some enlarge employee rights, while others increase administrative or employer discretion. The strength of the eventual legislation will therefore depend on the safeguards that accompany those powers.

On 18 June 2026, the Ministry of Human Resources (KESUMA) convened the Konvensyen Perburuhan 2026 at Wyndham Acmar Klang. Held under the theme “Pemeriksaan Undang-Undang Perburuhan: Mengimbangi Kebajikan Pekerja dan Kepentingan Majikan”, the convention was jointly organised by the Department of Labour Peninsular Malaysia (JTKSM), the Department of Industrial Relations Malaysia (JPPM), the Department of Trade Union Affairs (JHEKS) and the Industrial Court of Malaysia. It brought together key labour stakeholders to consider developments in Malaysia’s employment and industrial-relations framework, including reforms affecting the Employment Act 1955 (Act 265), the Employees’ Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446), the Industrial Relations Act 1967 (Act 177) and the Trade Unions Act 1959 (Act 262). At the time of writing, these reforms remain proposals presented for consideration at the convention and have not been tabled in Parliament as Bills. Their final scope, implementation timeline and commencement will therefore depend on the legislative process.

Together, these statutes regulate individual employment rights, migrant-worker accommodation, collective labour relations and trade-union administration. Reforming them as a package reflects the reality that worker protection depends not only on the content of contractual rights, but also on effective enforcement and collective representation. It also signals an effort to align individual employment standards, accommodation requirements and collective labour relations within a more coherent regulatory framework.

The reform agenda builds on the 2022 amendments to the Employment Act. Those amendments came into force on 1 January 2023 and expanded coverage to all private-sector employees, introduced seven days of paternity leave and flexible-work applications, reduced weekly working hours to 45 hours and created express provisions on discrimination and forced labour. The 2026 proposed reform exercise may therefore be viewed as the next phase: closing gaps revealed during implementation, strengthening remedies and modernising the administration and enforcement of labour standards.

Employment Act 1955: Stronger Entitlements And Enforcement Leave And Minimum Employment Standards

The most immediately visible proposal is the increase in statutory annual leave. Section 60E presently provides eight days for employees with less than two years' service, 12 days for service of two to less than five years, and 16 days for service of five years or more. The proposed entitlements are 12, 16 and 20 days respectively. This is consistent with Article 3(3) of the ILO Holidays with Pay Convention (Revised), 1970 (No. 132), which sets a minimum benchmark of three working weeks for one year of service. It is also long overdue: the Section 60E entitlements have not been revised since 1980. If enacted, the increase would require employers operating at the statutory minimum to revise handbooks and contracts, adjust leave provisioning and plan for higher accrued-leave liabilities.

Related amendments would prevent rest days and annual leave from running concurrently with paternity leave. More importantly, employers would be expressly prohibited from compelling employees to use annual leave. An express prohibition would give statutory force to the principle that annual leave is an employee entitlement rather than a device through which an employer transfers the cost of a temporary closure to its workforce. Employers would need to distinguish carefully between compulsory annual leave, an agreed collective shutdown, contractual shutdown leave and separately paid closure days.

The proposed repeal of Section 58A would also prevent pre-existing collective agreements from operating below the minimum benefits in Part XII of the Act. This would reinforce the statutory floor and align the Employment Act with the principle in Section 14(3) of the Industrial Relations Act that less favourable collective-agreement terms yield to written law.

Foreign Workers, Forced Labour And Access To Remedies

Section 60K already requires an employer to obtain the Director General's prior approval before employing a foreign employee. Existing approval conditions take account of outstanding orders and convictions under the Employment Act and other labour legislation. The proposals would expressly add compliance with Act 446, the Children and Young Persons (Employment) Act 1966 (Act 350) and the National Wages Consultative Council Act 2011 (Act 732) as approval criteria. They would also allow the Director General to prescribe the validity period of an approval

and revoke it, including where false information has been supplied. This would turn prior approval into a more continuous compliance mechanism, with potentially serious workforce and operational consequences for non-compliant employers.

The proposed clarification of Section 90B is equally important. Malaysia ratified the 2014 Protocol to the ILO Forced Labour Convention in March 2022. Section 90B currently criminalises conduct where an employer threatens, deceives or forces an employee to work and prevents that employee from leaving the relevant place or area. The proposal would specify that retaining an employee's passport falls within the element of preventing the employee from proceeding beyond that place or area. This gives statutory recognition to passport retention as a form of movement restriction, and reinforces the worker's right to move freely. The eventual wording should preserve genuinely voluntary and time-limited arrangements for administrative purposes, while making clear that an employee must retain effective control over the document and be able to retrieve it immediately.

Other proposals strengthen the remedial framework. The presumption as to who is an employee or employer under Section 101C would extend beyond prosecutions to other proceedings under the Act, including Labour Court claims. A six-year limitation period would be introduced for labour claims, discrimination disputes and sexual-harassment complaints. Courts could impose imprisonment of up to two years for non-compliance with Labour Court orders, while the Director General could certify an unpaid order to the Director General of Immigration to restrict a defaulting employer from leaving Malaysia. Section 83, which currently regulates the service of summonses, warrants and orders between Malaysia and Singapore, would be broadened to allow the Minister to make reciprocal arrangements with other worker source countries, supporting cross-border enforcement in an increasingly international workforce. These measures may improve enforcement, but travel restrictions and penal consequences should be accompanied by notice, an opportunity to be heard and clear avenues to challenge or discharge the restriction once payment is made.

Flexible Work And Employment Discrimination

The package also contains reforms that require closer scrutiny. Sections 60P and 60Q currently permit an employee to apply to vary the hours, days or place of work. An employer must respond within 60 days and state reasons for a refusal. The proposal would allow an employer to withdraw an approved arrangement where there is a business need. Although operational flexibility is legitimate, an unrestricted revocation power could weaken the practical value of the right to request flexible work. In order to maintain the integrity of the right, safeguards such as reasonable notice, written reasons, consultation and protection against retaliation would be important—particularly where the arrangement supports disability, pregnancy or caregiving responsibilities.

The proposed definition of 'discrimination in employment' would confine the term to discrimination in the form of cash payments. This is intended to address the difficulty faced by hearing officers under the present broad wording of Section 69F. However, if drafted as an exhaustive definition, it could narrow a jurisdiction which

currently extends to any dispute concerning a matter relating to discrimination in employment. Non-monetary discrimination may arise in recruitment, promotion, training, deployment, discipline or termination. A key question for the eventual Bill will be whether the definition is intended to delimit the Labour Court's monetary remedial jurisdiction or to exclude those wider forms of discrimination altogether. If the latter, significant discriminatory conduct could be left without an accessible statutory remedy.

Sexual-Harassment Investigations And Modernised Administration

Proposed Employment (Investigation of Sexual Harassment Complaints) Regulations would prescribe the procedure for an employer's inquiry under Section 81D. The procedure would include notice of the date, time and place of inquiry; attendance by persons with relevant knowledge; a closed inquiry; a reasoned written decision within 30 days of the complaint; retention of records for six years; and an appeal to the Director General. This would address an important procedural gap. Employers would require a written protocol, trained and impartial investigators, confidentiality controls and measures against victimisation. The internal process should also be coordinated with the separate remedy available through the Anti-Sexual Harassment Tribunal established under the Anti-Sexual Harassment Act 2022.

Other amendments would recognise electronic employee registers, simplify the submission of employee returns, establish a procedure for sums due to a deceased employee and update the Employment (Part-Time Employees) Regulations 2010. The part-time regulations would be aligned with the 45-hour statutory work week, cap daily working hours at eight (inclusive of overtime), extend paid public holidays from seven to eight days a year and make Malaysia Day a compulsory public holiday. These changes may be less prominent, but they are important to day-to-day compliance. The proposed provision that an employee is not entitled to wages for a period of absence will need to be drafted consistently with existing statutory leave, authorised absence, suspension and wage-calculation provisions to avoid unintentionally displacing more specific protections.

Act 446: From Minimum Standards To Immediate Remediation

Act 446 governs employee housing, accommodation and amenities in Peninsular Malaysia and Labuan. Its estate provisions address housing and health facilities, while Part IIIA regulates accommodation for employees in other sectors. The proposed amendments would clarify this division and bring centralised accommodation more consistently within the statutory definitions and reporting framework.

The principal shift is from certification and prosecution towards corrective intervention. The Director General would be empowered to cancel accommodation certificates; order accommodation or facilities to be replaced, altered or repaired; require temporary accommodation while work is undertaken; and direct that transport to and from the workplace be provided. The employer or centralised accommodation provider would bear the resulting cost and could not recover it

from workers through wage deductions. These powers adapt measures used during the COVID-19 emergency into a permanent framework. They protect workers during the period between detection of a breach and final enforcement, when unsafe accommodation may otherwise remain occupied.

The proposals also expand duties concerning the containment, rather than mere reporting, of infectious disease; permit inspection of workplaces or other premises suspected of being used as employee accommodation; extend penalties to breaches of written directions; modernise estate-housing construction standards; and require estate workers to receive basic items such as a bed, mattress, pillow, blanket and lockable cupboard on the same basis as workers in other sectors. Section 24H would be clarified to confirm that employee accommodation must comply with any applicable written law and is not confined to local-authority by-laws, a change directed at accommodation situated outside local-authority jurisdiction such as offshore fish farms or forestry sites. Employers using third-party accommodation should therefore reconsider any assumption that outsourcing transfers statutory risk. Contracts with providers should allocate responsibility for certification, occupancy reporting, inspection access, rectification, temporary rehousing, transport and indemnities.

A proposed ministerial exemption would remove the accommodation-certificate requirement for forestry and fisheries operations outside local-authority control. This may address genuine practical constraints and food-security concerns. Nevertheless, remoteness may heighten rather than reduce worker vulnerability. The effectiveness of any such exemption will depend on whether substantive minimum standards, reporting duties and inspection powers are preserved, or whether certification is replaced with an alternative sector-specific verification mechanism.

Industrial Relations: Earlier Resolution, With Access Safeguards

The Industrial Relations Act was substantially amended through changes brought into force in phases on 1 January 2021 and 15 September 2024. The 2026 proposals concern trade-union capacity and eligibility, secret ballots, multiple unions and sole bargaining rights, management prerogatives during collective bargaining, remedial powers under Section 8, the Section 20 representation process, application to statutory-body employees, prosecution for non-compliance and consistent terminology. Their ultimate effect will depend on precise drafting and the safeguards governing the exercise of the relevant powers.

The proposed Labour Dispute Prevention and Resolution System (LDPRS) and stronger internal grievance procedures reflect JPPM's stated aim of resolving more disputes at the workplace before they escalate to formal proceedings. Effective internal procedures can resolve disputes closer to the workplace, preserve employment relationships and reduce legal cost. They should not, however, become an inflexible exhaustion requirement that causes an employee to miss a statutory filing deadline. Much will depend on whether any new Director General discretion over Section 20 representations is governed by published criteria, reasoned decisions and a mechanism for reviewing procedural unfairness.

Trade-Union Governance: Regulation Without Undue Interference

The reforms to the Trade Unions Act have two strands. The first is procedural: filing fees would be standardised to reflect the RM10 minimum stamp-duty rate that took effect on 1 January 2025 and would replace a fee structure last revised in 1989. The second is more substantive and would restore or clarify powers of the Director General of Trade Unions following the 2024 commencement of the Trade Unions (Amendment) Act 2024.

The proposed powers include directing changes to a union's organisational structure; ordering a fresh annual general meeting or election where rules have been breached; investigating a substantiated complaint without being barred by domestic-remedy requirements; setting administrative eligibility criteria before approving an expanded membership scope; requiring a consolidated rule book; investigating and rejecting an invalid notice of change of officers; and imposing intermediate administrative measures such as compliance notices or limited suspension instead of prosecution or cancellation. The stated rationale is to provide a faster corrective middle ground for governance failures.

The need for credible union governance is substantial. Malaysia's trade unions represent a significant workforce, and their members are entitled to expect valid elections, transparent rules and reliable financial administration. At the same time, powers over elections, leadership, membership scope and internal complaints engage the autonomy of unions to organise their own affairs. Malaysia has ratified the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and its industrial-relations framework continues to receive international supervisory attention.

The eventual legislation will need to balance effective oversight with safeguards against overreach: objective grounds for intervention, prior notice and an opportunity to be heard, written reasons, proportionate sanctions and effective review. Caretaker control or suspension should be time-limited, with the least intrusive effective remedy preferred. Such safeguards would allow the regulator to protect members from serious governance failures without converting administrative oversight into routine interference with legitimate union activity.

Practical Implications For Employers And Workers

For employers, the reform package points towards a broader conception of labour compliance. It will not be enough to pay wages and observe contractual terms. Foreign-worker approvals, accommodation standards, internal investigations, grievance systems and compliance with administrative directions may become increasingly interconnected. Employers should be prepared to review annual-leave and shutdown practices; insert fair review mechanisms into flexible-work policies; prohibit passport retention; audit labour-supply chains and accommodation providers; preserve reliable digital records; and train managers who handle discrimination, sexual-harassment and grievance complaints.

For workers, the package promises higher minimum leave, clearer forced-labour protection, safer accommodation and more structured complaint mechanisms. Extending the employee-employer presumption may also assist workers whose arrangements are undocumented or deliberately obscured. Yet, those benefits will depend on accessible procedures, timely enforcement and protection against retaliation. Workers and unions should also anticipate greater documentary and governance obligations, particularly where remedies must first be pursued internally.

Conclusion

The Konvensyen Perburuhan 2026 reform agenda reflects an important shift from announcing rights to making them effective. Higher leave entitlements, passport-retention protection, corrective accommodation orders and structured investigation procedures can materially improve working conditions. For employers, the message is clear: compliance will no longer be a static, back-office exercise. The reforms demand that employers move from reactive observance to active stewardship—anticipating regulatory expectations, embedding compliance into operational systems and treating labour governance as a continuous obligation rather than a periodic audit item. Stronger enforcement also means greater discretion in the hands of regulators, and employers who have not prepared risk exposure not only to penalties but to reputational consequences in an increasingly transparent regulatory environment. The flexible-work, discrimination, Section 20 and trade-union proposals underscore why employers must engage early with the legislative process, invest in internal capability and advocate for clear statutory limits and procedural safeguards that enable genuine compliance.

Ultimately, stronger worker protection is not measured solely by the number of new offences or the severity of penalties. It depends on whether the law states rights clearly, provides proportionate and accessible remedies, supports compliance before harm occurs and preserves fair participation by all stakeholders. Employers who begin preparing now—reviewing leave policies, auditing accommodation and supply-chain arrangements, strengthening grievance and investigation protocols and training front-line managers—will be best positioned to meet the heightened expectations these reforms bring. If the elements of clarity, proportionality and accessibility are carried through into the eventual Bills, the proposed reforms could provide a more coherent and credible foundation for Malaysia's next phase of labour regulation—and employers who have invested in readiness will be its most effective partners in implementation.

LEAP MARKET 2.0: WIDENING FUNDRAISING ACCESS FOR MSMES, MID-TIER COMPANIES AND RETAIL INVESTORS

by David Lee & Shermaine Ng Bao Xuan

On 18 May 2026, the Securities Commission Malaysia (the SC) and Bursa Malaysia Securities Berhad (Bursa Malaysia) jointly announced a suite of proposed enhancements to the Leading Entrepreneur Accelerator Platform (LEAP Market), a platform dedicated to early-stage and emerging companies on Bursa Malaysia.

The proposals are set out in detail in Bursa Malaysia's Consultation Paper No. 2/2026 on Proposed Amendments to the LEAP Market Listing Requirements, ACE Market Listing Requirements and the Rules and Directives of Bursa Malaysia to reinvigorate the LEAP Market (the Consultation Paper).

These proposed enhancements follow the LEAP Market 2.0 announcement made by Finance Minister II Datuk Seri Amir Hamzah Azizan in March 2026, and form part of a wider policy effort to improve access to financing for micro, small and medium enterprises (MSMEs) and mid-tier companies (MTCs).

The reforms are said to support the objectives of the SC's Capital Market Masterplan 2026-2030 and align with the SC's Catalysing MSME and MTC Access to the Capital Market: 5-Year Roadmap (2024-2028) (the Roadmap), complementing the national MSME and MTC development agenda.

The Roadmap itself recorded that Malaysia's business landscape consists of approximately 8,500 MTCs, contributing around 36% of Malaysia's GDP and employing over 16% of the workforce, and set a key outcome of increasing MSME and MTC capital market fundraising from RM6.3 billion in 2023 to RM40 billion by 2028.

SC Chairman Dato' Mohammad Faiz Azmi described the move as a major step in building a more inclusive capital market for MSMEs and MTCs, noting that it reinforces the "funding escalator" from private to public markets by lowering costs and improving access to growth capital through a more facilitative regulatory environment.

The Consultation Paper records that, since the LEAP Market's launch on 25 July 2017, a total of 54 companies had successfully raised funds from their initial listings, amounting to RM275,834,773.00 in total funds raised, with a further 12 companies listed by way of introduction. As at 30 April 2026, 50 companies remained listed on the LEAP Market and 8 had been delisted.

Of these, 9 LEAP-listed corporations had transferred to the ACE Market as at the date of the Consultation Paper, with a further 2 transfer applications underway. Dato' Mohammad Faiz Azmi highlighted that Malaysia has an addressable pool of approximately 8,500 MTCs that could benefit from a clearer and smoother listing pathway.

This insight sets out:

- (a) the background and rationale for LEAP Market 2.0;
- (b) the current regulatory position of the LEAP Market;
- (c) the 5 key proposed enhancements;
- (d) the legal and practical implications for MSMEs, MTCs, advisers and investors; and
- (e) points for stakeholders to consider during the consultation period.

Background: The LEAP Market As It Currently Stands

The LEAP Market was launched on 25 July 2017 as an alternative capital-raising platform for SMEs that do not qualify for listing on the ACE Market, giving them access to fundraising and visibility through the capital market.

Admission is governed by the LEAP Market Listing Requirements issued by Bursa Malaysia, which acts as the approving authority. SC approval is not required for listing on the LEAP Market, although a copy of the information memorandum must be deposited with the SC.

It has been observed that the LEAP Market has suffered from persistent illiquidity since its 2017 launch. This has been attributed to trading having been strictly confined to sophisticated investors, a limited pool of market participants that has led to thin trading volumes, which in turn has discouraged new listings and hindered accurate price discovery on company valuations.

The Consultation Paper itself confirms that the LEAP Market operates as a qualified market accessible only to sophisticated investors under an adviser-driven, disclosure-based regime. It acknowledges that while this framework was consciously adopted to promote investor protection and market integrity, the targeted investor base has naturally resulted in more modest trading activity, noting that there were only 4 or 5 new listings on the LEAP Market in 2024 and 2025 respectively.

Under the existing framework, trading on the LEAP Market (other than by promoters or owners of the listed company) is restricted to "Sophisticated Investors" as defined by the Guidelines on Categories of Sophisticated Investors issued by SC on 5 February 2024. This category captures:

- (a) **Accredited Investors**, including licensed and registered persons, exchange holding companies, closed-end funds approved by the SC, and their chief executives and directors;
- (b) **High-Net-Worth Entities**, including trust companies, approved corporate trustees, and corporations or partnerships with net assets exceeding RM10 million; and

- (c) **High-Net-Worth Individuals**, being individuals whose net personal (or joint) assets exceed RM3 million (with primary residence contributing no more than RM1 million of that total), or whose gross annual income exceeds RM300,000.00 (or RM400,000.00 jointly with a spouse or child), or whose net investment portfolio in capital market products exceeds RM1 million, or who meet certain qualification, professional membership or capital-market work-experience criteria.

Retail investors, by contrast, have not been permitted to trade on the LEAP Market.

Companies seeking admission to the LEAP Market are also currently required to appoint an approved adviser to assist with both the listing process and post-listing compliance. The listing process itself is comparatively light-touch: there is no requirement for a prospectus, and the operative disclosure document is an information memorandum rather than a fully vetted prospectus of the kind required for Main Market or ACE Market listings.

The 5 Proposed Enhancements under LEAP Market 2.0

- (a) Alternative fundraising pathway for Equity Crowdfunding (ECF) Company and Venture Capital (VC)/Private Equity (PE) backed companies

Under the current regime, admission to the LEAP Market requires the appointment of an approved adviser. LEAP Market 2.0 proposes an alternative admission route for eligible ECF companies with a proven fundraising track record.

Under the Consultation Paper's proposed Rule 3.14 of the LEAP Market Listing Requirements (LEAP LR), an eligible ECF company may apply for admission directly without an approved adviser if, within the 7 years before the date of submission of its initial listing application, it has:

- (i) successfully completed at least 1 equity fundraising exercise on the ECF platform on which it was hosted; and
- (ii) raised an aggregate sum of at least RM5 million (which may include amounts raised through VC/PE firms registered with the SC, or an equivalent foreign regulator).

The company must also:

- (i) be assessed as suitable for listing having regard to its business and operations, corporate governance record, public interest and adequacy of disclosures;
- (ii) have secured a continuing adviser for at least one full financial year upon admission; and

- (iii) submit its initial listing application only after the expiry of at least 6 months from the completion date of its most recent ECF or VC/PE equity fundraising exercise.

The Consultation Paper further proposes that such a company must appoint a "listing agent", either the ECF operator that hosted it or the relevant VC/PE firm, to act as liaison with Bursa Malaysia during the admission process, although the listing agent's role does not extend to corporate finance advisory services such as advising on suitability or compliance with the LEAP LR. Following admission, such companies will still be required to appoint a continuing adviser to ensure ongoing compliance with post-listing obligations.

(b) Simplified disclosure document

An alternative disclosure document, termed the "Listing Document" under the Consultation Paper, will be introduced, adopting a simplified and structured format while retaining the essential information needed to support informed investment decisions.

The Consultation Paper proposes to re-designate the current information memorandum as the Listing Document, with prescribed disclosures presented in a standard template covering, among other matters, risk factors, related-party transactions and conflicts of interest, and financial information.

It further proposes to remove the current requirement to deposit the disclosure document with the SC, so that the document would only need to be registered with Bursa Malaysia concurrently with the initial listing application. The document would, however, remain subject to CMSA liability for any false or misleading statement or material omission.

Notably, the Consultation Paper proposes that the standard template exclude 2 categories of information that are currently expected in a comprehensive disclosure document:

- (i) details of the present directorships and controlling shareholdings held by specified shareholders and directors in businesses or corporations outside of the applicant's group; and
- (ii) details of any past material related party transaction entered into by the applicant or its subsidiaries in the last financial year, where such transactions have since ceased and will not continue after listing.

The items proposed to be reduced or reformatted are not, in substance, material to an investor's ability to make an informed decision, noting that core categories such as the business overview and risk factors are retained under the new format. What changes is the presentation and depth of certain fact-specific or compliance-orientated disclosures, rather than the availability of the categories of information most relevant to investment decision-making.

The stated aim of the simplified format is to enhance clarity, improve consistency and facilitate greater standardisation across submissions, thereby easing market access while preserving the quality and integrity of disclosure available to investors, and is expected to significantly lower overall listing costs for smaller businesses.

- (c) Broader investor participation: retail investors permitted for the first time.

This is the most significant proposed change. Retail investors, defined as any person who does not fulfil any of the criteria specified in the SC's Guidelines on Categories of Sophisticated Investors, will, for the first time, be permitted to participate in the LEAP Market, which has to date been reserved exclusively for sophisticated investors.

The Consultation Paper proposes that a retail investor may invest subject to the following caps (together, the Prescribed Investment Limits):

- (i) a maximum of RM100,000.00 in the subscription of securities offered or issued in an initial listing or a secondary fundraising by a listed corporation; and
- (ii) a maximum of RM100,000.00 held with each participating organisation for secondary market trading, subject to a total investment not exceeding RM250,000.00 at any time.

The Consultation Paper proposes that the Prescribed Investment Limits exclude:

- (i) all investments by a "specified shareholder" (broadly, a controlling shareholder, a person connected to a controlling shareholder, or an executive director who is a substantial shareholder) in their own corporation; and
- (ii) pre-listing investments of other existing securities holders.

The Consultation Paper also proposes a corresponding enhanced risk disclosure framework, requiring notification of the Prescribed Investment Limits in the listing document and other public documents, a risk disclosure statement to be signed by all investors before trading, and a declaratory approach under which a retail investor must declare compliance with the Prescribed Investment Limits before trading.

Industry commentary has framed this expansion as intended to create a more vibrant and liquid marketplace, providing promoters with better exit opportunities to realise their investments and enabling improved price discovery on company valuations.

This layered cap structure appears designed to balance the policy objective of democratising access to LEAP-listed companies against the higher risk profile inherent in early-stage and emerging-company investments, and

mirrors the tiered investment-limit approach already used in the ECF regime, under which retail investors are subject to a maximum of RM10,000.00 per issuer and RM50,000.00 in total within a 12-month period.

(d) Share-based payment to advisers

A share-based payment option will be introduced, allowing advisers to receive up to 50% of their advisory fees in the form of ordinary shares of the applicant. This is subject to safeguards:

- (i) a maximum shareholding limit of 2% per adviser;
- (ii) an aggregate cap of 5% across all advisers; and
- (iii) a 6-month moratorium on disposal of such shares.

This proposal is intended to reduce the cash cost of listing for MSMEs and MTCs while managing conflicts of interest and market-integrity concerns that can arise where advisers hold equity in the companies they advise.

(e) Seamless transfer from the LEAP Market to the ACE Market

The transfer framework from the LEAP Market to the ACE Market will be enhanced by removing the existing requirement, under Chapter 3A and Guidance Note 15A of the ACE LR and Rules 8.06 and 8.08 of the LEAP LR, for a transferring company to request a withdrawal of listing from the LEAP Market and offer its shareholders an exit offer or other equitable exit mechanism.

The Consultation Paper explains that this requirement was originally intended to give sophisticated investors a fair opportunity to exit if they did not wish to continue participating following the transfer to the ACE Market, but that in practice it had affected time-to-market and added cost and administrative complexity. In most past transfer applications, shareholders had undertaken not to accept the exit offer (with such undertakings given in 7 of the 9 completed transfers, or approximately 78%), and Bursa Malaysia had granted waivers accordingly.

As a complementary measure, the Consultation Paper proposes a new time-based delisting criterion under which a LEAP-listed corporation would be delisted if it fails to apply for a transfer of listing to the ACE Market by the expiry of 7 full financial years after its admission to the LEAP Market, or if its transfer application is rejected, together with a corresponding requirement for progressive disclosure of transfer plans from the 5th financial year onwards.

Based on the 9 completed transfers as at 6 May 2026, the listing period prior to transfer had ranged from approximately 2 years 10 months to 7 years 4 months, with most transfers occurring within approximately 5 to 6 years of listing.

This is intended to formalise and streamline the "funding escalator" concept referenced by the SC Chairman, positioning the LEAP Market as a transitional feeder market rather than a long-term listing venue, building on the fact that 9 LEAP-listed companies have successfully transferred to the ACE Market under the existing framework, with 2 further transfer applications underway.

Rationale And Policy Context

Bursa Malaysia's Chief Executive Officer, Dato' Fad'l Mohamed, characterised the reforms as building on the LEAP Market's role as an established entry point into the public market for MSMEs and MTCs, introducing greater flexibility in admission pathways, more streamlined disclosures and broader investor participation. He emphasised that these measures are intended to support MSMEs and MTCs as they participate in and grow through the capital market, while strengthening capital formation, reinforcing market depth and transparency, and maintaining appropriate standards of investor protection befitting a qualified market.

Read together, the 5 proposed enhancements can be understood as addressing structural weaknesses in the LEAP Market that the SC's Roadmap had already identified:

- (a) liquidity and exit concerns arising because access to the LEAP Market was limited to sophisticated investors;
- (b) a relatively high cost of issuance and compliance for MSMEs and MTCs, with the Roadmap noting that estimated total listing costs on the LEAP Market were approximately RM1 million to RM2 million, or around 13% of total funds raised, compared with 9% on the ACE Market and 4% on the Main Market;
- (c) a disclosure regime that, while lighter than a prospectus, may not have been optimally calibrated for the profile of issuers using the platform; and
- (d) an unclear and administratively heavy pathway for graduating to the ACE Market, notwithstanding the LEAP Market Transfer Framework introduced in 2023, which limited the LEAP Market's function as a genuine stepping-stone within the wider capital market ecosystem.

Implications Of The Proposed Amendments Under LEAP Market 2.0

- (a) For MSMEs and mid-tier companies

Eligible ECF companies gain a potentially faster and lower-cost route to the LEAP Market, bypassing the need for an approved adviser at the point of admission, although a continuing adviser will still be required post-listing.

Companies should assess, ahead of any ECF raise, whether structuring the

fundraise through a registered ECF platform or VC/PE firm with a view to a future LEAP listing is commercially attractive, given the RM5 million aggregate fundraising threshold over a 7-year look-back period and the mandatory 6-month cooling-off period before submission.

Companies should also note that, under the Consultation Paper's proposals, a LEAP-listed corporation would face delisting if it fails to apply for a transfer of listing to the ACE Market within 7 full financial years of admission (or if its transfer application is rejected), which effectively imposes an outer limit on how long a company may remain on the LEAP Market without progressing. At the same time, the removal of the mandatory withdrawal of listing and exit offer requirement should make the transfer itself faster and less administratively burdensome once a company does seek to graduate.

(b) For retail investors

Retail investors will gain access to an asset class previously closed to them, subject to the RM250,000.00 aggregate cap, RM100,000.00 per-issuer primary market cap, and RM100,000.00 per-broker secondary market cap.

Advisers and brokers dealing with retail clients in this space should note the practical compliance burden of tracking cumulative exposure across issuers and brokers to ensure these caps are respected, particularly once secondary trading develops.

Investors and their advisers should also bear in mind that LEAP-listed companies remain subject to a lighter disclosure regime than Main Market or ACE Market issuers (even after the proposed simplified disclosure document is introduced), and that prospectus liability concepts under the CMSA continue to have relevance to the standard of disclosure required.

(c) For approved advisers, ECF-Registered Market Operators (RMO) and VC/PE firms

ECF-RMOs and VC/PE firms stand to gain a new commercial role as listing agents for eligible ECF issuers, alongside a capacity-building obligation to support issuers progressing to the public market.

Approved advisers should consider the implications of the proposed share-based payment mechanism, including the governance and disclosure obligations that may attach to receiving up to 50% of advisory fees in shares, the 2% individual and 5% aggregate shareholding caps, and the 6-month disposal moratorium.

These features raise conflict-of-interest considerations that advisers will need to manage carefully, including in relation to independence and objectivity in advising on valuation and pricing where the adviser itself holds or will hold equity in the applicant.

(d) For the broader capital market ecosystem

If implemented as proposed, LEAP Market 2.0 would create a more continuous fundraising pathway spanning equity crowdfunding, the LEAP Market and the ACE Market, consistent with the SC's stated "funding escalator" objective.

This has implications for market intermediaries structuring fundraising strategies for MSME and MTC clients, who may increasingly plan multi-stage capital-raising journeys across these 3 tiers from the outset, rather than treating each platform as a discrete and separate fundraising decision.

Conclusion

LEAP Market 2.0 represents a material recalibration of the LEAP Market's position within Malaysia's capital market architecture. By opening the market to retail investors for the first time (subject to layered investment caps), simplifying disclosure through the new Listing Document, creating an alternative admission route for eligible ECF companies, permitting share-based adviser remuneration, liberalising the adviser and suitability assessment frameworks, and easing the transfer pathway to the ACE Market (while introducing a 7-year mandatory transfer deadline), the proposals set out in the Consultation Paper aim to strengthen the LEAP Market's role as a genuine stepping-stone between private and public capital markets for MSMEs and MTCs. Given Malaysia's addressable pool of approximately 8,500 MTCs, and against a backdrop in which 9 LEAP-listed companies have already migrated to the ACE Market (with 2 further applications pending), the reforms could, if adopted substantially as proposed, meaningfully expand the pipeline of companies progressing through the capital market escalator. However, the ultimate shape and effectiveness of the reforms will depend on the outcome of the public consultation closing 15 June 2026 and the final form of the amended LEAP LR, ACE Market Listing Requirements and Bursa Malaysia Rules and Directives, as well as the SC's concurrent review of the CMSA. Businesses, advisers and investors considering activity on the LEAP Market should monitor these developments closely and consider engaging with the consultation process where relevant to their interests.

This insight is for general information purposes only, is based on the proposals announced by the SC and Bursa Malaysia on 18 May 2026 and set out in the Consultation Paper dated 18 May 2026, and does not constitute legal advice. The proposals remain subject to public consultation and may change before finalisation.

David Lee | Partner
Capital Market
david.lee@rdslawpartners.com

Shermaine Ng Bao Xuan | Associate
Capital Market
shermaine.ng@rdslawpartners.com

ARTIFICIAL INTELLIGENCE AND INTELLECTUAL PROPERTY RECENT GLOBAL DEVELOPMENTS AND MALAYSIA'S PROPOSED COPYRIGHT ACT 1987 REFORMS

by Michael Soo & Wong Qi Shu

Artificial intelligence (AI) is moving faster than the law and its enforcement. Across the United States (US) and Europe Union (EU), courts are being asked whether training an AI on copyrighted works requires the owner's consent and compensation, and whether the works an AI generates deserve protection at all. Each ruling settles only a fragment, and the fragments do not fit together. These are questions on which billions of dollars and the future of the creative economy now turn, yet the answers are emerging case by case and jurisdiction by jurisdiction, often in open conflict.

This article surveys the key global developments since the second quarter (Q2) of 2026: the Anthropic settlement in the US, *GEMA v. Suno Inc.* in Germany, *CNN v. Perplexity* in New York, and the first generative-AI reference before the Court of Justice of the European Union (CJEU). It then turns to Malaysia, which has taken a different course. Rather than await a domestic test case, Malaysia is answering these questions by legislation, through the proposed amendments to the Copyright Act 1987 (CA 1987) and the forthcoming AI Governance Bill. The second part examines those reforms and offers a view on the shape the framework ought to take.

Part 1 — Key Global Developments Since Q2 2026

Bartz et al. v. Anthropic PBC — A Billion-Dollar Price Tag, But No Precedent

On 20 July 2026, District Judge Araceli Martínez-Olguín of the Northern District of California granted final approval to the USD 1.5 billion copyright settlement under which Anthropic will compensate authors whose pirated books were used to train its Claude chatbot. The settlement resolves the claims arising from Judge William Alsup's summary judgment ruling of June 2025, which held that training on copyrighted books was not itself unlawful, but that Anthropic's acquisition of pirated copies from shadow libraries was. The settlement covers more than 482,000 works, with each yielding approximately USD 3,000 before fees and costs.

The case establishes the first concrete pricing benchmark for the unauthorised use of pirated content in AI training and is the largest known copyright recovery in history. However, its precedential reach ought not to be overstated. The matter was disposed of by settlement rather than a final adjudication on the merits: the damages for piracy were never tested at trial, and no appellate court has pronounced on the question. The first-instance ruling did characterise the training as fair use, but that holding remains a district court determination, untested on appeal and confined to US law. It offers persuasive guidance at most and does not settle whether using copyrighted material to train AI models falls within the fair use defence.

GEMA v. Suno Inc. — Extraterritorial Reach

On 31 July 2026, the Munich Regional Court ruled in favour of GEMA, the German music collecting society, against the US-based AI music generator Suno (case no. 42 O 763/25). The court held that both the training conducted in the US and the musical output generated in Germany infringed copyright, granting injunctive relief, disclosure and a declaration of entitlement to damages. Its significance lies in being the first EU ruling to hold that AI training carried out entirely outside the EU can still give rise to German copyright liability, the opposite of the territoriality approach that defeated the training claims in *Getty Images v. Stability AI* [2025] EWHC 2863 (Ch) before the English High Court.

This ruling should put international AI developers on urgent notice. An AI developer might have hoped to train its AI model in a country with permissive copyright rules, then rely on the lawfulness of that training as a shield against liability elsewhere. This decision closes that route at two levels, jurisdiction and applicable law.

First, on jurisdiction, the court reached the US training in two steps. Section 131(1) of the German Collecting Societies Act 2016 (CSA), read with Section 32 of the German Code of Civil Procedure (CCP), gave the court international jurisdiction over the domestic acts (ie, the memorisation in the model and the outputs in Germany), under the principle of double functionality. The concentration rule in Section 131(2) CSA then drew the US training into the same court, since a collecting society may bring all its claims against one infringer before a single competent court. However, it should be noted that this gateway is available only to collecting societies, and it requires at least one place of infringement to lie in Germany.

Second, on applicable law, the court applied US copyright law to the US training, in accordance with the country-of-protection principle, and still found no fair use protection, because fundamentally here simple prompts produced outputs substantially similar to the originals. Separately, under German law for the outputs in Germany, the text and data mining (TDM) exception could principally cover the training, but not the memorisation of the works inside the model, which could be reproduced on request. On that footing, the court held that the AI model itself was an infringing copy. The exception failed for a further reason as there was no lawful access, because the works had been stream-ripped in breach of a technical protection measure. A user who circumvents such a measure cannot rely on the exception.

The AI developer thus found no refuge, whether under the law of the country where it chose to train, or under German law governing the acts that took place in Germany. The jurisdictional principle is firm: a court may take extraterritorial jurisdiction over training conducted abroad, where its domestic law permits this under the principle of double functionality. Whether that training in fact amounts to infringement, however, turns on the law of the country where the training took place, and separately, whether the output amounts to infringement turns on the law of the country where the infringing act occurs.

Cable News Network, Inc. (CNN) v. Perplexity AI, Inc. — AI Scraping the News

On 28 May 2026, CNN filed suit against Perplexity in the US District Court for the Southern District of New York (case no. 1:26-cv-04427), alleging that the AI search engine provider unlawfully copied thousands of CNN stories, videos and images to power its products and distributes identical or substantially similar competing content. The suit is CNN's first AI copyright action and advances a theory of infringement directed at the real-time scraping and redistribution of news content in AI-generated responses, distinct from the earlier wave of litigation.

The dispute is joined on the boundary between fact and expression. Perplexity's answer is a single proposition, that one cannot copyright facts, invoking the idea-expression dichotomy under which copyright protects original expression and not the underlying facts. CNN's response is that it asserts ownership not of the news itself but of the original expression through which it is reported: the selection of words, the editorial structure, the sourcing and the framing. The threshold question is therefore not whether facts are protected, since plainly they are not, but whether Perplexity reproduced CNN's protected expression.

Perplexity has yet to file its defence, but fair use is the defence every AI defendant in this wave has run, and it is expected here. It may prove difficult on these facts. Reproducing CNN's reporting in the responses served to readers arguably serves the same news-

reporting purpose as CNN itself, which is less likely to be transformative. The degree of exact reproduction weighs against Perplexity on the amount taken, and, most significantly, a response that spares the reader any need to visit CNN substitutes for the original and harms its market.

Like Company v Google Ireland Limited — Upcoming CJEU Decision

Like Company v Google Ireland Limited (case no. C-250/25) is the first preliminary reference before the CJEU to address generative AI and copyright. It arises from a dispute in which Like Company, a Hungarian press publisher, alleges that Google's chatbot Gemini reproduces and summarises substantial portions of its copyrighted articles without authorisation. Finding that the dispute turned on the interpretation of EU law, the Budapest court stayed the proceedings on 03.04.2025 and referred four questions to the CJEU.

The reference asks the CJEU to apply the InfoSoc Directive (2001/29/EC) and the Digital Single Market Directive (2019/790) (DSM Directive) to generative AI on the questions below: (1) whether a chatbot's answers that partially reproduce press content amount to a communication to the public; (2) whether training the model is an act of reproduction; (3) whether the TDM exception under article 4 of the DSM Directive covers it; and (4) whether output generated from a user's prompt is attributable to the service provider.

Advocate General Maciej Szpunar's opinion is scheduled for 3 September 2026, with the judgment expected some months later. It is highly significant as a CJEU ruling will bind all 27 Member States at once. As the first pronouncement by a supranational court on these questions, it is likely to shape courts and legislatures beyond the EU too, much as the DSM Directive's TDM regime has already become a reference point for jurisdictions, including Malaysia which is now designing their own exceptions.

The Common Thread, and Why Malaysia Is Not Waiting

The past AI-related legal developments share a common thread. Courts worldwide are grappling

with the same unresolved questions: whether AI training requires consent and compensation, and whether AI-generated outputs attract protection. Yet litigation is delivering answers piecemeal and often inconsistently. Malaysia has yet to record a court decision on AI and copyright. Rather than await its own test case, it is answering these questions by legislation.

Part 2 — Malaysia's Proposed Copyright Act Reforms: A Future-Ready Framework For AI

Malaysia's response is being assembled through two complementary instruments. The forthcoming AI Governance Bill governs accountability in the use of AI, while the proposed amendments to the CA 1987 regulate the rights of owners whose works are used in AI models, together with the rights arising from AI-generated works. Read together, they are intended to form a coherent legal framework for AI in Malaysia.

The Intellectual Property Corporation of Malaysia (MyIPO) describes the reform as a future-ready copyright framework. Unveiled through a public consultation that closed on 14 August 2026, it represents the most comprehensive revision of the CA 1987 since the digital-era amendments, signalling an intent to align Malaysia with global standards while enhancing local enforcement and commercialisation. The proposals now advance towards finalisation.

The Heart of the Reformation: Designing the TDM Exception

The central design question concerns the shape of the TDM exception. Its purpose is to give AI developers clear legal certainty at the outset: a defined statutory safe harbour within which computational analysis may proceed, without the uncertainty on whether the use would later be excused as fair dealing or fair use in litigation. In this regard, two international models, drawn from Singapore and Japan, are under consideration.

Japan's purpose-based model operates as a two-stage filter. A purpose test first distinguishes uses that enjoy a work's expression (such as reading or viewing) from information-analysis uses (such as data mining and AI training), where the work is exploited for its data rather than its expression. Only information-analysis uses qualify for the exception. A subsequent market-harm test then excludes any use that would unreasonably prejudice the legitimate interests of the rights holder, in particular by substituting for the original or causing economic harm. The Japanese model's strength is that it directly targets market substitution, however its weakness is that both stages turn on evaluative judgment which remains uncertain until interpretation accumulates.

On the other hand, Singapore's lawful-access model takes a simpler path. It permits computational data analysis for any purpose, provided one condition is met: the user must have lawful access to the work, by purchase, licence, subscription or a legitimately open source. The exception inherently excludes material acquired unlawfully, such as pirated copies or unauthorised downloads. Its strength is certainty, lawful access being a comparatively bright-line condition an AI developer can satisfy

and document in advance, however, unlike Japan, it carries no express market-substitution safeguard.

In authors' collective view, the soundest design adopts both models as two cumulative lines of defence. The first is lawful access: every work used to train a model must be lawfully acquired, by purchase, licence, subscription or a legitimately open source, with no cover for pirated or otherwise unlawfully obtained material. This bright-line gate at the input stage carries most of the weight, because it is here that the owner's consent is deemed to be given and some form of compensation flows from the lawful access. The second is a market-harm backstop: even where access is lawful, the exception should not extend to uses that substitute for or materially damage the market for the original work. This filter is deliberately narrow, a safeguard against the egregious case rather than a licence for judicial second-guessing, so the certainty conferred by the access gate is preserved. A use is excepted only if it passes both.

This dual structure would serve MyIPO's stated aims directly. The lawful-access requirement ensures that works are used with the owner's consent, and that owners are fairly compensated at the point of acquisition, honouring the creative sectors' demand for consent, compensation and transparency. The market-harm backstop protects the revenue streams on which continued creation depends. Together they secure certainty for AI developers and fair treatment for rights holders in a single exception.

Opt-In vs Opt-Out

Two further proposals refine the boundary of what counts as lawful material for AI training. The first concerns the mode of authorisation. In their consultation responses, creative-sector stakeholders have expressed a preference for an opt-in approach, meaning their works should be available for mining only where the owner has affirmatively consented, rather than swept in unless the owner opts out.

AI developers would unsurprisingly prefer the opposite default of opt-out, under which works are available for mining unless the owner has affirmatively withdrawn them, the burden falling on the owner to withdraw rather than on the AI developers to secure countless individual permissions.

The disagreement between the two sides comes down to one question: is the right to authorise TDM separate from the right to access to a work? Owners are likely to argue that it is separate, in the same way that different rights already attach to different uses of a copyright work, and that mining accordingly requires its own consent regardless of how the work was accessed. AI developers are likely to argue the opposite: if the exception already demands that every work be lawfully acquired, the owner has already granted access and been compensated at the point of acquisition, so requiring a separate consent for TDM imposes a further layer of authorisation on top of one already given, a double consent for a single body of works. This would be unworkable at the scale AI training demands, where a model may draw on millions of works, and would negate much of the certainty the exception is meant to confer.

The choice between these defaults mode of authorisation is the sharpest point of balance in the whole TDM exception design. Therefore, MyIPO will need to weigh this carefully, as its resolution will determine the practicality of AI training in Malaysia.

Orphan Works: Unlocking the Unfindable

A related proposal addresses a different problem: works that no one can license because their owners cannot be found. The reform explores a lawful mechanism for such orphan works, defined as works whose rights holders cannot be identified or located despite a diligent search. Where that search is conducted and documented, the work may lawfully be used. Such a mechanism would unlock archives and datasets that would otherwise lie idle. It does not weaken copyright protection, since access remains conditioned on a genuine and documented search for the owner.

Its significance for AI training is considerable. The provenance of training data is increasingly determinative of liability, and a diligent-search safe harbour offers AI developers a lawful route to material whose ownership is obscure, without harming any rights holder.

Human Creativity as the Threshold: Certainty by the Statute

For AI-generated works, the threshold question is one of subsistence before ownership: whether the output qualifies for copyright protection at all, before one asks who owns it. The reform's signal choice is to settle this by legislation rather than await judicial interpretation in Malaysia. Under the instant proposals, protection requires sufficient human creativity: it will continue to hinge on sufficient human authorship and creative contribution, consistent with the human-centred originality threshold the CA 1987 has always maintained, with the human author being the first owner of the work. It will be clear that wholly autonomous outputs produced without meaningful human contribution, such as, simple prompts and instructions, would not be eligible for protection at all. Fixing this in the statute, rather than leaving it to a test case Malaysia has yet to see, gives certainty on two points: which outputs are protected, and who owns them.

Conclusion

The global picture is one of hard questions answered in fragments. Across the jurisdictions surveyed above, courts are reaching for the same underlying principles. Yet each court reaches its own answer. What emerges is not a settled law of AI and copyright, but a patchwork of first-instance rulings, still open to appeal, still confined to their own jurisdictions, and still capable of pulling in different directions.

Malaysia's response is to supply by legislation the certainty that litigation elsewhere has not managed to deliver. The AI Governance Bill addresses conduct, governing how AI systems are built, deployed and used. The Copyright Act amendments address rights, governing what may lawfully be used to train those systems and what protection their output may claim. Read together, the two instruments assemble a coherent and deliberate legal framework for AI.

Whether that ambition will be realised will depend on the choices still to be made, particularly the shape of the TDM exception, the opt-in and opt-out question canvassed above, and how the balance is struck between the competing interests of AI developers and creators. If that balance is struck well, the reform will mark a decisive shift from soft-law governance towards enforceable obligations, and position Malaysia among the region's leaders in responsible AI adoption.

Michael Soo | Partner
Intellectual Property
michaelsoo@rdslawpartners.com

Wong Qi Shu | Associate
Intellectual Property
qishu@rdslawpartners.com

For further information, please contact us:

Datuk D P Naban

Senior Partner

naban@rdslawpartners.com

Amira Ahmad Azhar

Partner

amira@rdslawpartners.com

Austen Emmanuel Pareira

Partner

austen@rdslawpartners.com

Bahari Yeow Tien Hong

Partner

bahari@rdslawpartners.com

Chia Loong Thye

Partner

ltchia@rdslawpartners.com

David LH Lee

Partner

david.lee@rdslawpartners.com

Falisa Abu Bakar

Partner

falisa@rdslawpartners.com

Farah Shuhadah Razali

Partner

farah@rdslawpartners.com

**Tan Sri Datuk
Harmindar Singh Dhaliwal**

Partner

harmindar@rdslawpartners.com

Hurriyyah Kamaruzzaman

Partner

hurriyyah@rdslawpartners.com

Kamilah Kasim

Partner

kamilah@rdslawpartners.com

Kenny Lam Kian Yip

Partner

kenny@rdslawpartners.com

Lim Sheh Ting

Partner

shehting@rdslawpartners.com

Lim Zhi Jian

Partner

jian@rdslawpartners.com

Michael Soo

Partner

michaelsoo@rdslawpartners.com

Michele Kythe Lim

Partner

michele@rdslawpartners.com

Dato' Nadia Marni

Partner

nadiamarni@rdslawpartners.com

Nagarajah Muttiah

Partner

naga@rdslawpartners.com

Ooi Bee Hong

Partner

beehong@rdslawpartners.com

Rajeswari Karupiah

Partner

rajeswari@rdslawpartners.com

Raphael Tay

Partner

raphael@rdslawpartners.com

Rosli Dahlan

Partner

rosli@rdslawpartners.com

Sharifah Sazita

Partner

sharifah@rdslawpartners.com

S. Saravana Kumar

Partner

sara@rdslawpartners.com

Steven Perian KC

Partner

speriankc@rdslawpartners.com

Tan Gek Im

Partner

gekim@rdslawpartners.com

Teo Siang Ly

Partner

siangly@rdslawpartners.com

Vinayak Sri Ram

Partner

vinayak@rdslawpartners.com

Yap Wai Ming

Partner

waiming@rdslawpartners.com



Rosli Dahlan Saravana Partnership is an award winning full-service commercial law firm focusing on the following practice areas:

- **Appellate Advocacy**
DP Naban
naban@rdslawpartners.com
Farah Shuhadah Razali
farah@rdslawpartners.com
Tan Sri Datuk Harmindar Singh Dhaliwal
harmindar@rdslawpartners.com
Rosli Dahlan
rosli@rdslawpartners.com
Steven Perian KC
speriankc@rdslawpartners.com
- **Banking & Finance (Conventional and Islamic)**
Hurriyyah Kamaruzzaman
hurriyyah@rdslawpartners.com
Tan Gek Im
gekim@rdslawpartners.com
Teo Siang Ly
siangly@rdslawpartners.com
- **Banking & Finance Litigation**
Farah Shuhadah Razali
farah@rdslawpartners.com
- **Capital Markets (Debt & Equity)**
David LH Lee
david.lee@rdslawpartners.com
Hurriyyah Kamaruzzaman
hurriyyah@rdslawpartners.com
- **China Desk**
Kenny Lam Kian Yip
kenny@rdslawpartners.com
Lim Sheh Ting
shehting@rdslawpartners.com
Michael Soo
michaelsoo@rdslawpartners.com
Teo Siang Ly
siangly@rdslawpartners.com
- **Civil & Commercial Disputes**
Austen Emmanuel Pareira
austen@rdslawpartners.com
DP Naban
naban@rdslawpartners.com
Farah Shuhadah Razali
farah@rdslawpartners.com
Nagarajah Muttiah
naga@rdslawpartners.com
Rosli Dahlan
rosli@rdslawpartners.com
- **Commercial Debt Recovery and Insolvency**
Farah Shuhadah Razali
farah@rdslawpartners.com
- **Competition Law**
Ooi Bee Hong
beehong@rdslawpartners.com
- **Construction and Arbitration**
DP Naban
naban@rdslawpartners.com
Kamilah Kasim
kamilah@rdslawpartners.com
Vinayak Sri Ram
vinayak@rdslawpartners.com
- **Corporate Fraud & Economic Crime**
DP Naban
naban@rdslawpartners.com
Rosli Dahlan
rosli@rdslawpartners.com
Steven Perian KC
speriankc@rdslawpartners.com
- **Employment & Industrial Relations**
Rajeswari Karupiah
rajeswari@rdslawpartners.com
- **Energy, Infrastructure & Projects**
Falisa Abu Bakar
falisa@rdslawpartners.com
Kamilah Kasim
kamilah@rdslawpartners.com
Sharifah Sazita
sharifah@rdslawpartners.com
- **Environment, Social and Governance (ESG)**
Falisa Abu Bakar
falisa@rdslawpartners.com
Kenny Lam Kian Yip
kenny@rdslawpartners.com
Sharifah S. S. Hamzah
sharifah@rdslawpartners.com
- **Fintech**
Raphael Tay
raphael@rdslawpartners.com
- **Government & Regulatory Compliance**
Hurriyyah Kamaruzzaman
hurriyyah@rdslawpartners.com
Ooi Bee Hong
beehong@rdslawpartners.com
Rosli Dahlan
rosli@rdslawpartners.com
- **Intellectual Property**
Bahari Yeow Tien Hong
bahari@rdslawpartners.com
DP Naban
naban@rdslawpartners.com
Tan Sri Datuk Harmindar Singh Dhaliwal
harmindar@rdslawpartners.com
Kamilah Kasim
kamilah@rdslawpartners.com
Lim Zhi Jian
jian@rdslawpartners.com
Michael Soo
michaelsoo@rdslawpartners.com
- **Middle East Desk**
Sharifah S. S. Hamzah
sharifah@rdslawpartners.com
- **Public Private Partnership**
Sharifah S. S. Hamzah
sharifah@rdslawpartners.com
- **Shareholders & Board Disputes**
Austen Emmanuel Pareira
austen@rdslawpartners.com
- **Farah Shuhadah Razali**
farah@rdslawpartners.com
- **Mergers & Acquisitions**
David LH Lee
david.lee@rdslawpartners.com
Hurriyyah Kamaruzzaman
hurriyyah@rdslawpartners.com
Raphael Tay
raphael@rdslawpartners.com
Yap Wai Ming
waiming@rdslawpartners.com
- **Personal Data Protection**
Ooi Bee Hong
beehong@rdslawpartners.com
- **Conveyancing & Real Estate Transactions**
Chia Loong Thye
ltchia@rdslawpartners.com
Hurriyyah Kamaruzzaman
hurriyyah@rdslawpartners.com
Lim Sheh Ting
shehting@rdslawpartners.com
Tan Gek Im
gekim@rdslawpartners.com
- **Maritime & International Shipping**
Nagarajah Muttiah
naga@rdslawpartners.com
- **Start-Ups, Scale-Ups & Digital Entrepreneurship**
Lim Zhi Jian
jian@rdslawpartners.com
- **Tax Incentives**
Amira Azhar
amira@rdslawpartners.com
S. Saravana Kumar
sara@rdslawpartners.com
- **Tax, SST & Customs**
Amira Azhar
amira@rdslawpartners.com
DP Naban
naban@rdslawpartners.com
S. Saravana Kumar
sara@rdslawpartners.com
- **Technology, Multimedia & Telecommunications**
Lim Zhi Jian
jian@rdslawpartners.com
- **Trade Facilitation**
Amira Azhar
amira@rdslawpartners.com
S. Saravana Kumar
sara@rdslawpartners.com
- **Wills & Estate Administrations**
Tan Gek Im
gekim@rdslawpartners.com



Level 16, Menara 1 Dutamas, Solaris Dutamas. No. 1 Jalan Dutamas 1,
50480 Kuala Lumpur, Malaysia | Tel: +603 6209 5400 | Fax: +603 6209 5498
Suite S-21E & F 21st Floor, Menara Northam. No. 55, Jalan Sultan Ahmad Shah
10050 Georgetown, Penang, Malaysia | Tel: +604 370 1122 | Fax: +604 370 5678
8-35, Menara Delima Satu, Jalan Forest City 1, Pulau Satu, Gelang Patah,
81550 Johor Bahru, Malaysia | Tel: +607 585 6414 | Fax: +607 509 7614

