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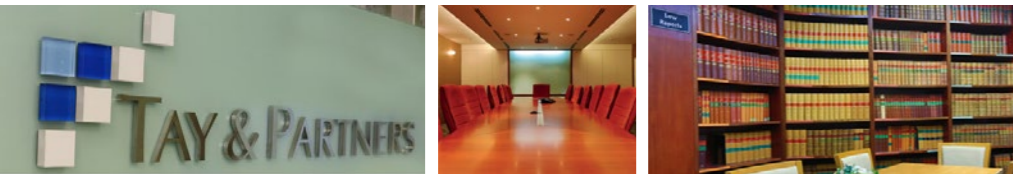
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# LegalTAPS

- **AN OVERVIEW OF THE RECENT AMENDMENT TO THE HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966**
- **3D PRINTING**
- **MALAYSIAN AVIATION COMMISSION ACT 2015**

**NEW  
DEVELOPMENT TO  
THE STRATA  
TITLES ACT 1985**





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# CONTENT

**1** NEW DEVELOPMENT TO THE STRATA TITLES ACT 1985  
by Fiona Fong

**3** AN OVERVIEW OF THE RECENT AMENDMENT TO THE HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966  
by Danielle Tan

**6** 3D PRINTING  
by Lim Bee Yi

**8** MALAYSIAN AVIATION COMMISSION ACT 2015  
by Yeoh Jit Wei

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# NEW DEVELOPMENT TO THE STRATA TITLES ACT 1985

by Fiona Fong

## Background of the new development

**P**rior to the coming into force of the Strata Titles (Amendment) Act 2013 (“STA 2013”) and the Strata Management Act 2013 (“SMA 2013”), the Strata Titles Act 1985 (“STA 1985”) and the Building and Common Property (Maintenance and Management) Act 2007 (“BCPA 2007”) were the laws governing strata management. STA 1985 has been amended a few times over the years since its enactment as a result of criticisms and complaints voiced against its inadequacy and obsolete application. BCPA 2007 was enacted to provide for the proper maintenance and management of buildings and the common property after delivery of vacant possession by the developer to the purchasers and before the management corporation comes into existence.

However STA 1985 and BCPA 2007 have several blind spots and consequently have led to different interpretations and ambiguity in the laws which have resulted in the occurrence of different strata management practices and malpractices.

With effect from 1 June 2015, the long awaited STA 2013 and SMA 2013 came into operation in all the states in Peninsular Malaysia and the Federal Territories (save for the state of Penang where SMA 2013 came into effect on 12 June 2015). As a result of which, BCPA 2007 has been repealed and replaced with SMA 2013. All the provisions relating to management of subdivided buildings and parcels under STA 1985 have been taken out and placed solely under the governance of SMA 2013. The implementation of SMA 2013 is supplemented by the Strata Management (Maintenance & Management) Regulations 2015 and the Strata Management (Strata Management Tribunal) Regulations 2015.

## ■ The impact of the STA 2013 and the SMA 2013

### (1) Expedition of the application for subdivision of a building or land and the issuance of strata titles

Previously under section 8(2) of the STA 1985, application to subdivide a building can be made only after the building is completed i.e. within 6 months from the date of certificate of completion and compliance (“CCC”) or within 6 months from the date of the sale (in the event the sale of the building or land parcels is made after the issuance of the CCC).

This section 8(2) was amended by the STA 2013 to provide for application to subdivide a building at super structure stage (i.e. the stage upon the completion of building works. Administratively, it may mean completion of building works up to completion of walls that are necessary

for measurement of parcels, accessory parcels and common property) within 3 months from the date of issuance of the document that certifies the super structure stage (“Super Structure Stage Certificate”). The Super Structure Stage Certificate is required to be submitted by the original proprietor of the land in the application for the certificate of proposed strata plan.

The application for subdivision shall be made in 2 stages i.e. (i) to apply for a certificate of proposed strata plan; and (ii) to apply for subdivision within a period of 1 month from the date of issuance of the certificate of proposed strata plan pursuant to the new section 8A.

Section 8A was inserted by the STA

2013 to provide for application for the certificate of proposed strata plan with the Director of Survey by the original proprietor of the land to be made within the time frame in the events specified in the newly amended section 8(2).

Section 9A was also inserted to replace section 10A of the STA 1985 allowing for the issuance of the provisional strata title for a provisional block in respect of land parcels, and not only in respect of buildings.

The duration of the work process of issuance of the strata titles will be shortened and owners of the strata units will be able to receive their strata titles sooner.

## (2) Issuance of the strata titles to the parcels upon purchasers taking vacant possession of the parcels and transfer of the strata titles thereafter

The new section 12 of the Housing Development (Control and Licensing) Regulations 1989 as introduced by the Housing Development (Control and Licensing) (Amendment) Regulations 2015 (albeit not having been implemented) provides that the Developer shall as expeditiously as possible, apply for subdivision of the building or land so as to obtain the issue of separate strata titles to the parcels under the STA 1985 before the delivery of vacant possession to the purchasers. The Housing Development (Control and Licensing) (Amendment) Regulations 2015 is consistent with the STA 2013 and its implementation will pave the way for delivery of vacant possession of housing accommodation only when the strata titles have been issued.

Pursuant to the insertion of section 19A of the STA 1985, the time frame for execution of transfer instrument by the landowner is reduced from 12 months to 30 days from the date of issuance of the strata title whereas the time frame for execution of transfer instrument by the purchaser is reduced from 12 months to 30 days from the date of notice of transfer of the strata titles is issued to him or from the date of purchase of the parcel, whichever is the later.

For new projects that are approved after the implementation of the STA 2013 and the SMA 2013, the strata titles to the parcels will be issued upon purchasers taking

vacant possession of the parcels upon which there will be no need to establish the joint management body .

## (3) Creation of subsidiary management corporations in a two-tier management corporation scheme

Section 17A was introduced by the STA 2013 to permit the designation of limited common property and creation of one or more subsidiary management corporations only for the purpose of representing the different interests of parcel proprietors by way of comprehensive resolution conducted under the SMA 2013.

Such 2-tier management corporation scheme, namely a main management corporation aiming to maintain and manage common property enjoyed by all parcel owners and a subsidiary management corporation aiming to maintain and manage the limited common property that is exclusively enjoyed by the limited parcels owners, is ideal for mixed development projects.

## (4) Establishment of the new Strata Management Tribunal

The Strata Titles Board established under Part IXA of the STA 1985 is now deleted and replaced by the Strata Management

Tribunal which will be governed by the Strata Management (Strata Management Tribunal) Regulations 2015. The new Strata Management Tribunal is established by the SMA 2013 to hear and determine disputes relating to strata-titled properties.

## (5) Compulsory subscription of damage insurance policy

Section 93 of the SMA 2013 provides for a compulsory damage insurance policy to be taken out by the person who has a duty or is responsible to maintain and manage any building .

The liability of the insurer can be limited to an amount specified in the damage insurance policy which shall however be at least the reinstatement value of the building indicated by the last valuation obtained for the building. A reinstatement valuation of the building shall be obtained from a registered valuer at least once every 5 years.

## (6) Presumption to be made in respect of any alleged defect in a parcel situated immediately above another parcel

Section 142 of the SMA 2013 provides for presumption to be made, in the absence of proof to the contrary, that the defect is within a parcel situated immediately above another parcel if there is any evidence of dampness, moisture or water penetration on the ceiling or the furnishing material attached to ceiling that forms part of the interior of the parcel immediately below the first-mentioned parcel.

## CONCLUSION

Generally, the implementation of the STA 2013 is aimed to make the strata titles' management "customer-focused" on the needs and interests of the buyers and to improve the delivery system of land administration in the management and issuance of strata titles. With the ever-rising development industry in the country, the implementation of the STA 2013 would undoubtedly bring forward a speedier, clearer and more efficient land and strata

titles administration system. Nevertheless, it is believed that even the best of legislation enacted to resolve problems would remain ornamental pieces until and unless strict enforcement is carried out. Therefore, how far and soon can one truly enjoy the benefits of the newly improved regime of the strata laws would depend on how effective the law is implemented, as the saying goes, "The law is only as good as its enforcement".



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# AN OVERVIEW OF THE RECENT AMENDMENT TO THE HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966

by Danielle Tan

**AN** abandoned housing project is a serious issue which cannot be ignored in Malaysia. Based on the official statistics, there were 216 private housing projects certified to be abandoned for the period between year 2009 and 31 January 2015. As such, the government has amended the existing laws to improve the legal aspects to enable the National Housing Department and the Ministry of Urban Wellbeing, Housing and Local Government to take more aggressive action against irresponsible developers and to protect house buyers from being victims of abandoned projects.

The Housing Development (Control and Licensing) Act 1966 ("Act 118") which provides for the control and licensing of the business of housing development in Peninsular Malaysia and the protection of the interest of the purchasers has been in force since 29 August 1969 and this Act has gone through 5 times of amendments in which the last amendment was made on 12 April 2007.

The Housing Development (Control and Licensing) (Amendment) Act 2012 ("Act 1415") which was gazetted on 9 February 2012 came into operation on 1 June 2015. Even though the Amendment Act was gazetted in 2012, it was not enforced earlier as the Act needed to be enforced together with the Strata Management Act 2013 and Strata Titles Act (Amendment) 2013.

The amendments to Act 118 involved 8 existing provisions, 1 new provision and the abolition of 1 provision, as follows:-

1. Amendment of section 3 where the interpretation of a

'housing developer' has been extended to include a person or body appointed by a court of competent jurisdiction to be the provisional liquidator or liquidator for the housing developer in a case where the housing developer is under liquidation.

Let's take a common scenario in the housing development industry: A housing developer company was wound up and the court had appointed a liquidator to take over the affairs of the company. The liquidator then called for a Purchasers Verification exercise and charged 2% of the purchase price as administrative fee in transferring the separate title / strata title to the house buyers; or when the current house buyer wanted to sell his property to another party pending issuance of the separate title / strata title, the liquidator imposed an administrative fee (range between a certain sum to 3% of the purchase price) on the house buyer for a written confirmation of the record of the beneficial owner of the property in the housing development and consent for the assignment. The imposition of the administrative fee on the house buyers is certainly a burden on them. This issue is not resolvable by Act 118 as the conduct of affairs of the liquidators is not covered by Act 118 but the Companies Act 1965 which allows the liquidators to collect fees permitted by the court or a committee of inspection or through an agreement with its creditors.

As a result of the amendment, a liquidator will be subjected to the duties imposed by Act 118 and may be liable for the offences of breaching such duties of a housing developer. That is to say, a liquidator will not be allowed to charge or impose any administrative fee on the house buyers when carrying out his duties under the sale and purchase agreement, for example,

when updating the record of ownership and perfecting the transfer of the separate title / strata title, etc.

2. Amendment of section 6 where the developer's requisite deposit has been increased from RM200,000 to 3% of the estimated construction costs (including financial costs, overhead costs and all other expenses necessary for the completion of the housing development but excluding the land cost).

This amendment seeks to ensure that only housing developers who have a strong financial position and are thoroughly committed are involved in the housing development industry and that there are financial resources available for the completion of the development in the event a project is certified to be an abandoned project.

Under Regulation 11A of the Housing Development (Housing Development Account) Regulations 1991, the Housing Controller may use the money in the Housing Development Account (HDA) to assist in the completion of problematic housing projects until the issuance of the Certificate of Completion and Compliance (CCC) and/or to comply with an award made by the Tribunal for Homebuyer Claims.

3. Amendment of section 7B to include section 7 enables legal action to be taken against the housing developer who commits an offence under section 7 where the housing developer's license has expired but the project has not been completed at the time the offence was committed.

The amendment on section 7B applies to 2 categories of housing developers, i.e. licensed housing developers and housing

developers whose licenses have expired pending completion of the housing projects.

4. Amendment of section 8A entitles a house buyer to terminate the Sale and Purchase Agreement (SPA) at any time if the licensed developer refuses to carry out or delays or suspends or ceases work for a continuous period of 6 months or more after the execution of the SPA.

Previously, the house buyers do not have such right of termination. Instead, the house buyers would need to apply to the Ministry of



Housing and Local Government for approval to terminate the SPA and such application shall be received by the Minister within 6 months after the execution of the SPA. Furthermore, the application requires the consent of at least 75% of all the purchasers who have entered into the SPA and agreed with the housing developer in writing to terminate the SPA.

Hence, through this amendment, the purchaser can individually apply to terminate the SPA at any time if there is no progress of work at the construction site continuously for 6 months or more after the SPA was signed provided that the purchaser has obtained the written consent from the end financier and

the Controller has certified the abandoned project.

5. The amendment to section 16N aims to expand the jurisdiction of the Tribunal for Homebuyers Claims ("the Tribunal") to enable the house buyers to claim damages in the Tribunal for cases involving SPA entered with the unlicensed housing developer.

6. Amendment of section 16Q where the phrase of "the cause of action not to be split" has been substituted by "claims not to be split" in order to clarify and give a more accurate picture of the purpose of the application of this provision. For example, the claim for defects and claim for liquidated damages for late delivery of vacant possession.

7. Amendment of section 16AD(1) to increase the rate of the fine from not less than RM5,000 but not exceeding RM10,000 to not less than RM10,000 but not exceeding RM50,000. The increase of the rate of the fine is required in order to overcome cases where housing developers default in complying with the award made by the Tribunal.

8. New section 18A was introduced to enable the purchasers to initiate criminal proceedings against any licensed housing developers who abandon or cause to be abandoned any housing project. The licensed developer who abandons or causes a housing development to be abandoned may be fined between RM250,000 and RM500,000 or imprisoned for a term not exceeding 3 years, or both. This amendment aims to restrict the housing developers from exploiting the house buyers.

9. As a result of the amendment of section 24(2)(g), the fine against housing developers has been increased from RM20,000 to

RM50,000. It covers, for example, housing developers who do not have a valid development license or housing developers who default to comply with the Tribunal award.

10. The abolition of subsection 16N(iii) which prevents disputes relating to limitation of the jurisdiction of the Tribunal to hear cases concerning claims for damages for late delivery of vacant possession (LAD).

The effect of the aforementioned amendments to the Act is perspective and not retrospective. Hence, any action or proceeding commenced or pending immediately before 1 June 2015 is still bound by the principal Act 118 (before the amendments).

In addition, the standard SPAs (i.e. Schedule

G, H, I & J) have been amended by the Housing Development (Control and Licensing) (Amendment) Regulations 2015 to further improve and protect the rights and interests of house buyers. The amendment took effect on 1 July 2015.

Some of the main amendments to the Regulations are as follows:-

1. Amendment of regulation 8 on the advertisement and sale permit in which the licensed housing developers are not allowed to include the following contents in the advertisement:
  - (a) offer of free legal fees;
  - (b) projected monetary return gains and rental income;
  - (c) claim of panoramic view;
  - (d) travelling time from housing projects to

popular destinations; or  
(e) any particular to which a housing developer cannot genuinely lay a proper claim.

2. All the timeline for payment under the standard SPA has been standardized to 30 days. For example, the payment term of progressive billings has been amended from 21 working days to 30 days and the payment term for the refund by the developer has been changed from 21 days to 30 days.

3. The manner of delivery of vacant possession to the buyer has been amended in which the buyer must be furnished with the CCC, separate strata title to the parcel (for stratified properties) with the completion of any alteration or additional work, if any.

Summarily, the list of the amended/new Acts is as follows:-

NO.	ACTS	DATE OF GAZETTE	DATE OF ENFORCEMENT
1.	Housing Development (Control and Licensing) (Amendment) Act 2012 (Act 1415)	9 February 2012	1 June 2015
2.	Strata Titles (Amendment) Act 2013 (Act 757)	7 February 2013	1 June 2015
3.	Strata Management Act 2013 (Act 318)	8 February 2013	1 June 2015

List of the corresponding regulations as amended pursuant to the enforcement of the above Acts, as follows:-

NO.	REGULATIONS	DATE OF GAZETTE	DATE OF ENFORCEMENT
1.	Housing Development (Control and Licensing) (Amendment) Regulations 2015	1 June 2015	1 July 2015
2.	Housing Development (Housing Development Account) (Amendment) Regulations 2015	1 June 2015	2 June 2015
3.	Strata Management (Maintenance & Management) Regulations 2015	1 June 2015	2 June 2015
4.	Strata Management (Strata Management Tribunal) Regulations 2015	1 June 2015	1 July 2015



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# 3D PRINTING

by Lim Bee Yi

**3D** printing technology is no longer a new technology as it was first introduced in the late 1980's. Due to the rapid advancement of technology, 3D printing technology has been continuously developing and aggressively expanding for use in many industry sectors. Recently, 3D printers have even become more accessible and affordable to consumers for everyday use which threaten to become mainstream in the near future. Although 3D printing technology provides consumers with the ability to customise products anytime and anywhere, it nevertheless has a negative impact on business community and marketplace.

Given the very nature of 3D printing technology which allows for copying and creating existing 3D objects, the use of

manufacture or replication of any solid object by using a 3D data either created by a computer-aided design (CAD) program or by using CAD files downloaded from the Internet, or created by

scanning an existing object with a 3D scanner which turns it into a virtual model or 3D physical objects. They are the source of copy of CAD files and 3D physical objects which cause various legal issues under IP law.

3D printing technology is widely used for both prototyping and distributed manufacturing with applications in various industries and markets which include the engineering, architecture, automotive, construction, industrial design, fashion, footwear, jewellery, military and many other fields. In light of personal 3D printing by consumers using 3D home printers, the fashion, footwear, jewellery, and cosmetic industries may be adversely affected due to the high demand of luxury brands. Consumers may resort to 3D printing to obtain the goods that they want.

In addition, due to the rapid growth of 3D printing and modelling technology and the plummeting cost of 3D printers combined with the creation of free and open software products readily available for 3D printers, IP theft will increase and inevitably result in negative implications for owners of IPRs. IP

**...WITH THE CREATION OF FREE AND OPEN SOFTWARE PRODUCTS READILY AVAILABLE FOR 3D PRINTERS, IP THEFT WILL INCREASE AND INEVITABLY RESULT IN NEGATIVE IMPLICATIONS FOR OWNERS OF INTELLECTUAL PROPERTY RIGHTS.**

this new technology has raised issues over intellectual property rights (IPRs) concerning the four main areas i.e. copyright, trade mark, patent and industrial design which are not addressed by the current intellectual property (IP) law framework. Therefore, it is vital to determine the repercussions of using 3D printers for unlawful purposes in respect of the issues of infringement and IP theft in 3D printing space before looking into the practical ways which the owners of IPRs may resort to for better protection and enforcement of their IPRs.

As far as 3D printing is concerned, 3D scanning and printing via 3D printers allows for the

theft does not just occur when there is production of a finished product. IP theft occurs even with a 3D printed mould which can then be used to manufacture the object that replicates the original. Besides, in view of the lack of public awareness of 3D printing and the lack of sufficient enforcement method, IP theft will be a growing problem in the 3D printing space.

The ability to manufacture objects through 3D printing technology has generated implications on IPRs at both ends of the spectrum of those rights. On one end of the spectrum, there will be original 3D designs created for production through 3D printing process which may be subject to protection of IPRs. On the other end, infringement could very possibly arise given the very nature of 3D printing which leaves users of 3D printers to face emerging IPRs issues involving their own rights and those of others.

In certain circumstances, our Malaysian IP law may be relevant to the issue of infringement of IPRs in the 3D printing space. In particular, the principles of copyright infringement under the Copyright Act 1987 may be applicable to 3D printing in which artistic works would be relevant to CAD files and literary works would be relevant to 3D designs software. As far as the Patents Act 1983 and Industrial Designs Act 1996 are concerned, infringement of

IPRs occur if patented products or inventions and objects or articles protected by design right are reproduced by 3D printers which will subsequently be used, sold, offered for sale, or kept for the purpose of using, selling or offering for sale to potential buyers. Besides, whenever trade marks exist on 3D objects which are then reproduced, there is also a risk of possible infringement of those trade marks under the Trade Marks Act 1976.

The main concern with 3D printers is that they allow individuals to potentially do a whole lot of illegal copying, be it willfully or innocently, in which infringement of 3D printing occurs. For instance, copying and distributing of a 3D printed copy of an object which has been afforded copyright protection would be a common scenario of 3D printing infringement. A more complicated scenario would be creating and sharing of a 3D design of an item protected by copyright in file sharing websites which provides a platform for users to download and print or purchase copies of the object. In that situation, the extent of liability of individuals and service provider would be debatable. Based on the hypothetical scenarios, apparently some IPRs cause veritable legal minefield of potential liabilities in the context of 3D printing and infringement of IPRs.

As 3D printers are becoming more accessible to the general public, one of the biggest challenges will be the possibility of extensive manufacturing of items for personal use, especially given the current private use exemptions under certain IP law. Counterfeiters could manufacture goods in their home markets independent of established markets in ways which are difficult to be detected, controlled or prevented and which could reduce shipping costs and by-pass customs check points to avoid customs seizures. As such, infringing activity in 3D printing space will be harder

to detect, making it impracticable or even impossible to enforce some IPRs. Rights holders will need to make smart choices about which elements of their IPRs they want to enforce.

File sharing websites that allow users to upload and download 3D model files including codes also raise questions of copyright infringement, which is likely to resemble the sharing of copyrighted music on illegal sharing websites, whether uploading 3D model files that provide the means to infringe copyright amounting to copyright infringement itself. In that case, the key issues concerned are who will be held liable for infringement and the extent of their liability.



Consequently, copyright owners will have a hard time enforcing their IPRs.

In Malaysia, 3D printing is a relatively new technology which is still in the early stages of development. In other words, the application of 3D printing technology in Malaysia is limited and is not as common as in other jurisdiction such as the United States. So far, there is no such problem arising from the use of 3D printing. The Malaysian IP office has yet to come out with any action or proposal to change the IP laws yet given that the development of IP in Malaysia is relatively slow compared to other jurisdictions.

In terms of protection, the best way that markets or industries can do to protect themselves legally is by way of all necessary registration of their IPRs, making necessary complaints of any infringements on their

IPRs and enforcing their IPRs through legal proceedings at the specialised Intellectual Property High Court.

Likewise, in order to better protect the IP owners, Malaysian IP office should carry out reasonable steps to raise public awareness of 3D printing, particularly with regards to the possible downside of 3D printing including prohibited acts constituting IPRs infringement and the effects of infringement. In addition and in view of growing concerns about the impact of 3D printing on IPRs, Malaysian IP office should also impress upon the legislature on the need to address issues of uncertainties on protection of IPRs in 3D printing space through amendment of existing IP laws or enactment of new laws.

The Malaysian IP office should consider incorporating new provisions into the existing IP law framework to regulate the role of manufacturers and distributors of the 3D printers in order to better protect IPRs from 3D printing. As the 3D printers hit the mass market, it will likely cause a legal minefield in various IPRs and laws. Apart from this, relevant changes to IP laws may be made to include design registrations in the 3D printing space and specific provisions governing the use of 3D printing technology as well as licensing of 3D printed works in order to prevent IP theft in 3D printing space.

To conclude, the rise of 3D printing has inevitably raised nuanced problems concerning IPRs and posed challenges before the owners of IPRs and relevant authorities during enforcement. It is apparent that the existing IP laws in Malaysia may not provide sufficient protection to safeguard the interests of the owners of IPRs in the 3D printing space. Therefore, it remains to be seen how 3D printing technology will expand in the near future and how IP laws will evolve to accommodate these upcoming challenges.



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# MALAYSIAN AVIATION COMMISSION ACT 2015



**T**he Malaysian aviation industry has seen an encouraging growth over the last decade with the government and tourism industry players' continuing initiative in growing the tourism industry in Malaysia. However, 2014 has been a tragic and horrifying year for the Malaysian aviation sector with 2 air tragedies involving Malaysia Airlines' flight MH370 and MH17. Despite the tragedies, Malaysia remains one of the most visited countries in Asia, coming in behind China with an approximate 27.4 million international tourist arrivals in 2014.

As part of the government's efforts to streamline and strengthen the national aviation industry, an independent regulator was established under the Malaysian Aviation Commission Act 2015 ("the Act"). The Act was debated and passed by the Parliament on 9 April 2015 consisting of 14 parts, 105 sections and 3 schedules.

The Act seeks to establish an independent Malaysian Aviation Commission ("the Commission") whose objectives include, amongst others, to regulate economic matters relating to the civil aviation industry, to strengthen the stability of the aviation industry, to provide just and fair treatment to all industry players, to provide a clear and transparent decision making process and to establish a competitive framework to promote healthy, stable and sustainable competition in the aviation industry.

The Commission will be under the purview of the Ministry of Transport ("the Ministry"). While the Commission is entrusted with the duties to oversee the economic and commercial aspects of the aviation industry; the technical, safety and security aspects of the industry remain under the purview of the Department of Civil Aviation ("DCA"). In this regard, the Act provides that the Commission shall consult the Director General of DCA on

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...THE INCREASE OF CONSUMER COMPLAINTS IN RELATION TO AVIATION INDUSTRY IS ALSO EXPECTED AND FORTHCOMING.

”

any technical, safety and security issue in the performance of its functions.

With the introduction of the Act, the Commission will take over from the Ministry the issuance of aviation licenses and determination of aeronautical fees and charges such as passenger service charge, landing fees and parking charges. The current licensing regime

and power to impose charges is regulated by the Civil Aviation Act 1999 and Civil Aviation Regulations 1996 which will soon be placed under the jurisdiction of the Commission under the Act.

A few other interesting aspects of the Act which are worth mentioning are the competition, public service obligations and consumer protection mechanism established under the Act. The Commission will be the new governing body in respect of competition matters relating to aviation industry, presently governed by Malaysian Competition Commission ("MyCC") established under the Competition Act 2010. The Act appears to have adopted the provisions from the present Competition Act in pari materia save for the provision for mergers between aviation service providers which would result in lessening of competition.

The Act also took public interest into consideration by taking a consumer-centric approach wherein aviation industry players will soon be legally obliged to conduct public service obligations and to operate on less profitable routes as determined by the Commission. The aviation industry players will be remunerated for their performance of public service obligations by the Commission using Public Service Fund.

Due to the increasing numbers of travelling public each year, the increase of consumer complaints in relation to aviation industry is also expected and forthcoming. As such, the government has taken away the role of the Tribunal for Consumer Claims established under the Consumer Protection Act 1999 for complaints relating to aviation industry to be dealt with by the Commission as part of its consumer protection initiative.

Upon commencement of the Act, the Commission will play a quasi-judiciary role in resolving disputes between the aviation industry players including airport operators. The Act makes it mandatory for disputing parties to resolve the dispute through mediation within a period of 3 months, failing which the Commission shall commence to decide on the dispute.

The Commission's decision must be in writing and may be registered as a judgment of the High Court and shall be enforced as such. However, the Act does not provide the avenue for appeal by any person aggrieved by the Commission's decision in relation to the dispute resolution. Thus, the usual judicial review process should be applicable since the Act is silent on the same.

The Commission also has powers to inspect and investigate matters within its jurisdiction besides carrying out audit on any aspect of the aviation industry. During the transitional period, all licenses and permits issued under the Civil Aviation Act 1969 and the Civil Aviation Regulations 1996 shall continue to be authorised until their expiry. Other pending applications, approvals or decisions which fall within the jurisdiction of the Commission shall be dealt with by the Commission after the Act comes into force.

The introduction of the Act appears to be timely and welcomed



by many quarters including the general public as the Malaysian aviation industry has suffered a catastrophic year in 2014. It is our hope that the Commission will strengthen the stability of the aviation industry and catapult Malaysia to amongst the leading countries in the aviation industry.

*\*Kindly note that the Act has been gazetted on 27 August 2015 but has not come into force as at the date of this publication.*



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## ■ INTELLECTUAL PROPERTY ■

**Date: 5 August 2015**

**Venue: Tay & Partners**

An exclusive breakfast talk was organised by Tay & Partners on 5 August 2015. Our partners and speakers Ms. Lee Lin Li and Ms. Lim Bee Yi shared the latest updates on Intellectual Property law, particularly in key



areas of protection and enforcement of intellectual property rights in Malaysia. While enjoying their breakfast, our invitees from different business sectors, engaged in interactive discussion and shared their valuable experience.



## ■ IR/ EMPLOYMENT ■

**Date: 24 June 2015**

**Venue: Tay & Partners**



Tay & Partners organised an exclusive breakfast talk on 24 June 2015 for a group of attendees from different business sectors. Our partner and speaker, Mr. Leonard Yeoh and the Labour & Employment team shared the latest updates in Industrial Relations, particularly the procedures and laws governing Reductions in Force/Retrenchment. The attendees had actively engaged in interactive discussions and shared their valuable experience while enjoying their breakfast.

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LegalTAPS is a collective effort of the firm to bring relevant legal updates and information to you.