



Price Control & Anti-profiteering New Anti-profiteering Regulations Alert

The Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) has gazetted the new Price Control and Anti-profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 (New Regulations). The New Regulations, replace the earlier 'Old' Regulations and come into force with effect from 1 January 2017.

We set out below some brief, salient features and potential implications of the New Regulations:

1. Unlike the Old Regulations' universal and equal application to all goods, the New Regulations shall apply only to the following classes of goods:
 - a) Food and beverages; and
 - b) Household goods
2. There are exhaustive definitions of the above terms provided in the New Regulations, which could potentially lead to interpretation issues and potential uncertainty in

determining the classes of goods (and suppliers) that would be included or excluded by the New Regulations.

3. The mechanism broadly implements a formula-based approach to determine unreasonably high profit, i.e. profit is determined as unreasonably high if the mark-up % or margin % for goods sold or offered for sale on any date in a particular financial year or calendar year exceeds the mark up % or margin % in respect of those goods, as at the 'baseline' first day of that particular financial year or calendar year.
4. The formulas broadly compute the mark-up % and margin % of goods for the baseline first day of the particular financial year or calendar year by reference to the mark-up % or margin % of the goods for up to 3 financial years or calendar years preceding the particular financial year or calendar year.
5. For the purpose of the New Regulations, "goods" means goods of the "same class" or "same description" (both of these terms are defined in the New Regulations). This is potentially a significant change from the previous MDTCC practice, under the Old Regulations, of referring to goods of the same SKU.
6. The New Regulations have allowed for an exception to the above general rule, whereby the mark up % or margin % on a date in a particular financial/calendar year may exceed the mark up % or margin % on the baseline first day of that financial year/calendar year. This is due to reduction in costs in that particular financial/calendar year.
7. The New Regulations broadly also reflect the factors in the Old Regulations as to goods sold at prices below their normal selling price i.e. "cheap sale price", "introductory selling price" etc., which are essentially, not considered in the formulas to determine unreasonably high profit.
8. Contrary to earlier indications by MDTCC that non-compliance with the New Regulations would not constitute an offence, reading the New Regulations with the Price Control and Anti-profiteering Act 2011 ("PCAP"), "unreasonably high profit" would technically constitute an offence under the current provisions of the PCAP, for which the penalties on court conviction, are as follows:
 - a) For corporate entity – a fine not exceeding MYR500,000 for first offence and not exceeding MYR1 million for second and subsequent offence.

- b) For any person other than the above- a fine not exceeding MYR100,000 or imprisonment for up to 3 years or both for first offence and not exceeding MYR250,000 or imprisonment for up to 5 years for second and subsequent offence.

Since the New Regulations have been made effective from 1 January 2017, there could be more explanations and clarifications forthcoming from the MDTCC. It is evident that affected businesses could potentially face practical issues associated with compliance with the New Regulations that could require analysis and, if necessary, seeking confirmations or clarifications from MDTCC.

In the meantime, we would reiterate that in the event affected businesses intend to revise their pricing policy, they would have to take into account compliance with the New Regulations. Those businesses not affected (i.e. businesses supplying goods or services NOT covered by the New Regulations) can heave a sigh of relief, as they would no longer be burdened by compliance with anti-profiteering legislation, due to the expiry of the Old Regulations.

Who can you call for more information?

Feel free to contact any of our specialists listed below.

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