

Client Alert

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Anti-Profiteering Laws in Malaysia: Changes and Introduction of a New Anti-Profiteering Mechanism

The Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 ("**2017 Regulations**") was gazetted on 22 December 2016. The 2017 Regulations came into force on 1 January 2017 upon the expiry of the previous regulations on 31 December 2016.

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The 2017 Regulations has introduced four notable changes. The changes are summarised below.

(I) Limitation of Scope for Application of the 2017 Regulations

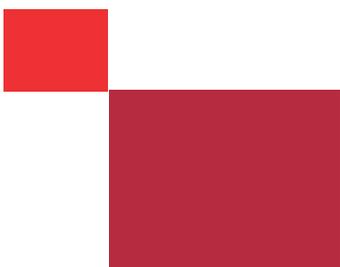
The 2017 Regulations apply only to certain classes of goods, which include food and beverages, and household goods. Household goods have been specifically defined to include non-durable household goods and personal care products purchased for personal, family or household purposes, but have specifically excluded cosmetic products.

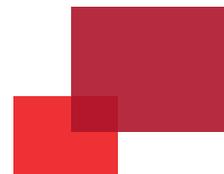
(II) Comparison Using Financial Year ("FY") or Calendar Year ("CY")

The determination of unreasonably high profit is made by comparing the mark-up percentage or margin percentage in a FY or CY. The relevant period for examination is the base period, which is the first day of a particular FY or CY when the goods are sold or offered for sale ("**Base Period**"), against the date of investigation of the goods in that particular FY or CY ("**Comparative Period**").

(III) Change in the Mechanism To Determine Unreasonably High Profit

Under the 2017 Regulations, the determination of unreasonably high profit is done using either the mark-up percentage or the margin percentage of the goods sold or offered using the prescribed formulas. Businesses are required to satisfy both mechanisms in order to determine whether the business is making unreasonably high profit.





(IV) Introduction of New Formulas To Determine Unreasonably High Profit

The 2017 Regulations introduced two specific formulas to determine whether there has been any unreasonably high profits. The formulas are quite complex and takes into account the mark-up percentage or the margin percentage.

Under the mark-up percentage mechanism, the mark-up percentage is calculated by taking into account the sale price *less* the cost price, *divided* by the cost price using a percentage basis.

Under the margin percentage mechanism, the margin percentage is calculated by taking into account the sale price *less* the cost price, *divided* by the sale price using a percentage basis.

Under both mechanisms, the determination of whether profit is unreasonably high is done by comparing the percentages of the goods sold or offered for sale on the Comparative Period with the percentages of the goods sold or offered for sale on the Base Period. If the former is higher, the business will be considered to be making unreasonably high profit. However, this will not be the case if the increase in the mark-up or margin percentage is caused by a reduction in the cost of goods.

Implications for Businesses

To ensure compliance with the 2017 Regulations, affected businesses should review and analyse any proposed price increases by examining the mark-up and margin percentage before and after any proposed price increase.

In the event of an increase in either the mark-up percentage or margin percentage, the business must be able to substantiate the increase with adequate documentation and proper justification to the Ministry of Domestic Trade, Co-operatives and Consumerism.

Under Section 18 of the Price Control and Anti-Profiteering Act 2011, any person who makes profit unreasonably high commits an offence and is liable, on conviction to:

- (a) a fine up to RM 500,000, or a fine up to RM 1,000,000 for a second or subsequent offence, where such person is a body corporate; or
- (b) a fine up to RM 100,000 and/or imprisonment up to 3 years, or RM 250,000 and/or imprisonment up to 5 years, where such person is not a body corporate.

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