

# GEOGRAPHICAL INDICATIONS (AMENDMENT) ACT 2002

## ACT A1141

### PREAMBLE

An Act to amend the Geographical Indications Act 2000.

**ENACTED** by the Parliament of Malaysia as follows:

#### 1. Short title and commencement.

(1) This Act may be cited as the **Geographical Indications (Amendment) Act 2002**.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

#### 2. Amendment of section 2.

The Geographical Indications Act 2000 [Act 602], which in this Act is referred to as the "principal Act", is amended in section 2-

(a) by inserting before the definition of "appointed date" the following definition:

"agent" means a Geographical Indication agent registered in accordance with this Act and the regulations made under it;'

(b) by substituting for the definition of "Minister" the following definition:

"Minister" means the Minister for the time being charged with the responsibility for intellectual property;'

(c) by substituting for the definitions of "Registrar", "Deputy Registrar" and "Assistant Registrar" the following definition:

"Registrar" means the Registrar of Geographical Indications as designated in subsection 8(1).';

(d) by inserting after the definition of "appointed date" the following definition:

"Assistant Registrar" means the person appointed or deemed to have been appointed to be an Assistant Registrar under subsection 8(2) or (3).';

(e) by inserting after the definition of "competent authority" the following definition:

"Corporation" means the Intellectual Property Corporation of Malaysia established under the Intellectual Property Corporation of Malaysia Act 2002;'

(f) in the national language text, by substituting for the full stop at the end of the definition of "pihak berkuasa yang berwibawa" a semicolon;

(g) by inserting before the definition of "competent authority" the following definition:

"appointed date" has the same meaning as is assigned to that expression in the Intellectual Property Corporation of Malaysia Act 2002 [Act 617];

(h) by inserting after the definition of "Court" the following definition:

"Deputy Registrar" means the person appointed or deemed to have been appointed to be a Deputy Registrar under subsection 8(2) or (3); and

(i) by inserting after the definition of "Register" the following definition:

"registered proprietor", in relation to a geographical indication, means the person for the time being entered in the Register as proprietor of the geographical indication;'

### 3. Amendment of section 8.

The principal Act is amended by substituting for section 8 the following section:

"8. Registrar, Deputy Registrars and Assistant Registrars.

(1) The Director-General of the Corporation shall be the Registrar of Geographical Indications.

(2) The Corporation may appoint, on such terms and conditions as it may determine, from amongst persons in the employment of the Corporation, such number of Deputy Registrars of Geographical Indications, Assistant Registrars of Geographical Indications and other officers as may be necessary for the proper administration of this Act, and may revoke the appointment of any person so appointed or deemed to have been so appointed under subsection (3).

(3) The persons holding office as Deputy Registrars, Assistant Registrars and other officers under this Act before the appointed date who were given an option by the Government of Malaysia to serve as employees of the Corporation and have so opted shall on the appointed date be deemed to have been appointed as Deputy Registrars, Assistant Registrars and such other officers under subsection (2).

(4) Subject to the general direction and control of the Registrar and to such conditions or restrictions as may be imposed by the Registrar, a Deputy Registrar or an Assistant Registrar may exercise any function of the Registrar under this Act, and anything by this Act appointed or authorized or required to be done or signed by the Registrar may be done or signed by any Deputy Registrar or Assistant Registrar and the act or signature of a Deputy Registrar or an Assistant Registrar shall be as valid and effectual as if done or signed by the Registrar.

(5) The Registrar shall have a seal of such device as may be approved by the Corporation and the impressions of such seal shall be judicially noticed and admitted in evidence."

### 4. Amendment of section 11.

Section 11 of the principal Act is amended-

(a) by inserting after subsection (1) the following subsection:

"(1A) An applicant may file an application for registration of a geographical indication personally or through an agent."; and

(b) by substituting for subsection (2) the following subsection:

"(2) Notwithstanding subsection (1A), where an applicant does not reside or carry on business in Malaysia, he shall appoint an agent to act on his behalf."

#### **5. New section 11A.**

The principal Act is amended by inserting after section 11 the following section:

##### **"11A. Agent.**

(1) Any person, firm or company may apply to act as an agent for the purposes of this Act if-

(a) that person is domiciled or resident in Malaysia; or

(b) the firm or company is constituted under the laws of Malaysia; and

(c) such person, firm or company carries on business or practice principally in Malaysia.

(2) The qualifications and the mode of registration of an agent shall be as prescribed."

#### **6. Amendment of section 19.**

Section 19 of the principal Act is amended-

(a) by renumbering the section as subsection (1) of that section; and

(b) by inserting after subsection (1) the following subsection:

"(2) The period of registration of a geographical indication shall be ten years and the registration is renewable upon an application made under section 19A."

#### **7. New sections 19A and 19B.**

The principal Act is amended by inserting after section 19 the following sections:

##### **"19A. Renewal of registration.**

(1) During the prescribed time before the date of expiry of the registration of a geographical indication the Registrar shall send a notice in the prescribed manner to the registered proprietor of such date of expiry.

(2) An application for the renewal of the registration of a geographical indication shall be made by the registered proprietor in the prescribed manner to the Registrar within the prescribed time before the date of expiry of the registration.

(3) An application under subsection (2) shall be accompanied by the prescribed fee.

(4) Subject to subsection (5), upon receipt of an application under subsection (2) and the prescribed fee, the Registrar shall renew the registration of the geographical indication for a period which shall not exceed ten years at each renewal.

(5) For the purpose of renewing the registration of a geographical indication, the Registrar may require additional particulars and may refuse to renew the registration if the applicant does not furnish the additional particulars required.

(6) If the Registrar refuses to renew the registration under subsection (5) the Registrar shall notify the applicant in writing of the decision.

(7) Subject to section 19B, the Registrar may remove a geographical indication from the Register if the applicant fails to apply for the renewal of the geographical indication within the prescribed time.

**19B. Restoration of geographical indication removed from the Register.**

The Registrar may restore a geographical indication that has been removed from the Register under subsection 19A(7) if-

(a) the applicant files an application for such restoration within twelve months from the date of expiry of the registration of the geographical indication; and

(b) the Registrar is satisfied that-

(i) there has been no use in bad faith of the geographical indication during the year immediately preceding its removal from the Register; or

(ii) no deception or confusion is likely to arise from the use of the geographical indication by reason of its previous use."

**8. Amendment of section 32.**

Subsection 32(2) of the principal Act is amended-

(a) by deleting the word "and" at the end of paragraph (g); and

(b) by inserting after paragraph (g) the following paragraphs:

"(ga) to prescribe the qualifications of agents and other matters relating to such qualifications;

(gb) to provide for the registration of agents; and".

**9. Saving provision.**

The amendments to the principal Act shall not affect any application for registration of a geographical indication or for the renewal of the registration of a geographical indication or the registration of a geographical indication or the renewal of the registration of a geographical indication, as the case may be, made under the principal Act before the appointed date and the relevant provisions of the principal Act, shall apply to the application or registration or renewal, as the case may be, as if the provisions had not been amended by this Act.