

THE BRIEF *Case*



*"Coming together is a beginning. Keeping together is progress. Working together is success."
– Henry Ford*



A BRIEF NOTE...

by Dato' Zulkifly Rafique

The New Normal...

ZUL RAFIQUE & partners is delighted to announce that we were named *Employer of Choice 2020* by Asian Legal Business, our 10th win since 2009.

We are also proud to announce our new practice areas – Corporate Liability & Risk Management, Legal Forensic Investigation & Compliance, and Tax.

As you all know, the World Health Organisation declared the COVID-19 outbreak a global pandemic early this year. The COVID-19 has since affected millions worldwide – people's livelihood, health, business, global economy etc.

Nevertheless despite this crisis, the Firm remains resilient. As such, the Firm would like to take this opportunity to thank all our employees for their hard work, dedication and commitment as we navigate through these uncertain times.

With patience, resilience and mutual support, we will overcome these difficult times together.

On that note, I would like to thank all our clients and friends for their never ending support and I wish you all the very best for the new year ahead!

Stay safe and healthy!

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- *Guidelines/Rules/Circulars/Directives and Practice Notes issued between January and November 2020 by Bank Negara Malaysia, Bursa Malaysia and Securities Commission Malaysia*

- **BURSA MALAYSIA: WORLD'S FIRST OPTIONS CONTRACT ON PALM OLEIN** Bursa Malaysia Bhd has successfully launched the Options Contract on US Dollar Denominated Refined, Bleached and Deodorised Palm Olein Futures (OPOL), the world's first options contract on palm olein, as a response to market demand for an options contract and to enhance the current US Dollar Denominated RBD Palm Olein Futures Contract by making OPOL available to the marketplace. 
- **CO-OPERATIVES SOCIETIES (AMENDMENT) BILL 2020** The Ministry of Entrepreneur Development and Cooperative has tabled the Co-operatives Societies (Amendment) Bill 2020 to review the Co-operatives Societies Act 1993 in the *Dewan Rakyat*. The Bill aims to improve the supervision and control of the cooperative sector so that it remains relevant to current economic development and becomes the driving force of the country's economy. 
- **COURTS' HISTORICAL VIDEO CONFERENCING PROCEEDINGS** The Court of Appeal had for the first time in April 2020, used video conferencing to conduct proceedings on appeals in three civil lawsuits on dependency claim which involved three individuals against a transportation company. The proceedings were live-streamed to the public on the judiciary's official website at www.kehakiman.gov.my. 
- **FEDERAL COURT: MUSLIM CHILD CONCEIVED OUT OF WEDLOCK CANNOT BEAR FATHER'S NAME** The Federal Court has ruled that a Muslim child conceived out of wedlock cannot bear his father's name on the ground that section 13A of the Births and Deaths Registration Act 1957 (surname of child) does not apply to the registration of births of Malay Muslim children as Malays do not carry any surnames. The Court further held that the said section has no application to the Malay naming system and did not enable the children to be named with the personal name of a person acknowledged to be the father of the children. 
- **FEDERAL COURT: PARLIAMENT HAS THE POWER TO ENACT LEGISLATION** The Federal Court has ruled that Parliament has the power to enact legislation on offences and to prescribe punishments for the offences, including the mandatory death penalty. The Court further stated that prescribing the measure of punishment was the prerogative of Parliament and that the discretion to determine the measure of punishment was not an integral part of judicial power. 
- **MALAYSIA AND PAKISTAN INK EXTRADITION TREATY** Malaysia and Pakistan have formally signed a treaty on extradition that would strengthen the bilateral relationship by enhancing security against transnational crime in both countries. Malaysia has formed mutual assistance with more than 10 countries in criminal matters - Brunei, Vietnam, Cambodia, Thailand, Indonesia, Australia, the United States, the United Kingdom, Singapore and Korea. 
- **MALAYSIAN SPACE BOARD BILL 2020** The Malaysian Space Board Bill 2020, which aims at setting up a Space Board to regulate the space industry in Malaysia, has been tabled in the *Dewan Rakyat*. The Bill states that the functions of the Malaysian Space Board will be to advise the government on matters pertaining to the space industry, ensure effective implementation of the Act, and issue guidelines and instructions related to the Act. 
- **MINIMUM WAGES ORDER 2020** The Minimum Wages Order 2020, released by the Human Resources Ministry, encompasses 56 city and municipal council areas from 1 February 2020. It states that the minimum wage rate payable to an employee who works within the 16 city councils and 40 municipal councils is MYR5.77 an hour or MYR1,200 monthly. 
- **OCCUPATIONAL SAFETY AND HEALTH (AMENDMENT) BILL 2020** Amendments to the Occupational Safety and Health Act 1994 which, among others, aims at extending the application of the law to all workplaces, have been tabled in the *Dewan Rakyat*. The Occupational Safety and Health (Amendment) Bill 2020 will also see an increase in penalties on employers who fail to ensure the safety, health and welfare of employees at the workplace. 
- **ROAD TRANSPORT (AMENDMENT) ACT 2020** The Road Transport (Amendment) Act 2020, which amends the Road Transport Act 1987, has come into operation on 23 October 2020. The amendments increase the penalties and punishment of certain traffic offences including offences of causing death by reckless and dangerous driving and driving under the influence of intoxicating liquor or drugs under sections 41 to 45A of the Act. 

- **SECURITIES COMMISSION MALAYSIA: GUIDELINES ON ADVERTISING FOR CAPITAL MARKET PRODUCTS AND RELATED SERVICES** The Securities Commission Malaysia (SC) has issued the "Guidelines on Advertising for Capital Market Products and Related Services" to promote responsible advertising and encourage greater use of digital channels. Product issuers such as recognised market operators, persons undertaking regulated activities and capital market service providers are no longer required to submit their advertisement materials to the SC, provided they comply with the requirements stipulated in the guidelines. ✨
- **SECURITIES COMMISSION MALAYSIA: WAQF-FEATURED FUND FRAMEWORK** The SC has launched a new framework to facilitate the offering of Islamic funds with waqf features to enable the growth of the Islamic social finance segment. The Waqf-Featured Fund Framework will broaden the range of innovative Islamic capital market products and provide the public access to Islamic funds that allocate the whole or part of the fund's returns towards socially impactful activities via waqf. ✨
- **TEMPORARY MEASURES FOR REDUCING THE IMPACT OF CORONAVIRUS DISEASE 2019 (COVID-19) ACT 2020** The COVID-19 Act 2020 has come into effect on 23 October 2020 and will be effective for two years from the enforcement date. The implementation in entirety will benefit every individual and company affected economically as a result of the COVID-19 pandemic. ✨
- **SCOTLAND FIRST IN WORLD TO MAKE PERIOD PRODUCTS FREE** Scotland has become the first country in the world to make period products free for all after Members of the Scottish Parliament has approved the Period Products (Free Provision) (Scotland) Bill which imposes a legal duty on local authorities to ensure that free items such as tampons and sanitary pads are available to "anyone who needs them". ✨
- **SCOTLAND: NEW LAW TO PROTECT CHILDREN GIVING EVIDENCE IN COURT** The new Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, which came into force on 20 January 2020, helps to ensure child witnesses are protected and not retraumatised. Children under 18 will no longer be asked to give evidence in court, as the new system will allow child witnesses to record their evidence in advance of a trial and played later to a jury, for crimes including murder, sexual offences, human trafficking and domestic abuse. ✨
- **SINGAPORE: EMPLOYEES INJURED WHILE WORKING FROM HOME ARE ELIGIBLE FOR COMPENSATION** Singapore's Minister of State for Manpower has stated that employers have to compensate their employees for injuries sustained during work-from-home arrangements. However, it must be ascertained that the injury arose while doing work at home and not while performing non-work activities at home. It is based on a fact-finding exercise that is no different from all other work injury compensation claims. ✨
- **SINGAPORE: INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT** The Insolvency, Restructuring and Dissolution Act together with its 48 related pieces of subsidiary legislation, has commenced on 30 July 2020. The Act consolidates Singapore's personal and corporate insolvency and debt restructuring laws and updates relevant laws to be aligned with international best practices. ✨

AROUND THE WORLD... IN-BRIEF

- **EU: LIONEL MESSI WON FIGHT TO TRADEMARK HIS SURNAME** The European Court of Justice has dismissed an appeal from Spanish cycling company *Massi* and the EU's intellectual property office and ruled that the footballer *Lionel Messi* can register his name as a trademark. The Barcelona footballer first applied to trademark his surname as a sportswear brand in 2011, but *Massi* argued that the similarity between their logos would cause confusion. ✨
- **SINGAPORE: INTERNATIONAL SEA DISPUTES** Disputes referred to the International Tribunal for the Law of the Sea (ITLOS), or one of its chambers, can now be heard in Singapore, following the signed model agreement setting out the terms and conditions to enable ITLOS or one of its chambers to sit and exercise its functions in Singapore. ✨

- SINGAPORE: STIFFER PENALTIES FOR EMPLOYERS WITH DISCRIMINATORY HIRING PRACTICES** Following changes to the Singapore Fair Consideration Framework, companies found guilty of discriminatory hiring practices now face stiffer penalties, such as longer debarment periods when applying for work passes, fines and imprisonment of key personnel involved, and prosecution for making false declarations on fair hiring consideration.
- UK: LANDMARK RULING ON CONCERT TICKET TOUTS** Two internet ticket touters, *Peter Hunter* and *David Smith*, who traded as *Ticket Wiz* and *BZZ*, and re-sold tickets worth millions of Pounds for events including *Ed Sheeran* and *Adele* concerts have been jailed. This ruling is described as a "landmark case" because it was the first successful prosecution against a company fraudulently reselling tickets on a large scale.
- UK: NEW 'TRANSFORMATIONAL' CODE TO PROTECT CHILDREN'S PRIVACY ONLINE** Social media sites, online games and streaming services used by children will have to abide by the new Age Appropriate Design Code, set by the UK's data watchdog, which includes a list of 15 standards that companies behind online services are expected to comply with to protect children's privacy.
- US: SUPREME COURT RULED FOR LGBT WORKERS' PROTECTION** In a six to three decision, the US Supreme Court has ruled that employers who fire workers for being gay or transgender are breaking the country's civil rights laws that prohibit discrimination based on sex, which includes sexual orientation and gender identity.
- US: UBER AND LYFT DRIVERS CLASSIFIED AS EMPLOYEES** A California judge has ruled that ride-hailing companies *Uber* and *Lyft* must classify their drivers as employees rather than freelancers, in accordance with the new rule in California, Assembly B5. The rule sets three criteria for defining whether a worker is independent or an employee, which includes whether the "hiring entity" has control and direction of worker performance and whether the worker performs work outside the usual course of the company's business.

CORPORATE LIABILITY & RISK MANAGEMENT

Article written by *Idza Hajar Ahmad Idzam* and *Mohammed Mifzal Mohd Murshid Kieron* from the Corporate Liability & Risk Management practice group

CORPORATE LIABILITY FOR CORRUPTION UNDER SECTION 17A OF THE MACC

ACT 2009... In 2019, Malaysia improved 10 places to 51 out of 180 countries in Transparency International's annual Corruption Perception Index, compared with its position in 2018 wherein Malaysia ranked 61 out of 180 countries. However, it is still a troubling fact to many Malaysians that Malaysia remains below many of its Asian counterparts, with neighbours Brunei Darussalam at 35th place and Singapore far ahead in fourth place.

Within that context, on 5 April 2018, the Malaysian Anti-Corruption Commission Act 2009 (the "MACC Act") was amended to incorporate section 17A, a provision to deal with corporate liability for corruption. It was expressly noted by the Malaysian government when the amendments were tabled in Parliament that the new section 17A of the MACC Act is modelled after the United Kingdom Bribery Act 2010.

INTRODUCTION Section 17A introduces a new statutory corporate liability offence of corruption by a commercial organisation under Malaysian law. The section deems any director, controller, officer, partner or who is concerned in the management of the affairs of a commercial organisation to be personally liable for the same offence if the commercial organisation is found liable.

SCOPE OF LIABILITY Section 17A(1) states that a commercial organisation commits an offence if a person associated with it corruptly gives, offers or promises any gratification to any person with an intent to obtain or retain business or a business advantage for the said commercial organisation. Note that section 17A(6) of the MACC Act provides that persons considered to be "associated" with a commercial organisation include directors, partners and employees of the commercial organisation, as well as any person "who performs services for or on behalf of the commercial organisation". It has yet to be determined how the courts will interpret this provision but given the broad language used in section 17A(6) of the MACC Act, one may assume that a commercial organisation may not only be

liable for bribery by its director or partner, but liability extends to actions of employees. This liability may potentially extend to actions of nominees, trustees, distributors, agents or joint venture partners.

Section 17A(8) of the MACC Act clarifies that a commercial organisation means a company or partnership that is formed under Malaysian law or a company or partnership that carries on business or a part of a business in Malaysia. Importantly, this means that companies could be found liable for failing to set up adequate measures to prevent bribery that occurred outside Malaysia, even if these acts were committed by a “company performing services for the commercial organisation” abroad.

“Illustration

Company A is a company incorporated and operates primarily in Malaysia that deals in the production and sale of bicycles.

Company B is a company incorporated and operates primarily in the United Kingdom, but maintains a business presence in Malaysia.

Company B is a distributor of bicycles in the United Kingdom.

Company A and Company B enter into a Distributorship Agreement for the distribution of bicycles in England and Wales. While attempting to close deals to sell bicycles from Company A, Company B offers bribes to grease the wheels. Company A was not aware of these bribes.

Company A may be liable under section 17A for the bribery committed by Company B.”

In line with the strong anti-corruption posture Malaysia has taken in recent years, the punishments under this provision are steep. Section 17A(2) provides that the penalty for an offence under section 17A shall be a fine of not less than ten times the value of the gratification in question or MYR1 million, whichever is higher, or imprisonment for not more than 20 years, or both. The penalties under this said section can similarly be applied to each individual convicted under section 17A(3) of the Act which states that any director, controller, officer, partner or anyone who is concerned in the management of the affairs of a commercial organisation will be personally liable for the same offence if the commercial organisation is found liable.

REVERSAL OF THE BURDEN OF PROOF & DEFENCE

The effect of section 17A is that the burden of proof has been reversed. The provisions create a presumption of criminal liability by deeming that the accused be required to prove that they exercised due diligence or put in place adequate measures to prevent the commission of the offence as they ought to have exercised, having regard to the nature of their function in that capacity and to the circumstances.

Section 17A(4) of the MACC Act provides that a commercial organisation shall be acquitted of a charge under section 17A if it proves that it had in place “adequate procedures” designed to prevent persons associated with the commercial organisation from undertaking such conduct.

GUIDELINES ON ADEQUATE PROCEDURES

Section 17A(5) of the MACC Act provides that the government shall issue guidelines relating to procedures that would be considered “adequate” as a defence under section 17A(4). The Guidelines on Adequate Procedures (GAP) was issued by the Prime Minister’s Office in December 2018 and is aimed at helping commercial organisations understand what would constitute “adequate procedures” and what they should implement to prevent corrupt practices. More importantly, to provide a defence against corporate liability under section 17A.

There are five main principles that a commercial organisation may reference under GAP to craft anti-bribery policies and procedures. Aptly arranged and easy to remember, the acronym for the five main principles is TRUST, as follows:

- **T**op Level Commitment
- **R**isk Assessment
- **U**ndertake Control Measures
- **S**ystematic Review, Monitoring and Enforcement
- **T**raining and Communication

It should be noted that GAP is not exhaustive, neither will it be universally applicable. The court is likely to examine each company’s procedures and policies on a case-by-case basis to determine whether the same are indeed “adequate”. However, the courts are likely to give heavy consideration to compliance with GAP.

After an examination of GAP, below is a non-exhaustive list of policies that companies should implement to ensure that they are protected from liability under section 17A:


- Craft a thorough and comprehensive anti-bribery/anti-corruption compliance policy;

- Conduct periodic corruption and bribery risk assessments (i.e. Every three years or when necessary as suggested by GAP);
- Establish transparent and independent reporting channels within the company;
- Create rules, policies and procedures to control, limit or prevent the act of giving gifts, donations, sponsorships, and facilitation payments;
- Strict enforcement of rules relating to declaration and prevention of conflicts of interest;
- Conduct regular due diligence on third parties;
- Conduct regular internal (i.e. directors, employees, etc) and external (i.e. distributors, agents, nominees, etc) training sessions to ensure all parties are familiar with company anti-corruption and anti-bribery policies/procedures; and
- Thorough integration of anti-corruption and anti-bribery policies/procedures/controls in all external engagements with entities/persons performing services for or on behalf of the company.

CHANGES BY BURSA MALAYSIA In conjunction with section 17A, Bursa Malaysia has announced the amendments to Listing Requirements for Main and ACE Market listed issuer in relation to anti-corruption measures. Both the amendment to the Listing Requirements and the MACC Act has taken effect on 1 June 2020.

The amendments include but are not limited to requiring a listed issuer and its board of directors to ensure that policies on anti-corruption that are (at a minimum) guided by the GAP, as well as policies and procedures on whistle-blowing are established and maintained for the listed issuer and its subsidiaries.

The amendments require policies and procedures be reviewed periodically to assess their effectiveness, and in any event, at least once every three years. It has also required that corruption risk be included in the annual risk assessment. Bursa also now requires the listed issuer to publish on its website its policy on anti-corruption and its policy/procedures on whistle-blowing.

CONCLUSION The COVID-19 pandemic could not have been predicted by the Parliament when section 17A was introduced. The Government of Malaysia must consider that COVID-19 has and will continue to impact the ability of companies in Malaysia to comply with the provisions of section 17A. However, in light of the above, directors and other senior personnel of companies must stay up-to-date with the rules and regulations surrounding the new section 17A and take steps to ensure that robust anti-corruption policies and procedures are well adopted, implemented and enforced throughout their respective organisations. 

EMPLOYMENT & INDUSTRIAL RELATIONS

Article written by Wong Keat Ching, Loh Qiao Wen and Wong Yen Ni from Employment & Industrial Relations practice group

MALAYSIA'S COVID-19 ACT: EMPLOYMENT PERSPECTIVE – TOO

LITTLE, TOO LATE?... The long-awaited Act in light of the COVID-19 pandemic, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (the "COVID-19 Act") has been gazetted on 23 October 2020 and came into force on the same day. This article explores the three relevant provisions from an employment law perspective.

(1) CONTRACTUAL PROTECTION

Section 7 of the COVID-19 Act has the effect of statutory force majeure on certain categories of contracts to protect the interest of the defaulting party/parties due to their inability to perform contractual obligation(s) as a result of the measures implemented by the Government to curb the spread of COVID-19.

The categories of contracts include, amongst others, contracts related to the supply of workers in a construction contract and professional services contract (such as independent contractors).

As such, parties that were unable to perform their contractual obligation(s) as a result of the movement control measures prescribed by the government are protected from any action commenced by their opposing party arising from the contract.

VALIDITY Crucially, this protection is only valid from 18 March 2020 until 31 December 2020.

EXCLUSION This contractual protection does not apply to any terminated contract, forfeited deposit or performance bond, damages received, legal proceedings or arbitration/mediation commenced, any judgement/award granted, or execution carried out before the commencement of the COVID-19 Act, i.e. the period from 18 March 2020 until 23 October 2020. Thus, contracts that have been terminated especially during the early period of the pandemic would not be afforded this contractual protection.

(2) MODIFICATIONS TO THE INDUSTRIAL RELATIONS ACT 1967

Section 40 of the COVID-19 Act provides that the period from 18 March 2020 to 9 June 2020 shall be excluded from the calculation of the time period stated in the following circumstances under the Industrial Relations Act 1967 (the "IRA"):

- i. Obligation of an employer or trade union of employers under section 9(3) of the IRA
Where a claim for recognition (i.e. a formal recognition that a particular trade union has the right to represent the employees) has been served on an employer or trade union of employers, the employer or trade union of employers must either accord recognition to the claim, or notify the trade union of workmen the grounds in writing for not according recognition, within 21 days after the service of the claim.
- ii. Obligation of a trade union of workmen under section 9(4) of the IRA
Where the trade union of workmen concerned receives a notification that recognition is not accorded, or where the employer or trade union of employers concerned fails to comply with item (i) above, the trade union may report the matter in writing to the Director General within 14 days of the receipt of the notification or after the 21-day period has lapsed as the case may be.
- iii. Filing of representations under section 20(1A) of the IRA
The Director General shall not entertain any representations (to be reinstated on grounds of dismissal without just cause and excuse) unless such representations are filed within 60 days of the dismissal.


DO THE PROVISIONS ABOVE HAVE ANY IMPACT?

For example, if X was dismissed with effect from 15 April 2020, he would have to file his representation in the Industrial Relations Department by 14 June 2020 (60 days) at the very latest. Under the exclusion of time provided by the COVID-19 Act, X has an extended time period until 9 August 2020 to file his claim (60 days calculated from 10 June 2020). However, the limitation period would have lapsed by 9 August 2020, before the COVID-19 Act had come into force (i.e. 23 October 2020). Thus, this provision does not effectively protect employees who wish to claim unfair dismissal during the Movement Control Order (MCO) and early Conditional Movement Control Order (CMCO) period as the extension of time granted under the COVID-19 Act would have expired upon the coming into force of the COVID-19 Act.

(3) MODIFICATION TO THE PRIVATE EMPLOYMENT AGENCIES ACT 1981

The period from 18 March 2020 to 9 June 2020 shall be excluded from the calculation of the period for an application to renew a licence under section 11(1) of the Private Employment Agencies Act 1981, i.e. at least 60 days before the expiry date.

CONCLUSION It is recognised that the implementation of the COVID-19 Act undoubtedly aims to mitigate the financial hardship suffered by employers and to protect the interest of employees during this period. However, these reliefs appear to be of little impact, given that seven months have passed since the implementation of the MCO. The contractual protection does not extend to contracts that have already been terminated before the COVID-19 Act came into force, and the limitation period to claim unfair dismissal during the MCO and early CMCO period has already expired.

Although some may argue that the worst has passed and that the economy has regained some semblance of normalcy with limited government intervention, the COVID-19 Act does present some level of certainty as a legal compass to navigate these circumstances. We can take comfort in that the COVID-19 Act extends protection to newly terminated contracts after it has come into force, which means businesses and contractual parties may rest a little easier knowing that further limbos if any, are alleviated. However, we hope that there would be more feasible reliefs to be implemented so that greater groups of individuals may benefit from them. 

E-SIGNATURE

Article written by Idza Hajar Ahmad Idzam from Litigation practice group

COVID-19: THE USE AND RECOGNITION OF E-SIGNATURE IN MALAYSIA – A

DOUBLE-EDGED SWORD?... This article explores the use and recognition of E-Signatures in Malaysia.

INTRODUCTION The limitation on movement presents difficulties for corporations and business entities in the execution of documents and contracts, prompting these entities to resort to electronic dealings in an attempt to ensure business efficacy and continuity of commercial transactions. Amongst others, the usage of electronic signatures, also known as e-signatures, emerges as the new norm post-Movement Control Order (MCO) and during Conditional Movement Control Order (CMCO) as a viable alternative to the traditional wet-ink signature that has long been the practice in commercial transactions.

TYPES OF E-SIGNATURES There are two types of electronic signatures legally recognised in Malaysia and they are as follows:

- i. Digital signature governed under the Digital Signature Act 1997 (the “DSA”); and
- ii. Electronic signature regulated under the Electronic Commerce Act 2006 (the “ECA”).

The term “digital signature” and “electronic signature” are not to be used interchangeably as it refers to entirely different concepts and are governed by differing statutes.

A. Digital Signature

A digital signature under the DSA is limited to mean “a transformation of a message using an asymmetric cryptosystem”¹ that is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority. In other words, a digital signature is based on cryptography which is legally recognised if it is created in accordance with the DSA comprising of *inter-alia* the following:

¹ Section 2 of Digital Signature Act 1997 (DSA).

- i. verification by reference to the public key listed in a valid certificate issued by a licensed certification authority²;
- ii. affixed by the signer with the intention of signing the message; and
- iii. the recipient has no knowledge or notice that the signer has breached a duty as subscriber OR does not rightfully hold the private key used to affix the digital signature³.

A digital signature bears no physical resemblance to wet-ink signatures as it is created and verified using cryptography that concerns itself with transforming messages into seemingly unintelligible form and back to its original form thereafter⁴. However, a digital signature would be as legally binding as a document signed with the traditional wet-ink signatures, an affixed thumbprint or any other mark⁵. There are instances where digital signatures have been used as an electronic signature in commercial transactions, and in such instances, the provisions of the DSA as a whole shall continue to apply in respect of the said digital signatures under section 9(3) of the ECA⁶.

B. Electronic Signature

An electronic signature under the ECA is defined broadly to include “any letter, character, number, sound or any other symbol or any combination thereof created in an electronic form adopted by a person as a signature”⁷. As a general rule, where any law requires a signature of a person on a document, it will be deemed fulfilled by an electronic signature if it:

- i. is attached to or is logically associated with the electronic message;
- ii. adequately identifies the person and adequately indicates the person’s approval of the information to which the signature relates; and
- iii. is as reliable as is appropriate given the purpose for which, and the circumstances in which the signature is required⁸.

² There are currently four licensed certification authorities in Malaysia. Further reference could be made to the Malaysian Communication and Multimedia Commission (MCMC) portal.

³ Section 62 of DSA.

⁴ Paragraph 36 of the United Nations Commission On International Trade Law (UNCITRAL) Model Law on Electronic Signatures with Guide to Enactment 2001 (MLES).

⁵ Section 62(2) of DSA.

⁶ The DSA shall continue to apply to any digital signature used as an electronic signature in any commercial transaction.

⁷ Section 5 of Electronic Commerce Act 2006 (ECA).

⁸ Section 9 of ECA.

The requirement of reliability of the electronic signature is fulfilled if the creation is linked to or under the control of the person only and any alteration to the electronic signature and the document concerned after the time of signing is detectable⁹.

In the Federal Court case of *Yam Kong Seng & Anor v Yee Weng Kai* [2014] 6 CLJ 285, Suriyadi Halim Omar FCJ delivering the judgment of the court held that the legal requirement for an electronic signature pursuant to section 9 of the ECA is fulfilled in the form of a short messaging service (SMS) where the sender is adequately identified i.e. the registered owner of the telephone number from which the SMS was sent. The judiciary further held that signatures need not be written and sufficient if there is any mark which identifies the act of the party or some distinguishing feature peculiar to the person. This case had interpreted broadly section 5¹⁰ of the ECA that an electronic signature of any letter, character, number, sound or other symbol or any combination created in an electronic form including SMS where the owner of the number is identified thereby paving the possibility of a wider recognition of electronic signatures in various forms.

NON-APPLICABILITY OF E-SIGNATURES

Unlike digital signatures, where the DSA is silent as to what specific types of transaction it is applicable to, electronic signatures on the other hand are applicable to any commercial transactions so long as the requirements under the ECA are fulfilled. However, it must be noted that there are four types of transactions or documents which are explicitly excluded from the application of electronic signatures under section 2 of the ECA, namely:

- i. Powers of Attorney;
- ii. The creation of wills and codicils;
- iii. The creation of trusts; and
- iv. Negotiable instruments (such as bills of exchange and cheques)¹¹.

It must also be noted that under section 16 of the ECA, service of documents such as notices of default, notices of demand, notices to show cause, notices of repossession, any notices required to be served before commencing a legal proceeding and any originating process, pleading, affidavit or other documents required to be served according to a legal proceeding cannot be effected by service or delivery through electronic means.

POINTS TO PONDER ON THE USE OF E-SIGNATURES

The adoption of e-signatures may be desirable to reduce turnaround time and ensure business efficacy. The prospect of adopting e-signatures becomes more attractive as social distancing becomes the new norm moving forward as it would ensure human contact during the execution of documents are kept to a minimal. However, there is a need to weigh the convenience of using e-signatures against the legal risks of such e-signatures being challenged. The legal and practical considerations that need to be taken into account are as follows:

A. Use not Mandatory

Pursuant to section 9 of the ECA, electronic signatures need to be signed on a document in the form of an electronic message. However, section 3 of the ECA provides that the use, provision or acceptance of an electronic message for commercial transaction is not mandatory and is subject to the consent of parties which may be inferred from conduct¹². This means that the validity of electronic signatures may be challenged if a party to the transaction disputes gives consent to the use of electronic messages. Consent must be reached in clear terms by parties for the use, provision and acceptance of commercial transactions by electronic means.

B. Absence of Technology Neutrality

Confusion can also arise in respect of the usage and effect of digital signatures and electronic signatures as both are treated differently under Malaysian law. An electronic signature created using a normal signing tool would satisfy the requirement of signature¹³ and/or witnessing¹⁴ in respect of paper-based documents provided that the threshold tests under the ECA are fulfilled. However, where any law requires a seal to be affixed, a digital signature created based on cryptography under the DSA is required instead. Awareness on the differences between these two methods of electronic signatures and its utilisation for different commercial transactions remains a relevant consideration for parties. Parties should avoid the risk of a contract being challenged on the ground that the incorrect method of e-signature was utilised.

⁹ Section 9(2) of ECA.

¹⁰ Interpretation.

¹¹ Schedule to Section 2 of ECA.

¹² Section 3 of ECA.

¹³ Section 9 of ECA.

¹⁴ Section 11 of ECA.

C. Recognition of Foreign Digital Signatures and Electronic Signatures

Unlike Thailand and Vietnam, Malaysia did not adopt the ECA and the DSA specifically based on or influenced by the UNCITRAL Model Law on Electronic Signatures 2001 (MLES)¹⁵. As such, there is no blanket acceptance or recognition of foreign digital signatures and electronic signatures issued/created outside Malaysia on the principle of substantive equivalence that disregards the place of origin¹⁶. A digital signature that has been recognised by foreign certification authorities will not have the same effect and validity in Malaysia unless the digital signature satisfies all the requirements under section 62 of the DSA and that the foreign certification authority is recognised under section 19 of the DSA¹⁷. To date, no foreign certification authorities have received recognition in Malaysia¹⁸.

The Malaysian position on the recognition of foreign electronic signatures which have been issued and/or created outside Malaysia is also uncertain as there are no specific provisions dealing with this issue under the ECA. In the recent High Court case of *SS Precast Sdn Bhd v Serba Dinamik Group Bhd & Ors*¹⁹, the learned judge Datuk Wong Kian Kheong in allowing the use of an unaffirmed affidavit with counsel's undertaking to refile the affirmed affidavit after MCO had taken judicial notice of the fact that the affirmation before a Commissioner for Oaths could not be carried out due to the MCO. It therefore follows that affirmations before a Commissioner for Oaths is still subject to the traditional requirement of wet-ink signatures/mark and could not be resorted to e-signatures, possibly given the provisions in the ECA and/or the Electronic Government Activities Act 2007 (the "EGA").

D. Government Dealings

Dealings between the government and the public and the legal recognition of electronic messages and electronic signatures are regulated specifically under the EGA. Similar to the ECA, the requirement for a signature on an electronic message can be fulfilled using electronic signatures however the use of electronic messages in dealings with the government is subject to consent²⁰.

Section 19 of the EGA further stipulates that documents filed or submitted in the form of the electronic message is recognised if:

- i. it is accessible and intelligible to be usable for subsequent reference; and
- ii. submitted in accordance with such specified form.

The issuance of any license, permit, approval, authorisation or similar document under any law is also fulfilled in the form of an electronic message provided it is accessible and intelligible to be usable for subsequent reference under section 21 of the EGA.

Whilst the usage of e-signatures and electronic messages in dealings between the public and the government would allow for efficacy and expediency in many transactions, the use of the traditional wet-ink signatures cannot be discounted altogether and may still be required for certain transactions.

CONCLUSION As there are statutory provisions in Malaysia that regulate and explicitly recognises e-signatures, corporations and relevant entities must take steps to understand and be aware of the requirements in law that must be fulfilled before e-signatures are recognised under the provisions of the ECA and/or DSA to ensure that the validity of documentation executed in this manner is not disputed or questioned later on. Corporations are thus encouraged to seek legal advice and have adequate legal representation who are well-versed in this area of law in these transactions to ensure their rights are protected. ✍️

¹⁵ The list of states which adopted domestic legislation based on or influenced by the UNCITRAL MLES.

¹⁶ See Article 12 of the MLES.

¹⁷ See regulation 71 of the Digital Signature Regulations, 1998 on the criteria for recognition of foreign certification authorities.

¹⁸ List of Recognised Foreign Certification Authorities can be found via MCMC Portal.

¹⁹ [2020] MLJU 400

²⁰ Sections 3 and 13 of the Electronic Government Activities Act 2007.

ADMINISTRATIVE LAW – Judicial review – Challenge against the decision of Director General of National Registration (DGNR)

JABATAN PENDAFTARAN NEGARA & ORS V SEORANG KANAK-KANAK & ORS [2020] MLJU 326, Federal Court

FACTS The second (MEMK) and third respondents, both Muslims, are the parents of the first respondent (the “Child”) who was an illegitimate child under Muslim law. The parents applied for MEMK’s name to be entered in the Child’s Birth Register but were given “bin Abdullah” instead. MEMK then applied to correct “bin Abdullah” to that of his name but was rejected by the DGNR on the basis that an illegitimate Muslim child cannot be ascribed to the name of his biological father, in line with the National Fatwa Committee (NFC)’s *fatwa* issued on the subject. This decision was then challenged by way of judicial review at the High Court, but it was dismissed. The Court of Appeal found that the learned High Court Judge had failed to address the existence of section 13A(2)²¹ of the Births and Deaths Registration Act 1957 (the “BDRA”) and held that an illegitimate child can bear either the mother’s or the father’s name. Hence, this appeal.

ISSUE Whether section 13A²² of the BDRA applies to the registration of births of Muslim children.

HELD In allowing the appeal in part, the Federal Court held that section 13A of the BDRA does not apply to the registration of births of Muslim children because the personal name of the father is not a surname. However, the DGNR was ordered to remove “bin Abdullah” from the child’s birth certificate as the Child was born in the state of *Johor*, and the State has not gazetted the NFC’s *fatwa* on ascribing “bin Abdullah” or “binti Abdullah” to a Muslim illegitimate child. ﷺ

²¹ The surname, if any, to be entered in respect of an illegitimate child may where the mother is the informant and volunteers the information, be the surname of the mother; provided that where the person acknowledging himself to be the father of the child in accordance with section 13 requests so, the surname may be the surname of that person.

²² Surname of child.

UNDANG-UNDANG PENTADBIRAN – Semakan kehakiman – Mencabar keputusan Ketua Pengarah Pendaftaran Negara (KPPN)

JABATAN PENDAFTARAN NEGARA & LAIN-LAIN V SEORANG KANAK-KANAK & LAIN-LAIN [2020] MLJU 326, Mahkamah Persekutuan

FAKTA-FAKTA Responden kedua (MEMK) dan ketiga adalah beragama Islam dan ibu bapa kepada responden pertama (“Kanak-kanak”), yang merupakan anak luar nikah di bawah undang-undang Islam. Ibu bapanya memohon agar nama MEMK direkodkan dalam Daftar Kelahiran Kanak-kanak tersebut, tetapi diberi “bin Abdullah”. MEMK kemudian memohon untuk membetulkan nama Kanak-kanak itu untuk menjadi ‘bin MEMK’ namun ditolak oleh KPPN atas alasan nama kanak-kanak Muslim yang tidak sah taraf tidak boleh mengandungi nama bapa kandungnya selaras dengan fatwa yang dikeluarkan oleh Majlis Fatwa Kebangsaan (MFK) tentang pekara tersebut. Responden-responden mencabar keputusan KPPN itu melalui semakan kehakiman di Mahkamah Tinggi, tetapi ditolak. Mahkamah Rayuan pula mendapati bahawa Hakim Mahkamah Tinggi gagal menumpukan kewujudan seksyen 13A(2)²³ Akta Pendaftaran Kelahiran dan Kematian 1957 (APKK) dan menyatakan bahawa nama kanak-kanak tidak sah taraf boleh dibubuh nama ibu atau bapanya. Oleh itu, rayuan ini.

ISU Sama ada seksyen 13A²⁴ APKK terpakai pada pendaftaran kelahiran kanak-kanak beragama Islam.

KEPUTUSAN Dalam membenarkan sebahagian rayuan, Mahkamah Persekutuan menyatakan bahawa seksyen 13A APKK tidak terpakai pada pendaftaran kelahiran kanak-kanak beragama Islam kerana nama peribadi si bapa itu bukan nama keluarga. Walaubagaimanapun, KPPN telah diarahkan untuk memadam “bin Abdullah” daripada sijil kelahiran Kanak-kanak tersebut kerana beliau dilahirkan di Negeri Johor dan Negeri itu tidak pernahewartakan fatwa MFK yang menyatakan bahawa kanak-kanak tidak sah taraf mestilah dinamakan “bin Abdullah” atau “binti Abdullah”. ﷺ

²³ Nama keluarga, jika ada, yang hendaklah dicatatkan berkenaan dengan anak tidak sah taraf boleh jika ibunya adalah pemberitahu dan secara sukarela memberi maklumat itu, menjadikan nama ibunya sebagai nama keluarganya; dengan syarat bahawa jika orang yang mengaku dirinya menjadi bapa kanak-kanak itu mengikut peruntukan seksyen 13 meminta sedemikian, maka nama keluarga bolehlah diletak atas nama keluarga orang itu.

²⁴ Nama keluarga kanak-kanak.

COMPANY LAW – Winding up – Statutory priorities regime

UNDANG-UNDANG SYARIKAT – Penggulangan – Rejim keutamaan berkanun

DUBON BERHAD (IN LIQUIDATION) V WISMA COSWAY MANAGEMENT CORPORATION [2020] 4 MLJ 288, Federal Court

DUBON BERHAD (DALAM LIKUIDASI) V PERBADANAN PENGURUSAN WISMA COSWAY [2020] 4 MLJ 288, Mahkamah Persekutuan

FACTS Following the winding-up of the appellant (“Dubon”), its liquidator set about realising the company’s assets to pay off creditors. One such asset was Dubon’s beneficial ownership of a strata unit in Wisma Cosway. In order to sell the unit, the liquidator required the property to be transferred into Dubon’s name but Wisma Cosway’s developer refused to execute the transfer unless Dubon had settled its “administrative and application fees” and “outgoings and service charges” owed to the respondent, the Management Corporation (MC) of Wisma Cosway. The liquidators refused to pay the aforesaid debts insisting that they were unsecured debts which could not be given preferential treatment over secured creditors in the winding-up process. Dubon filed a claim with the Strata Management Tribunal for an order directing the developer to execute the transfer of the strata unit to Dubon without imposing any charge and directing MC to issue a “clearance letter” upon payment. MC filed a counterclaim for the full sum that it was owed and applied to the High Court for leave to proceed with the said counterclaim but it was dismissed. The Court of Appeal reversed this decision. Hence, this appeal.

ISSUE Whether management fees/service charges that the wound-up company owed MC under section 77²⁵ of the Strata Management Act 2013 (the “SMA”) had priority over other unsecured debts.

HELD In allowing the appeal, the Federal Court held that the word “guarantee” under section 77 of the SMA neither elevated the payment of management fees due to the MC to the status of a secured debt, nor did it dislodge the statutory priority regime in section 527²⁶ of the Companies Act 2016, as this section stated that after payment of preferential debts, the liquidator was to safeguard the interests of the unsecured creditors by collecting and distributing the assets of the company *pari passu* amongst the unsecured creditors. ❄️

²⁵ Recovery of sum as a debt due to management corporation or subsidiary management corporation.

²⁶ Priorities.

FAKTA-FAKTA Berikutan penggulangan perayu (“Dubon”), pelikuidasi perlu menjual salah satu aset Dubon iaitu unit strata di Wisma Cosway. Pemaju tersebut enggan melaksanakan pemindahan melainkan Dubon menyelesaikan hutang-hutang “yuran pentadbiran dan permohonan” dan “kos perbelanjaan dan perkhidmatan” kepada responden, Perbadanan Pengurusan (PP) Wisma Cosway. Pelikuidasi enggan membayar jumlah tersebut dengan menegaskan bahawa ia adalah hutang tidak bercagar yang tidak seharusnya diberi layanan istimewa daripada pemiutang bercagar dalam proses penggulangan. Dubon mengemukakan tuntutan kepada Tribunal Pengurusan Strata untuk perintah mengarahkan pemaju untuk melaksanakan pemindahan unit strata ke Dubon tanpa mengenakan sebarang bayaran dan untuk PP mengeluarkan “surat pelepasan”. PP membuat tuntutan balas untuk jumlah keseluruhan yang terhutang dan memohon kebenaran daripada Mahkamah Tinggi untuk meneruskan tuntutan balas tersebut, tetapi ia ditolak. Mahkamah Rayuan membatalkan keputusan tersebut. Oleh itu, rayuan ini.

ISU Sama ada yuran pengurusan/caj perkhidmatan syarikat yang berhutang kepada PP di bawah seksyen 77²⁷ Akta Pengurusan Strata 2013 (APS) mempunyai keutamaan berbanding dengan hutang tidak bercagar yang lain.

KEPUTUSAN Dalam membenarkan rayuan itu, Mahkamah Persekutuan memutuskan bahawa perkataan “jaminan” di bawah seksyen 77 APS tidak menaikkan pembayaran yuran pengurusan terhutang kepada PP ke status hutang bercagar, dan ia juga tidak melucutkan rejim keutamaan statutori dalam seksyen 527²⁸ Akta Syarikat 2016 yang memperuntukkan bahawa selepas pembayaran hutang keutamaan, pelikuidasi harus melindungi kepentingan pemiutang tanpa cagaran dengan mengagihkan aset syarikat *pari passu* di antara pemiutang yang tidak bercagar. ❄️

²⁷ Mendapatkan jumlah wang sebagai hutang yang kena dibayar kepada perbadanan pengurusan atau perbadanan pengurusan subsidiari.

²⁸ Keutamaan.

COMPANY LAW – Application for leave to proceed against wound-up company's liquidator in personal capacity

TEE SIEW KAI V MACHANG INDAH DEVELOPMENT SDN BHD (IN LIQUIDATION)
[2020] 6 MLJ 168, Federal Court

FACTS The respondent had filed an application in the High Court seeking leave to proceed against the liquidator (the “appellant”) of another company, one Merger Acceptance Sdn Bhd (in liquidation) (“Merger”) in his personal capacity. Merger had created a third-party charge over a piece of land in favour of Bank Kerjasama Rakyat Malaysia (the “Bank”) to enable financing to be granted to the respondent to develop the said land. The development project failed and consequently the Bank had made several attempts to auction the said land but to no avail. Subsequently, the appellant as the liquidator of Merger was able to sell the said land for a price of MYR9 million but the respondent claimed that it was sold at a gross undervalue. The proposed claim was for damages against the liquidator personally, by reason of an alleged breach of a joint venture agreement and/or power of attorney between the two companies in liquidation. The main issue was whether the appellant who was the liquidator of Merger was personally liable in damages to the respondent for an alleged breach of contract by Merger. Both the High Court and Court of Appeal found in favour of the respondent, hence the present appeal.

ISSUE Whether a party who is neither a creditor nor a contributory of a wound-up company is entitled to obtain leave to sue the liquidator of a wound-up company, in his personal capacity.

HELD In allowing the appeal, the Federal Court held that when the liquidator carried out his statutorily stipulated function of selling the lands, he did so on behalf of the company and in his capacity as agent of the company. As such, while the sale so effected is binding on the company, it is not and does not amount to an act by the liquidator personally. The consequence is that a third party, such as Merger, cannot sue the liquidator for negligence, save for misfeasance or personal misconduct on his part. The liquidator owed no duties to Machang, which was neither a creditor nor contributory of Merger. ❄️

UNDANG-UNDANG SYARIKAT – Permohonan kebenaran untuk meneruskan tindakan terhadap pelikuidasi secara kapasiti peribadi

TEE SIEW KAI V MACHANG INDAH DEVELOPMENT SDN BHD (DALAM LIKUIDASI)
[2020] 6 MLJ 168, Mahkamah Persekutuan

FAKTA-FAKTA Responden telah memfailkan permohonan di Mahkamah Tinggi untuk meneruskan tindakan terhadap pelikuidasi (“perayu”) Merger Acceptance Sdn Bhd (“Merger”) dalam kapasiti peribadinya. Merger telah membuat cagaran pihak ketiga ke atas sebidang tanah kepada Bank Kerjasama Rakyat Malaysia (“Bank”) sebagai pembiayaan kepada responden untuk membangunkan tanah tersebut tetapi gagal. Akibatnya, pihak Bank telah berusaha untuk melelong tanah tersebut tetapi tidak berjaya. Perayu akhirnya berjaya menjual tanah tersebut dengan harga MYR9 juta tetapi responden mendakwa bahawa tanah tersebut dijual pada nilai kasar yang rendah. Tuntutan yang dicadangkan adalah untuk ganti rugi terhadap pelikuidasi secara peribadi di atas dakwaan pelanggaran perjanjian usaha sama dan/atau surat kuasa wakil antara kedua-dua syarikat dalam likuidasi. Isu utama adalah sama ada perayu yang merupakan pelikuidasi Merger bertanggungjawab secara peribadi terhadap kerugian kepada responden atas tuduhan pelanggaran kontrak oleh Merger. Kedua-dua Mahkamah Tinggi dan Mahkamah Rayuan berpihak kepada responden, oleh itu rayuan ini.

ISU Sama ada pihak yang bukan pemegang atau pencarum syarikat yang telah digulung berhak mendapat kebenaran untuk menyaman pelikuidasi syarikat yang telah digulung dalam kapasiti peribadinya.

KEPUTUSAN Dalam mengizinkan rayuan itu, Mahkamah Persekutuan memutuskan bahawa ketika pelikuidasi menjalankan fungsi-fungsi yang ditetapkan untuk menjual tanah-tanah tersebut, dia berbuat demikian bagi pihak syarikat dengan kapasitinya sebagai ejen syarikat. Oleh itu, walaupun jualan yang dilaksanakan adalah terikat ke atas syarikat, itu tidak bermaksud atau berjumlah pada tindakan oleh pelikuidasi secara peribadi. Akibatnya adalah pihak ketiga, seperti responden, tidak boleh mengambil tindakan terhadap pelikuidasi untuk kecuaiannya, kecuali kesalahan penyalahgunaan kuasa atau salah laku peribadi di pihaknya. ❄️

ACT

TEMPORARY MEASURES FOR REDUCING THE IMPACT OF CORONAVIRUS DISEASE 2019 (COVID-19) ACT 2020

National Language

Akta Langkah-Langkah Sementara Bagi Mengurangkan Kesan Penyakit Koronavirus 2019 (COVID-19) 2020

No
829

Date of coming into operation
23 October 2020

Notes

This is an Act to provide for temporary measures to reduce the impact of COVID-19 including to modify the relevant provisions in the Limitation Act 1953, the Sabah Limitation Ordinance, the Sarawak Limitation Ordinance, the Public Authorities Protection Act 1948, the Insolvency Act 1967, the Hire-Purchase Act 1967, the Consumer Protection Act 1999, the Distress Act 1951, the Housing Development (Control and Licensing) Act 1966, the Industrial Relations Act 1967, the Private Employment Agencies Act 1981, the Land Public Transport Act 2010, the Commercial Vehicles Licensing Board Act 1987, the Courts of Judicature Act 1964, the Subordinate Courts Act 1948 and the Subordinate Courts Rules Act 1955.

NATIONAL LAND CODE (REVISED - 2020)

National Language

Kanun Tanah Negara (Disemak - 2020)

No
828

Date of coming into operation
15 October 2020

Notes

This is the revised edition of the National Land Code 1965 which incorporates revisions made under previous amendment orders up to 14 October 2020.

CURRENCY ACT 2020

National Language

Akta Mata Wang 2020

No
827

Date of coming into operation
1 October 2020

Notes

This is an Act to provide for the management of currency of Malaysia, regulation of currency processing business and currency processing activities and for related matters.

FINANCE ACT 2019

National Language

Akta Kewangan 2019

No
823

Date of coming into operation
1 July 2020

Notes

This is an Act to amend the Income Tax Act 1967, the Real Property Gains Tax 1976, the Stamp Act 1949, the Petroleum (Income Tax) Act 1967, the Sales Tax Act 2018, the Finance Act 2010 and the Finance Act 2018, to provide temporary relief measures for the impact of COVID-19 pandemic.

AMENDMENT ACTS

NATIONAL SECURITY COUNCIL (AMENDMENT) ACT 2020


National Language

Akta Majlis Keselamatan Negara (Pindaan) 2020

No
A1625

Date of coming into operation
1 November 2020

Notes

This is an Act to amend the National Security Council Act 2016. The highlights of the amendments are, (1) amendment of section 18 regarding the authority to declare a security area, by giving that power to the Yang di-Pertuan Agong instead of the Prime Minister; (2) amendment to section 37 which increases the penalty for breaching information linked to National Security Council; (3) amendment to section 42 which enables the Council to make regulations under the Act; and (4) the insertion of two new sections 42A and 42B, which imposes liabilities upon the director, etc., for an offence committed by a company, etc., and upon a person for whose employee, etc. is liable under the Act. 

ROAD TRANSPORT (AMENDMENT) ACT 2020

National Language

Akta Pengangkutan Jalan (Pindaan) 2020


No

A1618

Date of coming into operation

23 October 2020

Notes

This is an Act to amend the Road Transport Act 1987. The highlights of the amendment Act are the amendment to section 41 which increases the penalties for traffic offences of causing death by reckless or dangerous driving, namely imprisonment for five to 10 years with a fine of MYR20,000 to MYR50,000, and the amendment to section 44 which increases the punishment for the offence of driving while under the influence of intoxicating liquor or drugs. Those causing death while driving will be jailed between 10 and 15 years and fined between MYR50,000 and MYR100,000, with the driving licence being disqualified for a period of 10 years for first-time offenders. The amendment also carries a jail term of 15 to 20 years, a fine not less than MYR100,000 and a maximum fine of MYR150,000, as well as the licence being disqualified for a period of 20 years, for subsequent offences. 

SUBORDINATE COURTS RULES (AMENDMENT) ACT 2020

National Language

Akta Kaedah-Kaedah Mahkamah Rendah (Pindaan) 2020


No

A1623

Date of coming into operation

22 October 2020

Notes

This is an Act to amend the Subordinate Courts Rules Act 1955. The highlight of the amendment Act is the amendment of section 2 of the principal Act by inserting the definition of "remote communication technology" which means a live video link, a live television link or any other electronic means of communication after the definition of "proceeding". 

SUBORDINATE COURTS (AMENDMENT) ACT 2020

National Language

Akta Mahkamah Rendah (Pindaan) 2020


No

A1622

Date of coming into operation

22 October 2020

Notes

This is an Act to amend the Subordinate Courts Act 1948. The highlight of the amendment Act is the amendment of section 2 of the principal Act by inserting the definition of "remote communication technology" which means a live video link, a live television link or any other electronic means of communication after the definition of "Registrar". 

COURTS OF JUDICATURE (AMENDMENT) ACT 2020

National Language

Akta Mahkamah Kehakiman (Pindaan) 2020

No

A1621

Date of coming into operation

22 October 2020

Notes

This is an Act to amend the Courts of Judicature Act 1964. The highlight of the amendment Act is the amendment of section 3 of the principal Act by inserting the definition of "remote communication technology" which means a live video link, a live television link or any other electronic means of communication after the definition of "Registrar".

CENTRAL BANK OF MALAYSIA (AMENDMENT) ACT 2020

National Language

Akta Bank Negara Malaysia (Pindaan) 2020

No

A1616

Date of coming into operation

1 October 2020

Notes

This is an Act to amend the Central Bank of Malaysia Act 2009. The highlight of the amending Act is the deletion of sections 62, 63 and 64 which confers the sole right to issue and call in currency notes and coins, as legal tender in Malaysia to the Central Bank of Malaysia (the "Bank"). Furthermore, the principal Act is amended by inserting the new section 66A which deals with the powers and functions of the Bank under the Currency Act 2020 in relation to the exchange rate regime for Ringgit.

COPYRIGHT (AMENDMENT) ACT 2020

National Language

Akta Hak Cipta (Pindaan) 2020

No

A1612

Date of coming into operation

1 July 2020

Notes

This is an Act to amend the Copyright Act 1987. The highlight of the amending Act is the introduction of the new section 59c regarding "disputes relating to royalties arising between a licensing body and any of its members subject to the agreement of such licensing body and such member".

MALAYSIAN ANTI-CORRUPTION COMMISSION (AMENDMENT) ACT 2018

National Language

Akta Suruhanjaya Pencegahan Rasuah Malaysia (Pindaan) 2018

No

A1567

Date of coming into operation

1 June 2020 for section 4

Notes

This is an Act to amend the Malaysian Anti-Corruption Commission Act 2009. The highlight of the amending Act is the introduction of new section 17A which imposes a corporate liability on organisations, who may now be held accountable for the corrupt offences committed by their employees or any persons deemed associated with the organisations.

WORKERS' MINIMUM STANDARDS OF HOUSING AND AMENITIES (AMENDMENT) ACT 2019

National Language

Akta Standard Minimum Perumahan dan Kemudahan Pekerja (Pindaan) 2019

No

A1604

Date of coming into operation

1 June 2020

Notes

This is an Act to amend the Workers' Minimum Standards of Housing and Amenities Act 1990. The highlight of the amending Act is the expansion of the minimum standard of housing and provision of basic facilities for workers in all sectors. Some of the minimum standards that employers are required to comply includes separate accommodation according to gender-based workers, fire safety measures, ensuring electrical wiring system complies with safety requirements and to provide medical aid to employees. 🌀

EMPLOYEES PROVIDENT FUND (AMENDMENT) ACT 2019

National Language

Akta Kumpulan Wang Simpanan Pekerja (Pindaan) 2019

No

A1611

Date of coming into operation

15 March 2020 except for sections 6, 8 and 11 (1 October 2020)

Notes

This is an Act to amend the Employees Provident Fund Act 1991. The highlights of the amending Act are the insertion of the new Eighth Schedule which allows a member to transfer his Employment Provident Fund (EPF) contributions into the account of his lawful wife/s and the amendment of section 39 which imposes travel bans on those with overdue EPF contributions. Another amendment is to section 55B which allows for earlier withdrawal of contribution under certain circumstances, e.g. physically or mentally incapacitated from engaging in employment, or non-citizen of Malaysia who is about to leave Malaysia with no intention of returning. 🌀

COMPANIES (AMENDMENT) ACT 2019

National Language

Akta Syarikat (Pindaan) 2019

No

A1605

Date of coming into operation

15 January 2020

Notes

This is an Act to amend the Companies Act 2016. The highlight of the amending Act is the amendment to section 84 by deleting the word "special" which allows a company to alter its share capital by way of an ordinary resolution instead of a special resolution, unless otherwise provided in the company's constitution. Another amendment is to section 409, by replacing the word "and" to "or" which makes it easier for the High Court to refuse a grant of a judicial management order by mere opposition of a secured creditor. The amendment also includes insertion of a new section 580A: Security for costs, which reintroduces section 351 of the Companies Act 1965, which empowers the court to require a company initiating legal proceedings as a plaintiff to provide sufficient security for all costs and to stay all proceedings until such security is given. 🌀

SUBSIDIARY LEGISLATION

- PU(A) 198/2020: Insolvency (Amendment) Rules 2020 – Effective date: 1 July 2020
- PU(A) 196/2020: Sales Tax (Amendment) Regulations 2020 – Effective date: 1 July 2020
- PU(A) 176/2020: Money Services Business (Exemption of Fees) Order 2020 – Effective date: 1 June 2020
- PU(A) 218/2020: Real Property Gains Tax (Exemption) Order 2020 – Effective date: 1 June 2020
- PU(A) 151/2020: Service Tax (Person Exempted from Payment of Tax) (Amendment) Order 2020 – Effective date: 14 May 2020
- PU(A) 123/2020: Companies (Exemption) (No. 2) Order 2020 – Effective date: 23 April 2020 to 31 December 2020
- PU(A) 142/2020: Employees Provident Fund (Amendment) Rules 2020 – Effective date: 1 April 2020
- PU(A) 219/2020: Financial Services (Exemption) Order 2020 – Effective date: 21 March 2020

**GUIDELINES/RULES/CIRCULARS/
DIRECTIVES AND PRACTICE NOTES ISSUED
BETWEEN
JANUARY AND NOVEMBER 2020
BY BANK NEGARA MALAYSIA,
BURSA MALAYSIA AND
SECURITIES COMMISSION MALAYSIA**

BANK NEGARA MALAYSIA (BNM)

- BNM Policy Document on Standing Facilities – *Effective date: 30 July 2020*
- BNM Policy Document on Electronic Know Your Customer (e-KYC) – *Effective date: 30 June 2020*
- BNM Foreign Exchange Notices – *Effective date: 30 April 2020*
- BNM Monetary Policy Instrument on The Statutory Reserve Requirement – *Effective date: 20 March 2020*
- BNM Policy Document on Issuance of Redemption Statement and Release of Original Title of Immovable Property – *Effective date: 26 February 2020*
- BNM Policy Document on Capital Adequacy Framework (Capital Components) – *Effective date: 5 February 2020*
- BNM Capital Adequacy Framework for Islamic Banks (Capital Components) – *Effective date: 5 February 2020*
- BNM Policy Document on Domestic Systemically Important Banks Framework – *Effective date: 5 February 2020*
- BNM Policy Document on Financial Reporting for Development Financial Institutions – *Effective date: 1 January 2020*
- BNM Policy Document on Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Financial Institutions – *Effective date: 1 January 2020*
- BNM Policy Document on Anti-Money Laundering, Countering Financing of Terrorism and Targeted Financial Sanctions for Designated Non-Financial Businesses and Professions & Non-Bank Financial Institutions – *Effective date: 1 January 2020*

BURSA MALAYSIA

- Amendments to the Rules and Directives of Bursa Malaysia Securities Berhad pursuant to the Expansion of the Market Making Framework – *Effective date: 7 December 2020*
- Amendments to the Rules of Bursa Malaysia Derivatives Clearing Berhad in relation to the Clearing Fund Size – *Effective date: 2 October 2020*
- Bursa Malaysia ACE Market Listing Requirements Guidance Note 9: Requirements for Directors and Signatory of Statutory Declaration for Accounts – *As at: 1 October 2020*
- Bursa Malaysia Securities Berhad Main Market Listing Requirements – *As at: 1 October 2020*
- Amendments to the Rules and Directives of Bursa Malaysia Derivatives Berhad in relation to the revision of the 5-Year Malaysian Government Securities Futures Contract and Other Amendments – *Effective date: 9 September 2020*
- Amendments to the Rules and Directives of Bursa Malaysia Derivatives Clearing Berhad pursuant to the Revision of the 5-Year Malaysian Government Securities Futures Contract and Other Amendments – *Effective date: 9 September 2020*
- Consolidated Bursa Malaysia Securities Bhd's Participating Organisations' Directives and Guidance – *As at: 21 August 2020*
- Consolidated Rules of Bursa Malaysia Securities Bhd – *As at: 21 August 2020*
- Consolidated Rules of Bursa Malaysia Derivatives Clearing Bhd – *As at: 21 August 2020*
- Amendments to the Rules and Directives of Bursa Malaysia Derivatives Clearing Bhd pursuant to the Enhanced Admission Process for Clearing Participants and Registered Persons and Other Amendments – *Effective date: 21 August 2020*

SECURITIES COMMISSION MALAYSIA

- SC Revised Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework – *Effective date: 12 November 2020*
- SC Revised Guidelines on Unit Trust Funds – *Effective date: 12 November 2020*
- SC Digital Assets Guidelines – *Effective date: 28 October 2020*

- SC Guidelines on the Use of Electronic Signature for Documents Submitted to the Securities Commission Malaysia – *Effective date: 23 October 2020*
- SC Guidance and FAQs on the Conduct of General Meetings for Listed Issuers – *Effective date: 13 October 2020*
- SC Guidelines on Trust Deeds – *Effective date: 23 August 2020*
- SC Guidelines on Conduct of Directors of Listed Corporations and Their Subsidiaries – *Effective date: 30 July 2020 except for Chapter 5 which will take effect on 1 January 2021*
- SC Guidelines on Licensing Handbook – *Effective date: 21 July 2020*
- SC Guidelines on Islamic Fund Management – *Issued on: 18 May 2020*
- SC Guidelines on Recognized Markets – *Effective date: 5 May 2020*
- SC Guidelines on Private Retirement Scheme – *Effective on: 4 May 2020*
- SC Guidelines on Prospectus – *Effective on: 4 May 2020*

WORD OF THE BRIEFCASE

Nunc pro tunc

It is a *Latin* phrase which means 'now for then', which refers to a change back to an earlier date of an order, judgment or filing of a document.

The issue of whether retrospective sanction from the Official Receiver/Liquidator of a wound-up appellant in Court by itself can sufficiently clothe the appellant and/or their solicitors to proceed with the appeal/proceeding in question without leave *nunc pro tunc* obtained from the Court was raised in the case of *Lai King Lung & Anor v Merais Sdn Bhd* [2020] 1 LNS 132.

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