



**REGULATORY
REFORM
INITIATIVES**

REGULATORY REFORM INITIATIVES

COVID-19 Initiative: Prescription of Amount of Indebtedness of Company under section 466(1)(a) of the CA 2016

Effective from 1 April 2021, the threshold of indebtedness of a company pursuant to section 466(1)(a) of the CA 2016 is an amount exceeding RM50,000 as prescribed under Gazette Notification No. 4159 [G.N. No. 4159].

This permanent increase of the indebtedness threshold from RM10,000 is in line with SSM's initiatives to continuously support the business community during the economic recovery period to assist companies which are still financially viable but affected by the extended period of the Movement Control Order (MCO) due the COVID-19 pandemic in facing its financial obligations.

From the period of 23 April 2020 to 31 March 2021, the indebtedness threshold was raised temporarily from RM10,000 to RM50,000 as part of the intervention initiative to ensure that the companies affected by the COVID-19 pandemic do not face winding up actions.

Proposed Amendment to the CCMA 2001

Following the Cabinet mandate that SSM becomes the regulatory body responsible for administering the Movable Property Security Interest (MPSI) Bill, SSM has proposed amendments to the CCMA 2001 to widen the Commission's functions to regulate the Bill.

In addition, provisions relating to the power to publish information, power to take action and appeal to the Minister are also proposed to be amended. The proposals are aimed to address inconsistencies in law and strengthen the application of existing provisions relating to the powers of the Minister, the Commission and the Registrar.

Companies (Amendment) Bill and Limited Liability Partnership (Amendment) Bill

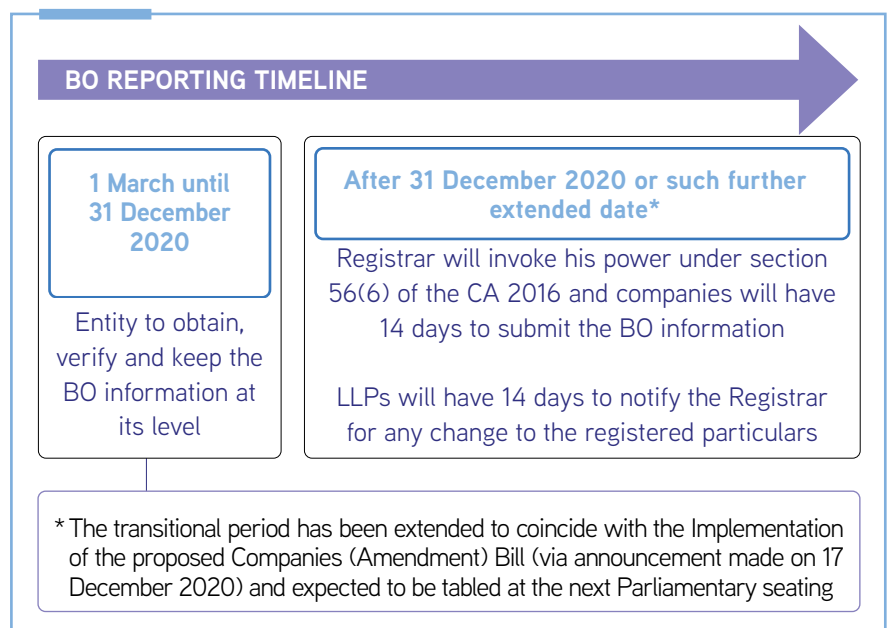
SSM is finalizing the Companies (Amendment) Bill and the Limited Liability Partnership (Amendment) Bill which are expected to be tabled in the Parliament in the 2022 session upon endorsement by the Attorney General's Chambers.

One of the objectives of the amendments is to improve the legal framework relating to the rehabilitation of business entities to be more comprehensive in line with the international standards to ensure that business entities remain competitive. Without a comprehensive legal framework, companies and limited liability partnerships are facing the risk of being wound-up when they are having financial difficulties even though the businesses are in fact still viable.

Another key objective of the amendments is to further strengthen the governance provisions by improving the beneficial ownership reporting framework to curb money laundering, terrorist financing, corruption, tax evasion etc. by abusing business entities to conceal criminal activities. The proposed reporting framework will increase the transparency of the actual individuals who own or control the business entity.

Extension of the Transitional Period for compliance to the Guideline for the Reporting Framework for Beneficial Ownership (BO) of Legal Persons

In line with the amendments made to the CA 2016 and the LLPA 2012 relating to the BO reporting framework, SSM has extended the transitional period for legal entities to comply with the requirement set out in the Guideline for the Reporting Framework for BO of Legal Persons to coincide with the enforcement date of the proposed Companies (Amendment) Bill and Limited Liability Partnerships (Amendment) Bill. During the transitional period, legal entities must fully comply with the guideline except for lodgement with the Registrar when there are changes to the BO information.



*REGULATORY REFORM INITIATIVES***Trust Companies Bill**

As part of its corporate law reform programme, SSM is proposing to introduce a new Trust Companies Bill to replace the existing Trust Companies Act 1949 (TCA 1949). This effort is to ensure that the law regulated by SSM remain relevant and to harmonise with the current development and best practices at the international level as well as to realize SSM's aspiration to be the world's leading regulator through effective monitoring based on comprehensive legal framework.

Trust companies have been identified by the Financial Action Task Force (FATF) as reporting institutions based on their propensity to be misused for money laundering and terrorist financing purposes. In response, the new Bill will introduce new policies towards modernizing the TCA 1949 in line with international requirements in ensuring that the business environment in Malaysia is safe and can attract foreign investors to Malaysia.

Objectives of TCA 1949 Review**01**

To provide clarity and certainty in law and to avoid inconsistent and overlapping provisions in different statutes

02

To introduce new modern enabling powers necessary for the efficient management of trust companies

03

To modernize the trust company law to facilitate more effective trust administration

04

To promote the trust business and strengthen the competitiveness and attractiveness of trust companies' services industry in Malaysia

05

To harmonize the law with relevant international standards

06

To abolish outdated and complicated rules which create uncertainties with regard to the registration process and reporting procedures

REGULATORY REFORM INITIATIVES

Policy Statements under the Trust Companies Bill

Parameters of Activities

Policy Statement 1	The law will provide a clear parameter of trust business or trust related activities and the definition of "Trust Business".
---------------------------	--

Mandatory Registration Regime

Policy Statement 2	The law will clarify that only public companies limited by shares are allowed to be registered as trust companies and that mandatory registration will be required under the TC Bill before they are allowed to carry on trust business or trust related activities.
Policy Statement 3	The law will introduce a mandatory requirement for a trust company to have a constitution with specific objects.
Policy Statement 4	The law will provide for an exemption to certain categories of persons from the registration requirement and the power to exempt lies with the Minister upon recommendation from the Registrar.
Policy Statement 5	The law will be harmonized with the CA 2016 following the modernisation of several company law concepts including the abandonment of the authorised share capital concept.
Policy Statement 6	The law will prohibit a person from holding more than 20% shareholding in a trust company.
Policy Statement 7	The law will retain the existing requirement for trust companies to place security deposits with the Minister of Finance but with modifications to the amount of the security deposits based on certain percentage to reflect the current value of the trust business undertaken by a trust company.
Policy Statement 8	The law will omit the current reciprocal provisions relating to the trust law in Singapore.
Policy Statement 9	The law will provide a new definition of "beneficial ownership" and "control" to promote transparency of ownership and control of a trust company and its trust arrangement.
Policy Statement 10	The law will provide for a mandatory submission of Annual Statement together with the BO information.
Policy Statement 11	The law will provide criminal sanctions on directors of a trust company for breaches of certain duties and obligations under the TC Bill in addition to those stated in the CA 2016.
Policy Statement 12	The law will empower the Registrar to impose any terms and conditions with regard to the qualification and experience of a director of a trust company.
Policy Statement 13	The law will retain the current policy on provisions relating to auditors under the CA 2016.
Policy Statement 14	The law will expand section 8(1) of the TCA 1949 in relation to objects of trust companies to include the power of the board of directors of a trust company to fix the remuneration, charges and fees itself.

REGULATORY REFORM INITIATIVES

Policy Statements under the Trust Companies Bill

Cessation of Trust Companies

Policy Statement 15	Retention of provisions relating to court powers to order winding up of trust companies.
Policy Statement 16	Clarification that a trust company is allowed to cease business provided that the assets of the trust business or trust related activities is distributed while still acting as trustee.
Policy Statement 17	Trust companies are allowed to benefit from the provisions relating to Scheme of Compromise or Arrangement and Corporate Rescue Mechanism under the CA 2016.
Policy Statement 18	Retention relating to powers of Minister to apply for the winding up of a trust company on specific circumstances and the adoption of paragraph 465(2)(b) of the CA 2016 where the Registrar is empowered to apply to wind up a trust company which is being used for unlawful purposes.

Electronic Services

Policy Statement 19	The law will introduce mandatory electronic filing for lodgement or filing of documents and empower the Registrar to supply information and issue any documents electronically.
----------------------------	---

Minister of Finance Related Powers

Policy Statement 20	<p>The law will empower the Minister:</p> <ul style="list-style-type: none"> (a) to hear an appeal to the Registrar's decision on refusal to register a company as a trust company; (b) to be in charge in matters relating to enforcement activities; and (c) to be in charge in matters relating to the winding up of a trust company by Court.
Policy Statement 21	<p>Retention of the existing policies relating to the Minister's power:</p> <ul style="list-style-type: none"> (a) to hear an appeal on the additional security deposit in certain situation and to approve substitution of other securities deposited with the Accountant General; (b) to approve investment and to sell mortgaged land within three (3) years after acquisition; and (c) to determine the amount of fees collected by the Registrar on behalf of the Accountant General.

REGULATORY REFORM INITIATIVES

Movable Property Security Interest Bill (MPSI Bill)

SSM continued its effort to introduce a secured transaction legal framework and establish a unified collateral registry for Malaysia through the proposed MPSI Bill.

The MPSI Bill was proposed to fill in the gap in Malaysia so that business entities can utilize movable property owned by them and use such property as collateral to obtain financing in order to further expand their business. Numerous discussions and consultations were conducted with various agencies and ministries, and a proposal paper to introduce a new legal framework for secured transactions was tabled to the Cabinet on 17 February 2021. The Cabinet agreed that MPSI Bill be enacted for the purpose of registration and enforcement of security interest of movable property in Malaysia and SSM was assigned with the responsibility to administer the MPSI Bill as well as regulating activities in relation to the registration of movable property as collateral.

A three (3) day workshop was held starting from 29 November to 1 December 2021 to finalize the draft MPSI Bill. The workshop was attended by legal officers from the Legal Division of MDTCA and SSM. 108 legal provisions based on 23 Policy Statements were discussed and refined for subsequent submission to the Attorney General's Chambers.

23 Policy Statements under the MPSI Framework

Policy Statement 1	Introduction of framework for the registration of security interest on movable property that includes security interest arising from shariah transactions.
Policy Statement 2	Registration is on voluntary basis.
Policy Statement 3	The legal framework will apply to floating charge.
Policy Statement 4	The legal framework applies to all movable properties.
Policy Statement 5	The establishment of a single comprehensive regime.
Policy Statement 6	The registration system will be fully electronic.
Policy Statement 7	Perfection of security interest is perfected and effective against third parties if (a) a notice with respect to the security interest is registered in the Registry; or (b) secured creditor is in possession of the movable property.
Policy Statement 8	The legal framework will provide notice filing.
Policy Statement 9	Only interested person can request information from the Register.
Policy Statement 10	Amendment to financing statement will be allowed to be registered by the grantor/ debtor/ secured creditor.
Policy Statement 11	The legal framework will provide criminal sanction for false statement made to the Registrar.
Policy Statement 12	The registration of security interest is effective unless seriously misleading.
Policy Statement 13	The registration of a financing statement may be cancelled by a notice.
Policy Statement 14	The legal framework will require disclosure on any subordination of financing statement.
Policy Statement 15	The framework will generally allow any person to search the register and obtain printed search result. However, consideration must also be taken with regards to Personal Data Protection Act (PDPA) 2010 where information to be made available to the public will not be those which are sensitive information under PDPA.
Policy Statement 16	As a general rule a perfected security interest has priority over an unperfected security interest in the same collateral and that priority between perfected security interests in the same collateral is determined by the time the party has taken the perfecting step.

REGULATORY REFORM INITIATIVES

23 Policy Statements under the MPSI Framework

Policy Statement 17	The legal framework shall provide clear parameters with regards to the security interests/ interest in different circumstances.
Policy Statement 18	The legal framework shall provide the enforcement of interests after default for the debtor/ grantor/ secured creditor.
Policy Statement 19	The legal framework shall allow the termination of enforcement by grantor or any person who has interest on the secured property.
Policy Statement 20	Provision will be made to ensure that appropriate protection is provided for the security interest involving debtor/ grantor under insolvency or receivership.
Policy Statement 21	General transition provision.
Policy Statement 22	Prior security interests.
Policy Statement 23	Consequential amendments and repeal.

Study on the Impact of Gig Economy on the ROBA 1956

Taking cognisance of the importance of the role played by gig workers and digital platform providers towards domestic growth, SSM took the initiative to study the impact of the gig sector to the ROBA 1956 with particular emphasis to determine whether the activities of gig workers fall within the definition of “business” that need to be registered under ROBA 1956.

This study is significant because many Malaysians have chosen to participate in the gig economy following retrenchments and loss of income due to the COVID-19 pandemic.

The objectives of study are:

(a) To ascertain whether the activities of gig workers involved in the gig economy falls within the classification of ‘business’ under ROBA 1956;

(b) To propose appropriate policies to regulate gig activities under ROBA 1956 based on their classification; and

(c) To modernise ROBA 1956 in tandem with current business practices and to be able to accommodate the new trend of “business like” activities carried out within the gig economy.

The final finding of the study is expected to be reported in May 2022 upon finalization of the report by the Malaysia Digital Economy Corporation (MDEC) in determining the appropriate national definitions relating to the gig industry and the research outcome on the Informal Workforce by the Economic Planning Unit (EPU).

Regulations, Practice Directives and Guidelines

In 2021, SSM continued to issue regulatory notes and documents to provide clear and up-to-date guidance and explanation of laws and practices under its supervision.

REGULATORY REFORM INITIATIVES

Below are the documents issued and gazette in year 2021:

(a) Companies (Amendment) Regulations 2021

Gazette Date: 18 August 2021

Objective : Amendment on the Schedule under the Companies Regulations 2017 with regards to:

- (i) The fee for the purpose of lodgement of notice on the increase of share capital of foreign company under subsection 567(3) of the CA 2016; and
- (ii) Items 43, 45, 47 and 48 so that the relevant particulars apply to the company, shareholders, directors, company secretaries, auditors and liquidators for the purpose of any relevant application and filing under the CA 2016.

(b) Prescription of Amount of Indebtedness of Company under section 466(1)(a) of the CA 2016

Gazette Date: 22 March 2021

Objective : To the increase of the indebtedness threshold of a company under section 466(1)(a) of the CA 2016 from RM10,000 to RM50,000.

(c) Revised Practice Directive 6/2020: Extension of Time for Annual General Meeting and Lodgement of Financial Statements

Issue Date : 27 January 2021

Objective : To clarify the powers of the Registrar relating to the application for the extension of time

- (i) To hold Annual General Meetings under section 340(4) of the CA 2016;
- (ii) To circulate the Financial Statements and Reports under PN 3/ 2018;
- (iii) To lodge the Financial Statements and Reports under section 259(2) of the CA 2016; and
- (iv) To waive the application fee for extension of time made under section 340(4), PN 3/ 2018 or section 259(2) of the CA 2016 for companies which are affected by the COVID-19 pandemic.

(d) Practice Directive 7/2021 – Lodgement of Annexure on Beneficial Ownership Information of Annual Return Lodged under section 68 of the CA 2016

Issue Date : 8 March 2021

Objective : (i) To clarify and streamline the lodgement of the annexure of the BO information accompanying the Annual Return pursuant to section 68 of the CA 2016.

- (ii) To determine the general requirements for the lodgement of the documents and related matters.

(e) Practice Directive 8/2021 – Extension of Time for Circulation of Financial Statements and Reports, Holding of Annual General Meeting and Lodgement of Financial Statements for Companies Affected by the Implementation of Movement Control Order.

Issue Date : 31 May 2021

Objective : To provide the manner for a company to apply for an extension of time for circulation of Financial Statements and Reports, holding an Annual General Meeting (AGM), and lodgement of Financial Statements and Reports with the Registrar for companies affected by the implementation of the MCO.

(f) Guidelines on Company Limited By Guarantee (CLBG)

Issue Date : 27 September 2021

Objective : To update the existing guidelines for matters regarding CLBGs.

(g) Guidelines for Application to Reinstate Company under section 555(1) of the CA 2016

Issue Date : 10 June 2021

Objective : To update the existing guidelines for companies applying for reinstatement after being struck-off by the Registrar.