



== SSM IN TWO DECADES ==
Inspiring Trust In Business

**20 YEARS OF
TRANSFORMATION**



MANAGEMENT REPORT

REGULATORY

REFORM INITIATIVES

REGULATORY REFORM INITIATIVES

REVIEW OF THE TRUST COMPANIES ACT 1949

Trust companies in Malaysia are regulated under the TCA 1949. The TCA 1949 came into force on 28 September 1949 for West Malaysia and 1 January 1973 for East Malaysia. As part of its law reform programme, SSM has initiated the process to review the overall framework of the TCA 1949 which has never been reviewed (in principal) since its enforcement with a proposal to replace it with a new Trust Companies Bill.

OBJECTIVES OF THE REVIEW OF THE TRUST COMPANIES ACT 1949

- 01** To provide a clear parameter of trust business or trust related activities with the introduction of a new definition for 'trust business'.
- 02** To clarify that only a public company may register as a trust company before the company are allowed to carry on trust business or trust related activities and it is a mandatory registration.
- 03** To harmonise with the provisions under the modernised CA 2016 which was enforced on 31 January 2017.
- 04** To omit the current reciprocal provisions relating to the trust law in Singapore.
- 05** To introduce a new beneficial ownership reporting framework of legal arrangements including the introduction of a new definition 'beneficial owner' of a trust business or trust related activities.
- 06** To provide criminal sanctions on directors of a trust company for breaches of certain duties and obligations under the Trust Companies Bill in addition to the sanctions provided in the CA 2016.
- 07** To provide legal avenue for trust company to cease business subject to certain terms and conditions.

The new Trust Companies Bill is tentatively proposed to be tabled in Parliament in 2024 upon its approval by the Attorney General's Chambers.

PROPOSAL TO REVIEW THE REGISTRATION OF BUSINESSES ACT 1956

Taking cognisance of the important role played by small businesses towards the country's economic growth, SSM is taking the initiative to modernise the ROBA 1956 with the objective of providing a conducive and dynamic environment for business development.

The proposal to modernise through the repeal of the ROBA 1956 will facilitate small traders (sole proprietorships and conventional partnerships) as the proposed new policies will reflect the current business trend and development.

Amongst the policy statements proposed as the basis of formulating a more efficient business registration process and procedures are as follows:

- (a) The current framework to govern the registration of businesses as sole proprietors or conventional partnerships based on the existing categories of business activities is being retained.
- (b) A comprehensive framework for online businesses or businesses without fixed physical presence will be introduced including empowering the Minister to impose specific terms and conditions for online entrepreneurs.
- (c) The policy regarding the restriction on foreigners from registering their business under ROBA 1956 is being retained to protect the small traders against competition.
- (d) The law will clarify that a person must register his business before its commencement.
- (e) The introduction of name reservation process in line with that under the CA 2016 and the LLPA 2012.
- (f) The introduction of a policy to allow a registered business to change its name subject to certain terms and conditions.
- (g) The present mandatory requirement to terminate the business in the event a partner cannot be located be amended to facilitate businesses by providing the remaining partner(s) in a business with an option to continue with the business if the business is still viable.
- (h) The present practice to notify the Registrar in the event of a termination of business and as a result of the death of an associate or a partner in which there is no surviving partner is being retained.
- (i) The introduction of a provision allowing an application to restore a business registration within 12 months after the registration of business has expired.
- (j) Similar framework for rectification of register or mistakes which is in line with the amendments made in the CA 2016 to be adopted.
- (k) Similar framework relating to electronic filing under the CA 2016 to be adopted.

Currently, the Registration of Businesses Bill will tentatively be tabled in Parliament in 2024.

PROPOSED COMPANIES (LICENCES UNDER SUBSECTION 45(3) AND (4)) REGULATIONS FOR COMPANIES LIMITED BY GUARANTEE

Towards standardising the terms and conditions to be complied with by CLBG in relation with the application for a licence under section 45(3) and (4) of the CA 2016, SSM will be introducing the Companies (Licences under subsection 45(3) and (4)) Regulations. The Regulations will provide the terms and conditions relating to an application:

- (a) to omit the word “Berhad” or the abbreviation “Bhd” from its name (subsection 45(3) of the CA 2016); and

- (b) for the purpose to hold a land (subsection 45(4) of the CA 2016).

By virtue of subsection 45(5) of the CA 2016, the Minister has the power to prescribe regulations or impose any conditions as he thinks fit for the purposes of approving such licences. Currently, the terms and conditions for each CLBGs licence are generally based on the merits and circumstances of the application by various companies and this has caused some inconsistencies for licences

approved for different CLBGs. As such, this Regulations will codify and standardise a CLBG’s terms and conditions of the licence applications to be fulfilled by the company upon approval by the Minister. Further it will simplify any applications for a licence by a CLBG and promotes transparency towards a more efficient and effective service delivery.

Eight (8) policies are being proposed to streamline the requirements under the CA 2016 and the procedures imposed under the “Guidelines for Company Limited by Guarantee” which was issued on 8 January 2019 (revised on 27 September 2021). The said eight (8) policies are as follows:

1.	An application under subsection 45(3) may only be considered upon compliance of the following conditions: (a) prior incorporation as a CLBG ; and (b) the initial fund threshold.
2.	Upon the granting of the licence under subsection 45(3), the following conditions will be applicable: (a) CLBG to use its profit or other income to pursue its objects; and (b) CLBG to ensure that its profit and other income are not used for politically related or illegal activities.
3.	The CLBG is required to obtain prior approval from the Registrar in circumstances as stated in the “Guidelines for Company Limited by Guarantee.”
4.	To provide a cooling off period of 24 months for a CLBG to reapply under subsection 45(3) after revocation of licence to omit the word “Berhad” or its abbreviation “Bhd.”
5.	To provide a definition of holding land.
6.	To provide standard conditions that will be applicable to all CLBGs granted with licence to hold land.
7.	To empower the Registrar to take the following actions against CLBG which has failed to comply with one or more of the licence conditions for licences issued under subsection 45(3) & (4): (a) impose a penalty not exceeding RM500,000; and (b) recommend to the Minister to revoke the licence.
8.	To recognise that licences issued prior to the commencement of this Regulations are valid but the conditions of the licences are revoked.

COMPANIES (AMENDMENT) BILL AND LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL

In 2022, the legislative process to pass the Companies (Amendment) Bill and the Limited Liability Partnerships (Amendment) Bill was still ongoing.

The focus 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. It is also 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.

One of the facilitative policy introduced under both Bills is to allow SSM's website to be used to publish advertisement required under the laws instead of newspaper.

MOVABLE PROPERTY SECURITY INTEREST BILL

SSM will be introducing the Movable Property Security Interest Bill (the Bill) as part of its efforts to modernise the corporate sector in line with corporate practices of advanced jurisdictions. The Bill is benchmarked against international standards and best practices and has also taken into consideration the views and comments from stakeholders who will be affected with its introduction. In 2022, the following activities were undertaken towards realising the introduction of the Bill in Malaysia:

(a) Capacity Building on Secured Transaction

On 22 February 2022, SSM invited Emeritus Professor Tom Johnson from the Osgoode Hall Law School, Canada to share the underlying principles and policies of secured transaction as well as the provisions contained in the Bill. The programme was attended by officers from SSM, Legal Division of MDTCA and the Attorney General's Chambers. The main objective of this programme was to provide clarity to the policies of the Bill on the practical aspects of the Bill in relation to the current commercial and financial practices with real-life examples.

(b) Finalisation on issues in respect to an execution of rights under the Bill with the Ministry of Finance

This Meeting was held on 10 February 2022 to ensure that any issues arising from the execution of rights by the secured party which may have an impact with Ministry of Finance has been resolved under the Bill.

(c) Workshops to finalise provisions under the Bill

To finalise and refine the provisions of the Bill, a total

of two (2) workshops were held from 7 to 9 June 2022 and 15 to 17 August 2022. Officers from SSM, Legal Division of MDTCA and the Attorney General's Chambers attended the workshops.

(d) Meeting with the Department of the Director General of Lands and Mines

A meeting was held on 2 August 2022 to provide clarity that references to 'land' under the Bill is not contrary in its application to the National Land Code 1965.

SSM was also invited by local and international forums to discuss Malaysia's main policies under the Bill. The international forums provided SSM with the opportunity to align the policies of the Bill with other countries that have adopted similar legislations on secured transaction framework and for SSM to embrace the best practices undertaken by these countries. Through participation organised by the Bar Council, SSM was given the opportunity to raise awareness and align the policies of the Bill with the local commercial best practices.

INTERNATIONAL AND LOCAL FORUMS TO DISCUSS MALAYSIA'S MAIN POLICIES UNDER THE MOVABLE PROPERTY SECURITY INTEREST BILL

APEC Workshop on Modernising Secured Transaction Legal Regimes in APEC Economies through International Instruments and Effective Dispute Resolutions Mechanisms

DATE

25 to 27 May 2022

ORGANISER

The Asia-Pacific Economic Cooperation (APEC)

VENUE

Tokyo, Japan

The three (3) day workshop was led by experts from the Kozolchik National Law Center (NatLaw) and supported by the World Bank Group with agenda to cover capacity building in secured transactions including expert presentations and case studies discussion to maximise learning and retention. SSM was invited to deliver on efforts to introduce the movable property security interest legal framework for Malaysia. Together with presentation on the main policies for the basis of the framework, efforts with regards to consequential amendment to the framework was also discussed.

RCAP@10 - The Road Ahead: Regional Trade, Global Standards and the Future of Legal Harmonization

DATE

11 November 2022

ORGANISER

United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific (UNCITRAL RCAP)

PLATFORM

Virtual - Online

UNCITRAL RCAP organised a virtual conference on 11 November 2022 to commemorate their 10th anniversary with a theme on "The Road Ahead: Regional Trade, Global Standards, and the Future of Legal Harmonization." UNCITRAL RCAP invited relevant speakers to share on regional collaborations and legislative accomplishments in the harmonisation of international trade and commercial law in multiple dimensions. SSM was invited to discuss under Panel 1 for "Fast tracking legal harmonization: Asia-Pacific successes and prospects" with a focus on Malaysia's steps in the policy adoption of the UNCITRAL Model Law on Secured Transactions for consideration to the introduction of the Movable Property Security Interest Bill.

INTERNATIONAL AND LOCAL FORUMS TO DISCUSS MALAYSIA'S MAIN POLICIES UNDER THE MOVABLE PROPERTY SECURITY INTEREST BILL

Virtual Conference on Corporate and Commercial Law

DATE
18 October 2022

ORGANISER
Malaysian Bar

PLATFORM
Virtual - Online

SSM was invited as a speaker for the panel of “Company Law and Practice - Perspective.” In an effort to raise awareness on the introduction of the Movable Property Security Interest Bill, a presentation on the objectives and benefits of the secured transaction framework together with the main policies of the Bill with regards to provisions for registration, priority and enforcement of rights upon default was provided to the participants.

DEVELOPMENT OF A REGISTRY SYSTEM FOR THE MOVABLE PROPERTY SECURITY INTEREST BILL

In line with the introduction of the Movable Property Security Interest Bill (MPSI Bill), the Registry System of Movable Property Security Interest (MPSI Registry) is being developed in tandem to support the implementation of the Bill. The project is one of SSM's high impact project under SSM's Strategic Direction Plan.

The MPSI Registry System will be a fully online Registry where the secured party or any stakeholders can register their security interest on the movable properties that are being used as collaterals.

On 22 November 2022, an awareness programme on the MPSI Registry has been conducted. The programme was attended by representatives from Central Bank of Malaysia, banks organisations (AIBIM, MIBA, ADFIM and ABM) and Bar Council. The main objective of the programme is to ensure that the Registry system that is being developed is in line with the existing banking practices.

OBJECTIVES OF MPSI REGISTRY

1

To establish an integrated Registry for secured transaction related to movable property in Malaysia

2

To establish a platform for the registration of security interest on movable property that is used as collateral

3

To establish a search for the secured parties in assessing the borrower's credit standing

4

To provide a platform for search for the stakeholder to search and check on the status of the movable properties they own

5

To manage financing statements or change of financing statements records and generate verification statements and statistical reports