

Shearn Delamore & co.

Legal Updates November 2020



Shearn Delamore & Co

7th Floor

Wisma Hamzah Kwong-Hing,

No 1, Leboh Ampang

50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

E: info@shearndelamore.com

W: www.shearndelamore.com

Dispute Resolution

The **National Land Code (Revised 2020) Act 828** (“the Act”) came into force on 15 November 2020.

It replaces its predecessor the **National Land Code** (Act 56 of 1965) that was in force since 1 January 1966.

The Act was revised by the Commissioner of Law Revision under the authority of the **Revision of Laws Act 1968**.

The preamble to the Act reads:

“An Act to amend and consolidate the law relating to land and land tenure, the registration of title to land and dealings therewith and the collection of revenue from within the States of Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territories of Kuala Lumpur, Putrajaya and Labuan for purposes connected therewith.”

The Act, in its present form, consists of 6 Divisions, 42 Parts, 59 Chapters and 447 sections.

The Act applies only to Peninsular Malaysia and the Federal Territory of Labuan. The Sabah Land Ordinance (Cap. 68) remains the main legislation for Sabah whilst in Sarawak the Sarawak Land Code (Chapter 81) continues to be in force.

With the coming into force of the Act any right, liberty, privilege, obligation or liability existing

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at the commencement of the Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of the Act.

For further information regarding dispute resolution matters, please contact our [Dispute Resolution Practice Group](#).

Financial Services

Guidelines on Digital Assets

The revised Guidelines on Digital Assets came into force on 28 October 2020 and regulate:

- the offering of digital tokens by an issuer through an initial exchange offering (IEO) platform;
- persons intending to operate an IEO platform; and
- persons who provide the services of safekeeping, storing, holding or maintaining custody of digital assets for the account of another person (i.e. a digital asset custodian, DAC).

Guidelines on the use of electronic signature for documents submitted to the Securities Commission Malaysia

The Securities Commission Malaysia issued the Guidelines on the use of electronic signature for documents submitted to the Securities Commission Malaysia (the Guidelines) on 23 October 2020.

The Guidelines apply to all documents which are addressed to the Securities Commission Malaysia except for documents relating to an application for a person to be licensed or registered under the **Capital Markets Services Act 2007**.

Where electronic signatures are used, the minimum procedures as set out in the Guidelines must be complied with. It must be noted that these Guidelines do not make it mandatory for an electronic signature to be used in the documents addressed to the Securities Commission Malaysia.

Currency Act 2020

The **Currency Act 2020** came into force on 1 October 2020. It seeks to provide for the management of currency of Malaysia, the regulation of currency processing business, currency processing activities and related matters.

Based on the **Currency Act 2020**, the following should be noted:

- only Bank Negara Malaysia can issue currency or any other instrument as legal tender.
- a legal tender limit for coins is set at 25 pieces. Recipients may refuse to accept payment if it is made using more than 25 pieces of coins of any denomination.
- a registration regime will be introduced to regulate currency processors. Standards on currency processing will be imposed on them to ensure high quality and integrity of currency in circulation.
- no person is permitted to melt coins with the intention to gain profit.

The Minister of Finance also issued the Currency (Processing Fees for Application of Registration of Currency Processing Business) Regulations 2020, which came into force on 1 October 2020 as well. Pursuant to these regulations, a processing fee of RM500 is payable for an application for registration to carry on a currency processing business.

Central Bank of Malaysia (Amendment) Act 2020

With the **Currency Act 2020** coming into force, the **Central Bank of Malaysia (Amendment) Act 2020** also came into force on the same day.

As set out in [legal alert for March 2020](#), the substantive changes introduced by the **Central Bank of Malaysia (Amendment) Act 2020** include:

- removal of provisions relating to the right of Bank Negara Malaysia to issue currency, legal tender, and the right to call in currency, all of which have been provided for in the **Currency Act 2020**; and
- adding a provision to clarify that the powers of Bank Negara Malaysia under the **Currency Act 2020** are in addition to the powers granted under the **Central Bank of Malaysia Act 2009**, and not in derogation of them

Public Consultation on proposed amendment to Guidelines on Unit Trust Funds

The Securities Commission Malaysia had, on 11 November 2020, issued a consultation paper on its proposed amendments to the Guidelines on Unit Trust Funds as part of its effort to facilitate greater competitiveness in the industry and provide investors access to a wider range of products, while maintaining adequate investor protection.

The key aspects the Securities Commission Malaysia is considering include the universe of permitted investments and various operational requirements on the fund manager.

The consultation paper is open for feedback by the public until 10 January 2021.

Launch of new framework to facilitate offering of Islamic funds with *waqf* features

A new framework has been launched by the Securities Commission Malaysia on 12 November 2020 to facilitate the offering of Islamic funds with *waqf* features to enable growth in the Islamic social finance segment.

The requirements on an Islamic fund with *Waqf* feature can now be found in Chapter 14 of the revised Guidelines on Unit Trust Funds and Chapter 6 of the revised Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework.

Amendment to the Guidelines on Unlisted Capital Market Products Under the Lodge and Launch Framework

In addition to the introduction of Chapter 6 on *waqf* featured fund framework, the Securities Commission Malaysia has also introduced two new paragraphs to Section B: Part I Wholesale Fund.

The following new obligations are imposed on a fund management company or the operator of the wholesale fund where it invests in real estate (as defined in the therein) outside Malaysia:

- to ensure that the real estate outside Malaysia is managed by a manager that is licensed, registered, approved or authorised to manage the foreign real estate in its home jurisdiction: paragraph 2.20A.
- valuation on the real estate located outside Malaysia must be conducted at least once every three years: paragraph 4.01A.
- notwithstanding the 2nd bullet point above, the value of the real estate located outside Malaysia must be monitored and valuation must be carried out when the change in value of any of the underlying real estate exceeds a reasonable pre-determined threshold: paragraph 4.01B.

For further information regarding financial services matters, please contact our [Financial Services Practice Group](#).

Tax and Revenue

Income tax

The following public rulings, guideline and tax audit framework have recently been published on the [Inland Revenue Board of Malaysia's official website](#):

- i. **Taxation of Trusts (Public Ruling No. 9/2020)** issued on 6 November 2020;
- ii. **Reinvestment Allowance Part I — Manufacturing Activity (Public Ruling No. 10/2020)** issued on 6 November 2020;
- iii. **Reinvestment Allowance Part II — Agricultural and Integrated Activities (Public Ruling No. 11/2020)** issued on 10 November 2020;
- iv. **Tax Incentive for Angel Investor (Public Ruling No. 12/2020)** issued on 17 November 2020;
- v. **Garis Panduan Operasi – Potongan Cukai Bulanan Di Bawah Kaedah-Kaedah Cukai Pendapatan (Potongan Daripada Saraan) 1994** (available in Malay language only) — issued on 17 November 2020; and
- vi. **Tax Audit Framework on Finance and Insurance** — issued on 18 November 2020.

Sales tax & service tax

The following Specific Guides have recently been published on the [Royal Malaysian Customs Department's MySST website](#):

- i. **Guide on Return and Payment** (as at 13 October 2020) – to replace the earlier version dated 29 September 2018; and

- ii. **Guidelines on SST-02 and SST-02A Return (Manual Submission)** (as at 13 October 2020).

For further information regarding tax and revenue matters, please contact our [Tax and Revenue Practice Group](#).



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km@shearndelamore.com

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