

Dispute Resolution

Banking Confidentiality and Liability: Public Bank Berhad v National Feedlot Corporation [2025] CLJU 1556

Brief facts

In this case, Public Bank Berhad appealed to the Federal Court against the decision of the Court of Appeal holding it liable for breach of banking secrecy and confidentiality in respect of the disclosure of confidential banking information.

The confidential information was revealed during a 2012 press conference by Rafizi Ramli, who shared with the press internal bank documents related to a loan application.

The Federal Court dismissed Public Bank's appeal on liability and held the bank accountable with damages to be assessed.

Legal principles

The main issue revolved around whether a bank's implied contractual duty of confidentiality is absolute or qualified, and whether liability should be strict or fault based.

The English common law exceptions particularly the English Court of Appeal's decision in **Tournier v National Provincial and Union Bank of England** [1924] 1 KB 461, which recognises four exceptions to a bank's duty of secrecy, and the "*Quincecare duty*" to exercise reasonable care and skill in **Hilton v Westminster Bank Limited** [1926] 135 LT 358 were discussed.

The Federal Court held that common law principles on duty of banks, do not apply in determining the breach of the duty of secrecy in light of the **Banking and Financial Institutions Act 1989** ("BAFIA") which codify banks' duty of secrecy. Specifically, sections 97(2), 98(1), and 99(1) of BAFIA set out banks' duty of secrecy and specific statutory exceptions. Section 3(1) of the **Civil Law Act 1956** limits the application of English common law where local statutes exist.

Legal Updates

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Section 97(1) of BAFIA imposes a clear duty of confidentiality on banks. A bank whose duty of secrecy is regulated by BAFIA cannot escape liability where the breach is committed by those under its employment, supervision and care. This means even if bank employees act without authorisation, in breaching confidentiality obligations, the bank is liable.

Key takeaway

The Federal Court affirmed that Malaysian banks are bound by statutory duties of confidentiality, and liability arises even if the breach is committed by employees without authority. Common law exceptions do not apply as BAFIA regulates the matter.

CONTACT US FOR FURTHER INFORMATION REGARDING DISPUTE RESOLUTION MATTERS.

Financial Services

Proposed amendments to Digital Asset Exchange Framework

On 30 June 2025, the Securities Commission Malaysia (“SC”) published a [consultation paper](#) to seek public feedback on its proposed enhancements to the regulatory framework for Digital Asset Exchange (“DAX”) set out in the Guidelines on Recognized Markets.

The SC has indicated that its proposed amendments are aimed to allow DAX to offer more types of digital assets whilst ensuring there is adequate investor protection.

The deadline to provide feedback is 11 August 2025.

Proposed framework on sustainable assurance

The SC’s Advisory Committee on Sustainable Reporting has published a [consultation paper](#) on 25 June 2025 to seek public feedback on its proposed framework on sustainability assurance.

The proposed framework is intended to ensure reliability of disclosures by companies scoped-in under the National Sustainability Reporting Framework.

The deadline to provide feedback is 6 August 2025.

Proposed amendments introduced by BNM

Bank Negara Malaysia (“BNM”) has issued the following exposure draft:

- a) on 20 June 2025, relating to [Capital Adequacy Framework \(Internal Ratings-Based Approach for Credit Risk\) Policy Document](#).

The exposure draft sets out BNM’s proposed regulatory capital requirements for credit risk for financial institutions under the Basel III Internal Ratings-Based (“IRB”) approach, in which case BNM’s seeking feedback on its proposal, suggestions for specific issue and areas to be clarified or elaborated.

The deadline to provide feedback is 31 December 2025.

- b) on 30 June 2025, relating to the [Interoperable Fund transfer Framework Policy Document](#).

The exposure draft sets out BNM's proposed regulatory requirements and guidance to further promote interoperability of fund transfer services and facilitate collaborative competition between banks and non-bank payment service providers through fair and open access to shared payment infrastructure.

The deadline to provide feedback is 30 September 2025.

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