



# SSM's Efforts in the Reform of the Trust Companies Act 1949

**I**n recent years, many jurisdictions such as Singapore, Hong Kong and New Zealand have carried out reforms to their respective trust legislation to reflect the current global environment concerning trust activities.

The Trust Companies Act 1949 (TCA 1949) governs companies carrying out trust activities in Malaysia. It comes under the purview of the Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia, better known as SSM), the leading authority for the improvement of corporate governance in the country. According to SSM Chief Executive Officer, Datuk Nor Azimah Abdul Aziz, the TCA 1949 came into force on Sept 28, 1949 for Peninsular Malaysia and Jan 1, 1973 for East Malaysia. As at June 30, 2022, there were 41 trust companies registered under the TCA 1949.

She explained that the policies and provisions in the TCA 1949 have not been reviewed principally since its enforcement more than 70 years ago, a review and reform of this piece of legislation may be timely. At the same time, a robust regulatory framework is needed to ensure trust companies in Malaysia are resilient against the threat of money laundering or terrorism financing activities.

Nor Azimah said in 2014, Malaysia was evaluated by the Financial Action Task Force (FATF), the global standard-setting body for the development of policies to combat money laundering and terrorist financing. She said in its mutual evaluation report published in September 2015, the FATF recommended improvements to the trust law framework in Malaysia.

"Three years later, the SSM embarked on a review of the TCA 1949 with the publication of a consultation paper inviting public feedback, especially from relevant stakeholders, on the proposed policies." SSM had formulated 19 proposed new policies to be introduced under the Trust Companies Bill that will replace the existing Trust Companies Act 1949. She explained that several consultation sessions were conducted with government agencies (including the Ministry of Finance and the Accountant General's Department of Malaysia) and regulators (Bank Negara Malaysia and the Securities Commission Malaysia). She added other relevant stakeholders involved were members of the Association of Trust Companies, which consists of several trust companies in Malaysia (such as Kensington Trust Malaysia Bhd, Rockwills Trustee Bhd, As-Salihin Trustee Bhd, Pacific Trustees Bhd, MTrustee Bhd, Deutsche Trustees Malaysia Bhd, Affin Hwang Trustee Bhd, CIMB Trustee Services and AmanahRaya Trustees Bhd).

She said against this background, a reform of the TCA 1949 is critical to ensure the law remains relevant and competitive, particularly when other relevant corporate legislation has undergone substantial reforms and modernisation. One notable example is the Companies Act 1965, which has been repealed and replaced by the Companies Act 2016 (CA 2016).

Nor Azimah explained that one of the proposed reforms to the TCA 1949 is the need to examine the parameters of trust activities that will necessitate registration as a trust company. "A clear parameter will address possible overlapping regulatory frameworks as trust activities can fall under different pieces of legislation and under the purview of various regulatory authorities or agencies." In addition, a mandatory registration regime is proposed for companies carrying out trust activities that fall within the parameters of the TCA 1949 to



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DATUK NOR AZIMAH ABDUL AZIZ,  
Chief Executive Officer of SSM

ensure a more robust, comprehensive and complete framework is in place to address possible regulatory arbitrage.

"To this end, the new TCA seeks to provide clarity that while the registration of trust companies falls under SSM's purview, the trust activities or arrangements carried out by such trust companies can also be subject to other written laws that fall within the jurisdiction of regulators such as Bank Negara Malaysia and the Securities Commission Malaysia."

She said another proposed policy reform is the codification of the qualifications, duties and responsibilities of directors for trust companies. These requirements will be in addition to the general duties expected of directors under the CA 2016. "The new TCA will address issues relating to the fit and proper criteria, including a potential director's experience before he or she can be appointed to the board of a trust company."

She added a new reporting framework for beneficial ownership of legal arrangements in line with the best practices and international standards is also being introduced. Such policies show Malaysia's seriousness in combating money laundering and terrorism financing activities in the long term as trust companies are susceptible to being used as a front for such activities.

"The above-mentioned proposed policies are aimed at strengthening the competitiveness of trust companies in providing such services. This year, the SSM will be seeking the mandate from the cabinet to repeal the TCA 1949 and replace it with a new TC Bill."

"In 2023, another round of consultations will be carried out before the draft Bill is tabled in Parliament," she said.

## 19 PROPOSED POLICIES

to be introduced under the Trust Companies Bill

### POLICY #1

Clear parameter of trust business or trust related activities through the introduction of a new definition of 'trust business'

### POLICY #2

Only public companies limited by shares are allowed to be registered as trust companies and mandatory registration is required before they are allowed to carry on trust business or trust related activities

### POLICY #3

Mandatory requirement for a trust company to have a constitution with specific objects

### POLICY #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 #5

Harmonize with the CA 2016 following the modernization of several law concepts including the abandonment of the authorised share capital concept

### POLICY #6

Prohibit a person from holding more than 20% shareholding in a trust company

### POLICY #7

Revise the amount of the security deposits to reflect the current value of the trust business undertaken by a trust company

### POLICY #8

Omit the current reciprocal provisions relating to trust companies registered in Singapore

### POLICY #9

New definition of 'beneficial owner' to promote transparency of a trust company and its trust arrangements

### POLICY #10

Mandatory submission of annual statement together with the beneficial ownership information

### POLICY #11

Criminal sanctions on directors of a trust company for breaches of certain duties and obligations in addition to those stated in the CA 2016

### POLICY #12

The Registrar will have the power to impose any terms and conditions with regard to the qualification and experience of a director of a trust company

### POLICY #13

The current policy relating to auditors under the CA 2016 will be retained

### POLICY #14

Section 8(1) of the TCA 1949 in relation to objects of trust companies will be expanded to include the power of the board of directors of a trust company to fix the remuneration, charges and fees

### POLICY #15

The Court's power to order winding up of trust companies will be retained

### POLICY #16

Trust companies are allowed to cease business provided that the assets of the trust business or trust related activities is distributed while acting as trustee

### POLICY #17

Trust companies are allowed to benefit from the provisions relating to scheme of arrangement and corporate rescue mechanism under the CA 2016

### POLICY #18

Mandatory electronic filing for lodgement or filing of documents

### POLICY #19

Retention of the Minister's power 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