

SEPTEMBER 16 TH

MALAYSIA DAY EDITION



NADA PRACTITIONER

THE OFFICIAL PUBLICATION OF **National Association of Malaysian Life Insurance and Family Takaful Advisor**



www.namlifa.org.my



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HISTORY OF MALAYSIA DAY

It commemorates 16 September 1963, when the former British colony of Singapore and the East Malaysian states of Sabah and Sarawak, joined the Federation of Malaya to create the Malaysian Federation.

Singapore only remained in the federation for two years, leaving on 9 August 1965.

Originally this date was planned for 1 June 1963, but it was delayed twice; once to 31 August to make it coincide with an older national day, and then delayed again to allow referendums to take place in certain regions.

Malaysia Day has only been a national holiday since 2010. On announcing this holiday, Prime Minister Datuk Seri Najib Tun Razak said the day would involve activities that would foster the Malaysia spirit and would be celebrated with formal events such as a parade to commemorate the historical moment. He added that it should remind the Malaysian people about their struggle in achieving independence.

On 31 August, Malaysians celebrate Independence Day (Merdeka Day), so it is unusual for a country to effectively have two independence day holidays.



PRESIDENT'S MESSAGE

Greetings From The President's Chair.

It is a pleasure to convey a message for the E-Nada edition which is a platform to share updates and publish valuable articles.

Since the Annual Delegates Conference held on 14th June 2023, the National Council has had continuous engagements with Bank Negara Malaysia and LIAM on issues pertaining to the Policy Document on Professionalising the Agency Force. On the mandatory completion and passing of compulsory courses that are mentioned in the Policy Document, I am pleased to announce that NAMLIFA has been granted permission by BNM to issue exemption letters to students who have completed Module 1 & 2 and the Graduates of the FCLP Program without the need for conversion exercise to RFP Module 2. Notifications will follow suit accordingly.

I am also pleased to inform you that our plight on Absolute Assignments stamp duty charges based on Ad Valorem calculation on Life Insurance policies were made known to the CEO of LHDN who visited NAMLIFA Secretariat on 26th July, 2023. A memorandum was submitted for LHDN's consideration. We will pursue this issue accordingly.

The 20th National Akard Awards Presentation was successfully organised on 18th August 2023, attended by almost 1,100 guests and participants. Heartiest Congratulations to the Organising Team.

Dear readers, as NAMLIFA represents the interest of the Tied Agency Channel, we will continue our engagements with stakeholders of the Life & Family Takaful industries to continue highlighting the plights of the Agency Force and Consumers. As almost 70% of the Industry premium/contribution are from the Tied Agency Channel, our voice must not go to vain. I urge you to continue supporting our initiatives and help grow NAMLIFA membership.

As we near the final quarter of the year, I wish you the very best in your business endeavours and good health. Stay tuned for further developments.

Thank you.



G. Saseedaran

PRESIDENT OF NAMLIFA



SECRETARY GENERAL'S MESSAGE

From the Desk of the Secretary General,

Greetings to all members of NAMLIFA, Corporate Members and our Tripartite partners LIAM, MTA and BNM.

Let me take this opportunity to extend my greetings to all of you on behalf of the President and Council Members of NAMLIFA.

We are very fortunate to be able to celebrate 66 years of Independence and may I wish all our members and your extended policy holders a Happy Merdeka Day which falls on 31st August 2023 and also Malaysia Day which fall on 16th September 2023.

Whilst, the country had attained 66 years of Independence NAMLIFA has also grown to be 45 years since it's formation.

It is you, all members who have kept NAMLIFA growing year after year.

NAMLIFA just concluded the AKARD Awards Presentation in a grand manner on the 18th August 2023. Kudos to the Organising Chairman and his committee.

We will ensure that all our Branches in the country organises a good AKARD Award Presentation for their members.

In the meantime we are also focused to improve our Education and Training programmes for our members.

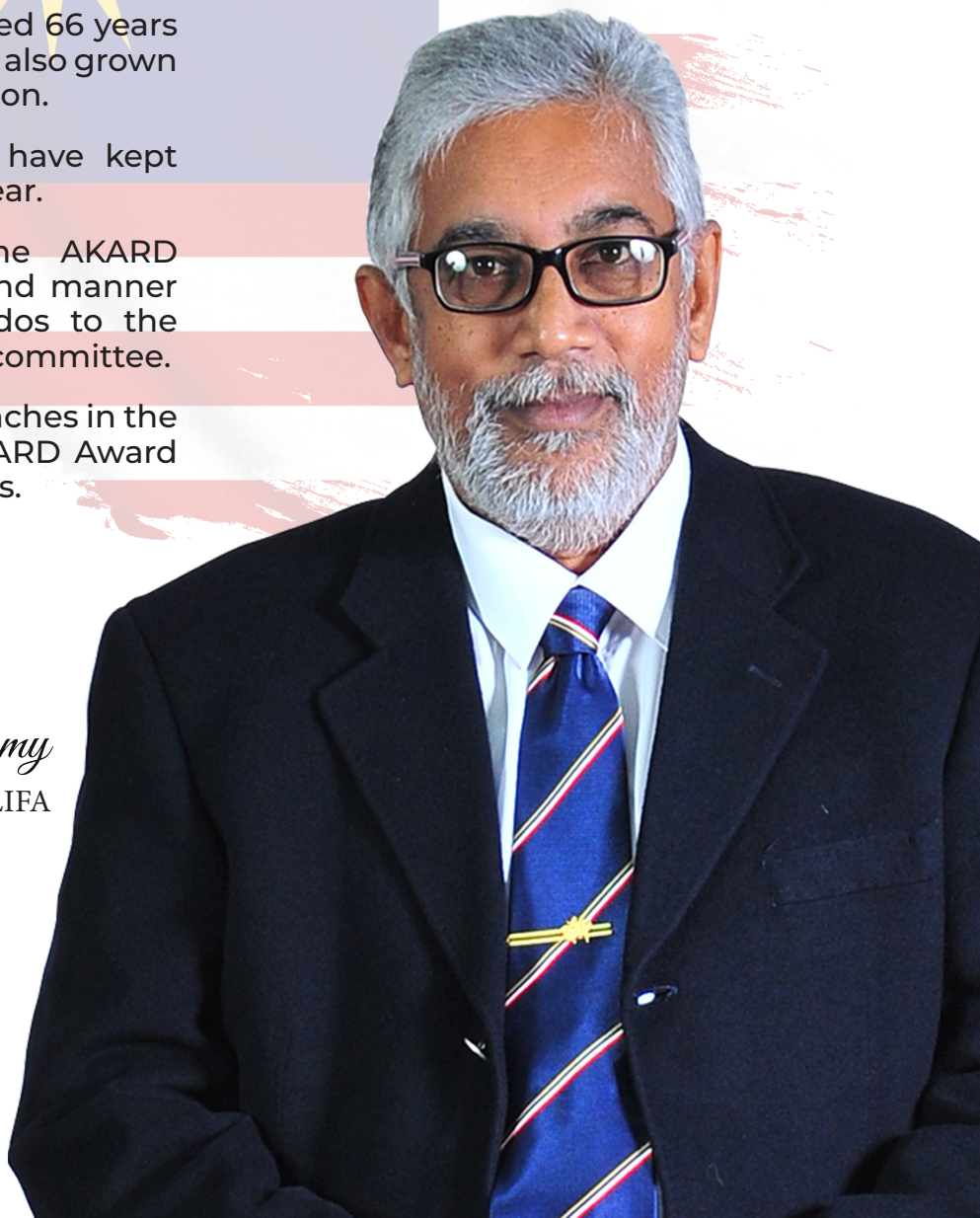
Lastly, let us work in tandem with all our Tripartite partners LIAM, MTA and BNM to ensure that the Malaysians are equipped with adequate Life Insurance which will indirectly contribute towards a financially healthy economy and nation.

This could only be achieved by our NAMLIFA Members

“SELAMAT HARI MERDEKA” and
“HARI MALAYSIA”.



Sathiaselvan P. Kuppusamy
SECRETARY GENERAL OF NAMLIFA



EDITOR'S MESSAGE

Salam Merdeka NAMLIFA Members.

Here we have our 66th Merdeka & Hari Malaysia edition of the E-NADA for your perusal. I hope everyone has gathered momentum to finish the year better than the last; We have 4 solid months left.

Also to note on the recent completion of the National AKARD on 18th August 2023 @ Sunway International Convention Centre; and moving forward our branches will be celebrating similarly at the Branch AKARD Events lined up in Q3 up to Q4 of 2023. We will be sharing photos in the next edition of E-NADA.

I would like to take this opportunity, to thank all our contributors for their information rich articles and updates on branch activities with photos; Without them these E-NADA editions would not be possible. I hope all of you take the time to read these articles as it is very much relevant to our business and industry.

Lastly, I would like to wish Selamat Hari Malaysia to all Members, especially to our Sabah & Sarawak members.

Thank you & Best Regards.



T. Prakash Paul Naidu

ASSIST. SECRETARY GENERAL
OF NAMLIFA



NATIONAL COUNCIL MEMBERS



G.Saseedaran
President



Major Leow Nan Chung
Deputy President



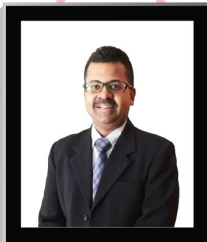
Krishnan Appanu
1st Vice President



Mani Raja Chandran
2nd Vice President



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Teeru Prakash Naidu
Assist. Secretary General



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Ong Joo Lee
Council Member No.2



Periyasamy Chinnappaian
Council Member No.3



Karem Husin
Council Member No.4



Wooi Yu Thong
Council Member No.5



S.K.Samy
FLPC Chairman



A.M.Naidu
Immediate Past President

NATIONAL ACTIVITIES

MAY

8/5/2023
LP101 Virtual Class

8/5/2023
AKARD Meeting with
Central Region

10/5/2023
Staff Raya Potluck

10/5/2023
Branch Launch at EQ
Hotel

17-18/5/2023
Membership drive during
GSM EDC at Avante
Hotel

AUGUST

1/8/2023
AKARD Meeting with
secretariat at NAMLIFA
Boardroom

15/8/2023
NTAC Meeting

16/8/2023
Last call AKARD
committee meeting

18/8/2023
20th AKARD Award
Night (Central & HQ)
at Sunway Pyramid
Convention Centre

25/8/2023
FLPC Board Meeting
at Sunway Convention
Centre

JUNE

1/6/2023
10th National Council
Meeting at Bayview
Hotel Langkawi

6/6/2023
Meeting with MTA at
MTA boardroom office

6/6/2023
AKARD Presentation
with Central Region and
Klang Branch

12/6/2023
GSMA Leaders
convention at Federal
Hotel Kuala Lumpur

13/6/2023
Branch Liaison Meeting
at Dorsett Hartamas,
Kuala Lumpur

13/6/2023
Fellowship Dinner

14/6/2023
45th Annual Delegates
Conference at Dorsett
Hartamas, Kuala Lumpur

22/6/2023
Membership drive
during Prulia Convention
Centre at Bangi Avenue
Convention Centre

22/6/2023
FLPC & ZULIA Meeting
at NAMLIFA boardroom

26/6/2023
MFPC AGM

JULY

7/3/2023
11th National Council
Meeting - Virtual

7/7/2023
Invitation to Top 120

7/7/2023
4th NTAC Meeting at
NAMLIFA boardroom

12/7/2023
GSMA 9th leaders
Convention at Bukit
Bintang

22/7/2023
FLPC HQ exam at
Training room

22/7/2023
LP102 Klang
Examination 16 pax at
NAMLIFA training room

22/7/2023
LP103 Penang & HQ
Examination 15 pax at
NAMLIFA training room

24/7/2023
NTAC Meeting at
NAMLIFA Boardroom

25/7/2023
AKARD Meeting with
Sunway's staffs

26/7/2023
LHDN Meeting (stamp
duty) at NAMLIFA
Training room

27/7/2023
12th National Council
Meeting

29/7/2023
Train the Trainer HQ at
NAMLIFA Training room

BRANCH ACTIVITIES

CENTRAL REGION

18/8/2023
Central Region AKARD AWARD,
Sunway Pyramid Covention
Centre



JOHOR

11/8/2023
Tea Talk, Tamil Leadership
Seminar, Grand Paragon Hotel
Johor

NATIONAL ASSOCIATION OF MALAYSIAN LIFE
INSURANCE AND FAMILY TAKAFUL ADVISORS
நமஸிஃபா ஜொகூர் மாநில பேரவை
பெருமையுள் வழங்கும்
**TAMIL LEADERSHIP
SEMINAR**
ஆயுள் காப்புறுதி தலைமைத்துவ
கருத்தரங்கு
2023
DATE : 11 AUGUST 2023
VENUE : GRAND PARAGON HOTEL, JB
TIME : 9 AM (REGISTRATION)
**5 AUGUST 2023
TICKET CLOSING**
MR S. MALIYARASAN
CEO,
ASIA ACE AGENCY SDN BHD
MR D. KUMARAN
CEO,
KL MEGA GROUP
PLEASE CONTACT 016-7312944 CHANDRAN (OC) 019-7794911 L SUBRA (CO-OC)



SABAH

25/8/2023
Sabah AKARD AWARD, Port
View Palace Hall, Dewan Hakka,
Signal Hill, Kota Kinabalu, Sabah

BRANCH ACTIVITIES

MIRI

11/6/2023

Funds raising for children cancer patient and collabs with Go Bald, Imperial Permaisuri Mall, Miri.

27/6/2023

Membership Drive, Octo Gastrobar, Miri.



SIBU

29/7/2023

Blood Donation Program at Wisma UCA Sibu

Out of Time!



Zainol Talib
Council Member
Malaysian Institute of Estate
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Have you had your insurance claim rejected and don't know what to do next?

Many policy owners are not aware that they have a six-year limitation period to take legal action if they suffer from any physical or financial injury. This limitation period or time-bar falls under Section 6(1) of the Limitation Act 1953.

This means that if you decide to contest the insurer's decision, you must take legal action

within six (6) years from the date of the incident.

Time Barred Law and Legal Definition

The term 'time-bar' refers to a bar to a legal claim that arises from the lapse of a defined length of time. Time barred means barred by the passage of time under a statute of limitations, statute of repose, or procedural rule. Any claims or action beyond the statutory limitation period is said to be time barred.

Here are 3 examples:

Case 1

A fire damaged a policy owner's car beyond repair on 24 April 2010 but the claim was refused by the insurer on 15 June 2012 on

the ground that the policy was *void ab initio*, meaning invalid from the outset.

Unsatisfied, the policy owner took the insurer to court to claim compensation on 16 May 2016, which was six (6) years and twenty-two (22) days after the date of the fire incident.

However, the Sessions Court allowed the insurer to strike out the application on the basis that it was time-barred in accordance with Section 6(1) of the Limitation Act 1953.

Undeterred, the policy owner then filed an appeal at the High Court against the Sessions Court Judge's decision.

The High Court upheld the decision of the Sessions Court. The claim should arise upon the date of the loss (24 April 2010), and not the date of refusal of liability by the insurer (15 June 2012).

Case 2

A policy owner died but the insurer decided not to indemnify the family's claim on the ground that the policy owner's death was caused by suicide, which was excluded under a life policy. However, a subsequent inquest revealed that the policy owner had not taken his own life but was murdered instead.

The family initiated legal action against the insurer from the date of repudiation of liability, six (6) years after the statutory limitation period.

The delay was due to the fact that negotiations were ongoing and the fact that the inquest was ordered only after three years of the policy owner's death. The inquest was only carried out after more than six (6) years from

the said order.

Unfortunately for the family, they had not filed the action in time and the action failed on that ground.

The High Court, in holding that the claim was time-barred, held that cause of action accrued at the date of death and not upon the date of refusal of liability.

Case 3

On 6 January 2005, a policy owner's Mercedes Benz Model E250 was forcefully taken from him while driving along Jalan Langat, Klang, Selangor by three persons who impersonated as motor repossessioners.

It turned out that they were not repossessioners but merely belonged to the nefarious trade of motor thieves and the car was in fact stolen in broad daylight.

The motor accident notification/claim form dated 10 March 2005 and the policy owner's police report dated 6 January 2005 were submitted on 14 March 2005.

However, the policy owner's claim under the policy which provided cover for loss of the insured vehicle due to theft was rejected by the insurer on an exception under the policy which absolved them of liability in instances where there was an element of 'cheating/criminal breach of trust' ('the exception') in this case, cheating by impersonation.

The insurer concluded that there was no theft as the key was handed over by the policy owner voluntarily to the purported 'repossessioners'. This action was sufficient to trigger the exception in the policy and therefore, repudiated the claim on 16 September 2005.

The policy owner appealed for a reconsideration of his claim via a letter dated 27 October 2005 to explain that he had no choice and that the situation at the scene was such that he felt compelled to hand over the keys to the men who claimed that they were repossessors. Hence, he was only a victim of a crime. But the claim was again rejected through a letter dated 30 December 2005.

The policy owner stopped making payments to the hire purchase financier on 14 February 2011, and took legal action against the insurer on 7 April 2014.

The Sessions Court held that the insurer's letter dated 16 September 2005 captioned as 'Notice of Repudiation' was clear that the insurer was declining liability.

Upon receipt of this letter, the policy owner

was already entitled to commence an action for wrongful repudiation of the contract of insurance between the policy owner and the insurer.

Therefore the policy owner had to file his action within six (6) years from 16 September 2005.

The Sessions Court similarly held that the the policy owner had a valid cause of action against the insurer for wrongful repudiation of liability under the said policy.

However the action was time-barred and that the critical date for computing limitation was the date of repudiation by the insurer wherein the limitation had already set in on 16 September 2011 and therefore the policy owner's claim was dismissed.

'Notice of Repudiation'

was clear that the insurer was declining liability.



Caveat Emptor

With two divergent court conclusions, the principle laid down is that unless the insurance policy otherwise provides, the cause of action under an indemnity insurance accrues from the date of the loss, and not from the date of repudiation of liability by the insurer.

Get To Know Your Limit

It is common to find a condition in a policy clearly stating that any action on the claim is to be taken within 12 months from the happening of the event.

However, this clause is clearly in violation of Section 29 of the Contracts Act 1950 and Section 6 of the Limitation Act 1953.

Section 29 of the Contracts Act 1950 provides that:

“Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent”.

Section 6 of the Limitation Act 1953 provides that:

“A person is entitled to take an action in contract within six (6) years from the date the cause of action arises”.

Thus, a condition in a policy limiting the time for the insured to submit his claim to twelve (12) months from the time of loss would be void.

It is to be noted that in practice, there are practical problems in obtaining the necessary documents for submission to the insurer.

The obtaining of death certificates, police reports, adjuster’s reports, medical reports, post mortem reports, loss assessment reports and a variety of other documents often involve various parties. Delays are inevitable.

Legal Jurisdiction

The Limitation Act 1953 (amended 2018) which provides the limitation of six (6) years that an action may be brought after a breach of law occurs however, applies only to Peninsular Malaysia.

In Sabah, the limitation period is provided under the Limitation Ordinance (Sabah Cap. 72), whilst the Limitation Ordinance (Sarawak Cap. 49) governs the Sarawak jurisdiction.

In Peninsular Malaysia, a fatal claim made by the dependents of a deceased person who has died due to the negligence of another party, any action founded on contract or tort must be brought within six (6) years from the date on which the cause of action accrues.

The time limit for filing a fatal claim in Sabah and Sarawak is three (3) years.

Alternative Action

You can lodge a complaint with the Financial Mediation Bureau under Bank Negara Malaysia to resolve any matters fairly expeditiously and economically.



“
Nothing
can be said
to be certain,
except
death and
taxes.”



Zainol Talib
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A woman was shocked when she received a letter from Lembaga Hasil Dalam Negeri (LHDN) declaring that her husband was deceased!

The letter dated 25 July 2017 which was sent to their home address in Paka, Terengganu stated he was dead, and to add insult to injury, also demanded the 43-year-old wife to settle his outstanding income tax of RM1,728.50.

Acknowledging later that the husband is very much alive, LHDN saw the light and issued an

apology and also laid the matter to rest.

According to a statement by LHDN, the Board is legally empowered to collect outstanding taxes even after someone has died.

This is in accordance with Section 74 and Section 106 of the Income Tax Act 1967 to claim a deceased's outstanding tax from the rightful next-of-kin.

“If the next-of-kin is not able to pay the whole sum, LHDN advises the next-of-kin to visit LHDN's office to discuss paying in installments,” the statement said.

Section 74 of the Income Tax Act 1967 states that:

“Where an individual dies in the basis year for a year of assessment, his executors shall be assessable and chargeable to tax for that

year of assessment, for the following year of assessment and, whenever necessary, for any previous year of assessment in respect of the chargeable income of that individual for any such year of assessment; and, where they are so assessable and chargeable, they shall be assessable and chargeable to tax in like manner and to the like amount as the individual would be assessed and charged to tax if he had not died”

Section 106 of the same Act allows the government to recover tax due and payable through civil proceedings as a debt due to the government.

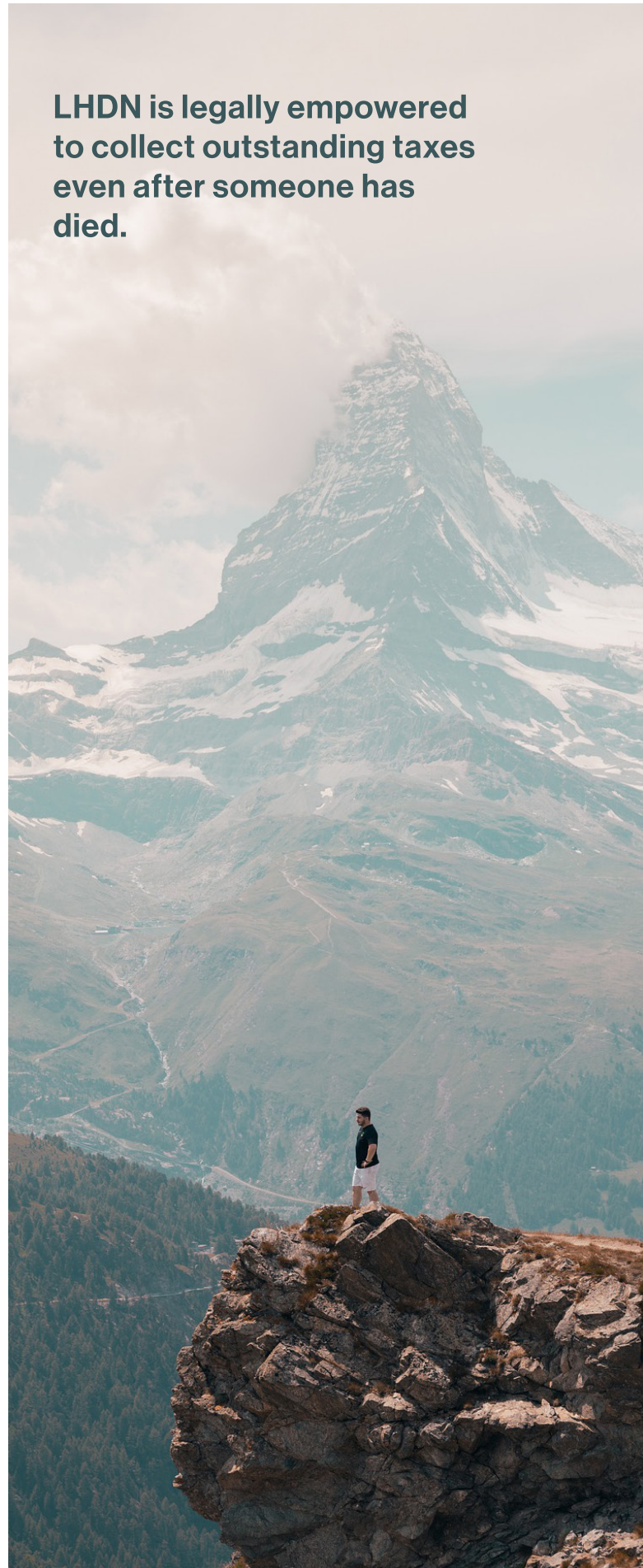
New Developments

In an unrelated case, the Pahang Mufti has a different opinion on shariah law requiring the legal representative or administrator of a deceased taxpayer's estate to pay the tax arrears left by the deceased. He is reported to have said that the next of kin to the estate of a deceased taxpayer does not need to do so.

Following a difference of opinion between Penang Mufti Datuk Seri Dr Wan Salim Wan Mohd Noor and Pahang Mufti Datuk Seri Dr Abdul Rahman Osman regarding the matter, the Panel of Shariah Experts at the Jabatan Kemajuan Islam Malaysia (JAKIM) brought it up at the Majlis Kebangsaan Bagi Hal Ehwat Agama Islam (MKI) for deliberation.

Minister in the Prime Minister's Department (Religious Affairs) Datuk Dr Mohd Na'im Mokhtar said,
“The decision on whether next-of-kin must pay tax arrears of deceased persons will be known by September 2023”.

LHDN is legally empowered to collect outstanding taxes even after someone has died.





Elemen Perundangan

dari Perspektif Seorang Pengamal Undang-Undang



Khairul 'Buzze' Azam Aziz
Azam Aziz & Co
azamaziznco@gmail.com

Saya adalah seorang peguam yang juga terlibat terus dengan masalah perundangan berkaitan kewangan dan insurans.

Sebagai seorang pengamal undang-undang, saya memahami kepentingan suatu persekitaran yang teratur dengan sistem kawal selia mampan dalam membolehkan perniagaan dan industri berkembang dengan baik dan meningkatkan tahap keyakinan pelanggan.

Industri insurans hayat dan takaful keluarga juga tidak terkecuali. Dengan permintaan yang semakin meningkat terhadap produk dan perkhidmatan insurans hayat dan takaful

keluarga, adalah penting bagi ejen-ejen memahami rangka kerja undang-undang dan tadbir urus yang mentadbir profesion mereka.

Memahami Kerangka Undang-Undang

Industri insurans hayat/takaful keluarga beroperasi dalam kerangka undang-undang yang dikawalselia terutamanya oleh Akta Perkhidmatan Kewangan 2013 (FSA 2013) dan Akta Perkhidmatan Kewangan Islam 2013 (IFSA 2013). Akta-akta ini menyediakan asas bagi pentadbiran dan pengawalan institusi kewangan, termasuk syarikat insurans hayat dan pengendali takaful.

Beberapa akta-akta di bawah kawalselia SPRM dan Kementerian Komunikasi & Digital juga amat berkait dalam urusan transaksi ejen. Ejen-ejen perlu memahami peruntukan yang relevan untuk memastikan pematuhan dan melindungi kepentingan pelanggan mereka.

Kod Etika Tingkah Laku Untuk Ejen-ejen

Untuk meningkatkan etika dan profesionalisme di kalangan ejen-ejen, Bank Negara Malaysia, telah memperkenalkan Kod Etika Tingkah Laku untuk Entiti Berlesen.

Kod ini menetapkan jangkaan bagi ejen-ejen dalam pelbagai bidang, termasuk pendedahan (disclosure), cadangan produk, perkhidmatan pelanggan dan pengendalian aduan.

Seksyen 17A Akta SPRM 2009 (Pindaan 2018), organisasi komersial juga mempunyai liabiliti dan boleh dihukum sekiranya pekerja atau pihak bersekutunya, termasuk ejen-ejen, terlibat dengan jenayah rasuah.

Mematuhi peraturan ini adalah penting untuk menjaga hubungan yang telus dan meningkatkan keyakinan yang tinggi oleh pelanggan.

Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil Daripada Aktiviti Haram 2001 (AMLATFPUAA)

Akta ini berkait terus dengan transaksi penjualan dan pembelian produk-produk insurans hayat/takaful keluarga yang dijalankan oleh ejen-ejen.

Kefahaman terhadap kesemua peringkat yang boleh berlaku didalam skimpengubahan wang haram ini adalah penting untuk ejen-ejen berwaspada, mengesan dan bertindak jika berlaku semasa mengendalikan transaksi mereka.

Kesalahan rasuah yang ditanggung bersama oleh syarikat insurans hayat dan pengendali takaful di bawah Seksyen 17A Akta SPRM 2009 (Pindaan 2018)

Peruntukan undang-undang yang juga dikenali sebagai liabiliti korporat ini ialah untuk menggalakkan aktiviti perniagaan dijalankan dengan integriti tanpa rasuah dan mempromosi amalan tadbir urus baik dalam organisasi.

Secara asasnya, menerusi Seksyen 17A

Akta SPRM 2009 (Pindaan 2018), organisasi komersial juga mempunyai liabiliti dan boleh dihukum sekiranya pekerja atau pihak bersekutunya, termasuk ejen-ejen, terlibat dengan jenayah rasuah.

Syarikat insurans hayat dan pengendali takaful tersebut boleh disifatkan bersalah dalam keadaan sama ada pihak pengurusan atasannya atau wakilnya tahu tentang kelakuan rasuah yang dilakukan oleh pekerja atau pihak bersekutunya, termasuk ejen-ejen.

Jika syarikat insurans hayat dan pengendali takaful disabit kesalahan, hukuman di bawah Seksyen 17A(2) adalah denda tidak kurang 10 kali ganda daripada nilai suapan tersebut atau RM1 juta, mengikut mana-mana yang lebih tinggi, atau dipenjarakan sehingga 20 tahun, atau kedua-duanya sekali.

Akta Perlindungan Data Peribadi 2010

Akta ini mengawalselia proses-proses mengumpul, memproses, menyimpan dan menyebarkan data peribadi dibawah kendalian Jabatan Perlindungan Data Peribadi, Kementerian Komunikasi dan Digital.

Adalah menjadi keutamaan bagi ejen-ejen untuk mematuhi akta ini demi menjamin privasi dan kerahsiaan data peribadi pelanggan.

Ketidakpatuhan boleh mengakibatkan hukuman, termasuk denda atau penjara, seperti yang telah diperuntukan dalam undang-undang.

Kesimpulan

Bagi ejen-ejen insurans hayat/takaful keluarga, pemahaman yang mantap berkaitan rangka kerja undang-undang dan persekitaran peraturan adalah penting untuk mencapai kejayaan.

Menegakkan prinsip profesionalisme, integriti, komunikasi yang efektif, pematuhan, dan amalan jualan beretika akan membolehkan ejen-ejen menyeimbangkan semangat jualan dan penjagaan pelanggan dengan baik.

Dengan beroperasi dalam batasan undang-undang dan etika, ejen-ejen menyumbang kepada keyakinan dan kebolehpercayaan industri insurans hayat dan takaful keluarga di negara ini.



*Artikel ini ditulis bersama dengan
Tn Muhammad Adli Alias
Naib Presiden Eksekutif
Etiqa Insurance & Etiqa Takaful*

“Adalah menjadi keutamaan bagi ejen-ejen untuk mematuhi Akta Perlindungan Data Peribadi 2010 demi menjamin privasi dan kerahsiaan data peribadi pelanggan.”

Kebanyakan orang kurang mempunyai pengetahuan atau hampir tidak pasti apa tindakan yang perlu diambil pada akaun bank pemilik yang telah meninggal dunia, terutama sekali jika ia melibatkan ahli keluarga sendiri.

Selalunya apabila berlaku kematian, pasti terdapat masalah yang berlaku dan ianya melibatkan wang. Sekiranya wang tersebut berada di dalam akaun bank, sudah tentu ia amat sukar untuk dikeluarkan oleh pewaris tanpa dokumen yang lengkap. Begitu juga akaun pembiayaan hartanah dimana baki pinjaman perlu dilunaskan agar rumah kediaman itu tidak dilelongkan oleh bank.

Satu webinar bertajuk **“Apa berlaku kepada waris selepas kematian, dari perspektif bank”** telah di anjur oleh *Association of Islamic Banking and Financial Institutions Malaysia (AIBIM)* pada Khamis, 17 Ogos 2023.

Topik berkenaan telah dihuraikan oleh panel jemputan Ustaz Ismanizam Ismail (*Shariah Advisory, Maybank Islamic*) dan Pn Irda Rina Kamarul Bahrain (*TSI Wealth Planners*) serta Dr Hj Shahizan Md Noh (*Head, Wealth Management MATA*) sebagai moderator.

Ustaz Ismanizam mengulas “Pada peringkat pertama dalam aliran proses penyelesaian pusaka, bank akan menyekat atau membekukan akaun simpanan, semasa dan deposit setelah mendapat maklum bahawa pemilik akaun berkenaan telah meninggal dunia”. “Pada peringkat kedua dan terakhir, bank akan



Akaun Bank Suami,

Apa Terjadi Jika Dia Meninggal Dunia?

Zainol Talib
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melepaskan baki akaun berkenaan kepada wasi atau pentadbir setelah ada pembuktian Surat Kuasa Mentadbir atau *Grant of Probate* atau *Letters of Administration* dari pihak berkuasa”.

Menurutnya pihak bank lazimnya mempunyai senarai semak bagi pembuktian dokumen-dokumen yang diperlukan untuk melepaskan baki wang didalam akaun si mati.

“Namun, akaun simpanan atau semasa yang dimiliki oleh dua orang bersama, tidak dibekukan atas klausa ‘*survivorship*’ walaupun ianya tidak terpakai bagi orang Islam atas sebab isu syariah”.

Perkara utama yang perlu diselesaikan oleh

pemegang akaun bersama adalah untuk membatalkan nama si mati atau menutup akaun tersebut dan pindahkan baki wang ke dalam akaun persendirian yang baharu.

Pn Irda Rina berpendapat “Waris biasanya mengetahui mengenai akaun pinjaman yang

“Bank akan menyekat atau membekukan akaun simpanan, semasa dan deposit setelah mendapat maklum bahawa pemilik akaun berkenaan telah meninggal dunia.

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Apa Berlaku KEPADA WARIS SELEPAS KEMATIAN, DARI PERSPEKTIF BANK

Panel 1

USTAZ ISMANIZAM ISMAIL
VP of Shariah Advisory,
Maybank Islamic

Moderator

DR HJ SHAHIZAN HJ MD NOH
Head of Wealth
Management for MATA

Panel 2

PUAN IRDA RINA KAMARUL BAHRAIN
TSI Wealth Planners
Sdn Bhd

tertunggak setelah menerima notis tuntutan dari pihak bank”.

Bagi akaun simpanan, semasa dan deposit yang tidak diketahui oleh waris pula, wang dalam akaun yang tidak aktif selama tujuh (7) tahun akan dipindahkan ke Jabatan Akauntan Negara Malaysia sebagai Wang Tidak Dituntut (WTD). Ini termasuk akaun pemilik yang sudah mati atau yang masih hidup.

“Maka salah satu daripada tanggungjawab wasi dan pentadbir adalah untuk menyemak nama si mati di Jabatan Akauntan Negara di bahagian WTD”.

Tambah Pn Irda Rina lagi, ada perbezaan antara harta pusaka yang mempunyai wasiat dengan pelantikan wasi dengan wasiat yang hanya mempunyai pesanan memberi harta tanpa pelantikan wasi.

“Wasiat yang mengandungi pelantikan wasi mampu melangkaui satu prosedur yang merenyahkan atau memakan masa”.

“Seorang wasi tidak perlu mendapatkan persetujuan dari setiap waris untuk melantik seorang pentadbir kerana pelantikan telah disempurnakan oleh pemilik harta semasa hayatnya.” “Ini dapat mempercepatkan proses mendapatkan Surat Kuasa Mentadbir”.

Menyebut tentang akaun pembiayaan pula, Ustaz Ismanizam menerangkan bahawa apabila akaun itu tertunggak akibat kematian peminjam, bank akan menuntut hutang itu dengan melelong hartanah tersebut.

Ia bakal berlaku apabila perlindungan *mortgage reducing term takaful* (MRTT) tidak mencukupi atau tidak wujud.

Ustaz Ismanizam memetik contoh dimana sebuah hartanah dalam pinjaman telah tidak dituntut oleh waris. Rentetan daripada itu, bank terpaksa melantik pemegang amanah untuk mewakili harta tersebut untuk dilelongkan bagi mendapatkan hak keatas pembiayaan yang dibuat.

“Wang dalam akaun yang tidak aktif selama tujuh (7) tahun akan dipindahkan ke Jabatan Akauntan Negara Malaysia sebagai Wang Tidak Dituntut.”

“Bagi akaun pembiayaan bersama, tanggungan liabiliti itu akan berpindah kepada pemilik yang masih hidup”. “Bank akan menuntut hutang keatas beliau selaku pemegang bersama akaun pembiayaan tersebut”.

Untuk memiliki harta dengan sempurna, Ustaz Ismanizam memberi saranan supaya peminjam mempunyai perlindungan takaful yang mencukupi dimana dana tabaruq digunakan sebagai jalan penyelesaian masalah kewangan yang berbangkit. Cara ini dapat mengelakkan dakwa dakwi atau tuntutan di mahkamah kelak.

“Bagi pemilik akaun yang sudah mempunyai wasiat pelantikan wasi, dia juga perlu membuat penyediaan bertulis tentang kaedah pembahagian harta selepas pemergiannya”, tambah Pn Irda Rina.

Ini kerana bank tidak menyediakan bantuan untuk menyelesaikan pertikaian antara waris-warisan yang menuntut pusaka simati.



Wang tak dituntut atau WTD juga merupakan wang yang sepatutnya dibayar kepada seseorang namun gagal dibayar dalam tempoh setahun, seperti:-

1. Gaji, upahan, bonus, komisen dan wang lain yang kena dibayar kepada kakitangan;
2. Dividen;
3. Keuntungan yang diisytiharkan untuk dibahagikan;
4. Tuntutan insurans yang telah diluluskan untuk bayaran;
5. Draf bank, cashier's order, dan dokumen lain yang mempunyai fungsi yang serupa di mana tempoh sah lakunya telah luput;
6. Simpanan tetap (tanpa arahan pembaharuan automatik) yang telah matang;
7. Cagaran dan deposit apabila tujuan wang itu dikutip telah tercapai;
8. Pemiutang pelbagai atau penghutang pelbagai berbaki kredit.

Artikel ini adalah penulisan "Akaun Simpanan Bersama" di laman Facebook **Ahmad Termizi Abdullah, Termizi & Co.**

Berlaku hibah ruqba antara kedua-dua pemilik akaun.

Syarat *ruqba* terpakai secara praktis dalam perjalanan akaun simpanan bersama yang mana jika syarat pengeluaran hanyalah berdasarkan izin salah seorang pemegang akaun sahaja.

Apabila salah seorangnya meninggal, akaun bersama tidak dibekukan dengan andaian sudahpun berlaku hibah *ruqba* antara kedua-dua pemilik akaun. Klausula 'survivorship' walaupun tidak dinyatakan oleh pihak institusi kewangan sebagai *ruqba*, tetapi boleh ditafsirkan sebegitu jika fakta kes menunjukkan berlakunya hibah *ruqba*.

Dalam kes *Latifah bte Mat Zin lwn Rosmawati bte Sharibun & Anor [2006] 4 MLH 705*, Mahkamah Rayuan telah menyatakan bahawa undang-undang perbankan tentang hak kemandirian dalam akaun bersama pada hakikatnya tidak wujud dalam bentuk bertulis sebagai undang-undang Persekutuan dan sememangnya satu perkara berkaitan kontrak yang tidak memberikan milikan kemandirian benefisiari itu terhadap wang dalam akaun bersama.

Klausula kemandirian atau hak

Nada Practitioner www.namlifa.org.my

Hibah Ruqba Terpakai bagi Akaun Bank Bersama

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kemandirian hanya memberikan hak kepada yang masih hidup itu untuk menerima wang tersebut.

Keadaan ini membolehkan bank membayar wang dalam akaun bersama kepada orang yang masih hidup. Dengan cara ini, pihak bank akan mendapat pelepasan daripada terus bertanggungjawab terhadap wang tersebut.

Akan tetapi, persoalan sama ada orang yang masih hidup itu berhak secara benefisial terhadap wang tersebut adalah sama sekali bukan dalam skop bank atau undang-undang perbankan.

Hal ini dikatakan demikian kerana klausa kemandirian sahaja tidak memberikan milikan benefisial yang membolehkan pemegang akaun yang masih hidup berhak terhadap kesemua wang tersebut.

Dalam sesetengah keadaan, pemegang akaun yang masih hidup bertindak sebagai pentadbir harta pusaka si mati dan dalam keadaan yang lain, pemegang akaun yang masih hidup mungkin berhak kepada keseluruhan atau sebahagian wang dalam akaun bersama itu.

Jika terdapat pertikaian, perkara ini haruslah diputuskan oleh mahkamah.

Dalam konteks orang Islam khususnya, status wang dalam akaun bersama telah diputuskan dalam kes *Jariah binti Yahya & 3 Lagi lwn Nor Hasiah binti Harun (2010) 31 JH81*.

Dalam kes ini, Mahkamah Rayuan Syariah telah mengekalkan keputusan Mahkamah Tinggi Syariah Seremban yang memutuskan bahawa wang simpanan yang di depositkan dalam akaun bersama antara si mati

dengan anak perempuan si mati daripada perkahwinan ketiganya (responden) merupakan harta hibah daripada si mati kepada responden.

Pemilikan penuh dan kesempurnaan harta hibah telah berlaku berdasarkan penelitian hukum syarak dan peruntukan undang-undang.

Oleh yang demikian, wang berkenaan tidak dikira sebagai harta pusaka si mati.


Dari segi fakta, hakim memutuskan antara lainnya bahawa tindakan responden dengan sendirinya boleh melakukan transaksi akaun bank menunjukkan bahawa responden juga merupakan pemilik akaun bank tersebut.

Selain itu, perbuatan responden yang telah menguruskan mahupun mengeluarkan semasa hayat dan selepas kematian si mati menunjukkan penguasaan terhadap harta tersebut. Keadaan ini menunjukkan telah berlakunya *qabd* (penerimaan dan penguasaan) dan pemilikan pada harta yang dihibahkan.

Oleh yang demikian, telah berlakunya hibah berdasarkan rukun hibah yang ditetapkan oleh hukum syarak.

Berdasarkan kes yang tersebut, dapatlah dirumuskan bahawa dari sudut perbankan, sesuatu klausa kemandirian tidak memberikan milikan benefisial secara automatik kepada pemegang akaun bersama yang masih hidup.

Walau bagaimanapun, sesuatu wang dalam akaun bersama menjadi milik pemegang akaun bersama sekiranya dapat dibuktikan bahawa pemegang akaun tersebut mempunyai penguasaan penuh terhadap akaun berkenaan ketika hayat si mati.



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