

LEGAL ALERT

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Departure Levy Act 2019 Comes into Force

The Departure Levy Bill was passed in Dewan Negara on 8 May 2019, received Royal Assent on 3 July 2019 and subsequently gazetted as the Departure Levy Act 2019 (“the Act”) on 17 July 2019. The following provisions, i.e. Part I, Part II, Part IV, section 17, section 18, section 31, Part VII, Part VIII except for section 37, Part IX, Part X and Part XI came into force on **1 August 2019**. Simultaneous with the coming into force of the Act, the following Orders and Regulations also came into force:

- [Departure Levy Regulations 2019 \(except for Part III\)](#)
- [Departure Levy \(Exemption\) Order 2019](#)
- [Departure Levy \(Compounding of Offences\) Regulations 2019](#)

The remaining provisions in Part III, Part V except for sections 17 and 18, Part VI except for section 31 and section 37 to the Act will come into force on **1 September 2019**. The effective date for the charging and levying of the departure levy also falls on **1 September 2019** together with the following Orders and Regulations:

- [Part III of the Departure Levy Regulations 2019](#)
- [Departure Levy \(Rate of Departure Levy\) Order 2019](#)

The key highlights of the Act are as follows:

[Territorial and extra-territorial application \(s. 2\)](#)

The Act applies both within and outside Malaysia and also applies to foreign operators. An “operator” is defined in the Act as any person who operates any vehicle to carry any person leaving Malaysia and “foreign operator” means any person, who operates any vehicle to carry any person leaving Malaysia, but who has no business or place of business in Malaysia.

[Imposition of departure levy \(s.9\)](#)

Any person who leaves Malaysia by using any carrier made available by an operator shall pay a departure levy. The operator shall collect the departure levy at a rate of which shall be fixed by the Minister in accordance with section 11 of the Act. According to the Departure Levy (Rate of Departure Levy) Order 2019, the rate of departure levy are as follows:

Country/Class	ASEAN Countries		Other than ASEAN countries	
	Economy class	Other than economy class	Economy class	Other than economy class
Rate of departure levy	RM8	RM50	RM20	RM150

Failure to pay the departure levy is an offence that is punishable with a fine not exceeding RM500,000 or imprisonment for a term not exceeding three years or to both.

[Liability to be registered \(s.13\)](#)

The liability for registration lies on the operator. An application must be made to the Director General to be registered, in the manner as may be prescribed. The application must be made not less than 30 days before the commencement of the operation of carrying any person leaving Malaysia. Failure to comply with the requirement to register is an offence which is punishable with a fine not exceeding RM100,000 or to imprisonment for a term not exceeding one year or to both.

Duty to appoint an agent for foreign operators (s.14)

A foreign operator who does not have any business or place of business in Malaysia is required to appoint an agent and the agent appointed shall be responsible to account, pay the departure levy, and comply with the provisions of the Act. If there is a change of an agent appointed, the foreign operator shall appoint another agent to act on his behalf not less than 30 days before the changes and the new agent shall apply for registration within 30 days after the date of appointment.

Failure to comply with the requirements above is an offence punishable with a fine not exceeding RM100,000 or imprisonment for a term not exceeding one year or to both.

Payment of departure levy (s.20)

A registered person who is required to furnish a return is also required to pay the amount of the departure levy due and payable not later than the last day of which the registered person is required to furnish the return. If the registered person fails to pay wholly or partly of the departure levy due within the prescribed time and prosecution has yet to be instituted, a penalty of up to 40% of the amount of the departure levy remaining unpaid is provided under the Act.

Liability of directors (s.30)

Where departure levy is due and payable or penalty is payable under this Act by any company, limited liability partnership, firm, society, or other body of persons, the directors of such company, the compliance officer of the limited liability partnership, the partners of such firm, the office-bearers of such society or the persons responsible for the management of the body of person, as the case may be, shall be jointly and severally liable for the departure levy or penalty.

Stiff penalties for evasion of departure levy etc.

The following offences and penalties among others are provided for under the Act:

Section	Description	Penalty
38	Evasion of departure levy	Fine not exceeding RM1 million or imprisonment for a term not exceeding five years or to both. Where the offence relates to the deficiency of departure levy, to a penalty equal to the deficient amount.
41	General penalty	Fine not exceeding RM100,000 or to imprisonment for a term not exceeding one year or to both, where no penalty is expressly provided.

42	Offences by company	<p>Directors, compliance officers, partners, managers, secretaries or other similar officers of the company, limited liability partnership, firm, society or other body of persons who are to any extent responsible for management may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or the body of persons.</p> <p>The company, limited liability partnership, firm, society or the body of persons if found guilty of the offence shall be liable to the same punishment or penalty as an individual unless the following defences can be proved:</p> <ul style="list-style-type: none"> • that the offence was committed without his knowledge; or • that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.
43	Liability for any person for offence committed by his employee or agent or the employee of his agent	Same punishment or penalty for every such act, omission, neglect or default of the person's employee or agent, or of the employee of the person's agent.

For a copy of the Act, please click [here](#).

If you have any questions or require any additional information, please contact [Ahmad Zulkharnain Musa](#) or the ZICO Law partner you usually deal with.

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