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National space legislation : future perspectives for Malaysian Space Law

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5 A FEASIBLE DRAFT ACT OF A MALAYSIAN OUTER SPACE LAW

5.1. INTRODUCTION

The burgeoning of various activities in outer space¹ necessitates the emergence of national space laws, especially in countries involved and participating in space activities. This is evident from the discussion provided throughout the study.² Having the international space rules alone is, in fact, inadequate to govern and monitor the flourishing of space activities, particularly considering the tremendous efforts accomplished by the private sector in the exploration and use of outer space. More efforts and ideas should be arranged and formulated to alert the world community to the importance of enacting domestic space laws to rule and guide the activities nationally. There is no doubt that national space laws can assist the international space conventions in monitoring space activities, nationally and globally. Indeed, they will benefit each other in ensuring that space actors adhere to and observe the application and performance of the legal principles and rules governing the exploration and use of outer space.³

Thus, to meet the above target, this study has attempted to draft feasible national space legislation for Malaysia. The legislation is drafted in such a way that it takes into account certain major aspects that must be considered while drafting such legislation.⁴ Indeed, this is done in the expectation that the study will produce the best possible Malaysian national space legislation. Moreover, the study has scrutinized several important points or themes that the Malaysian space legislation should incorporate.⁵ In fact, these points have been discussed in the previous chapter,⁶ and have then been modified and adjusted to suit the Malaysian legal, economic, and technological environment. Thus, on the basis of these major themes, this

¹ Read Chapter 1 of the thesis (1.4. Applications and Activities) and Chapter 2 (2.2. World Space Activities).

² Read Chapter 4 of the thesis (4.2. Reasons for Necessity), Chapter 5 (5.2.2. The Legal Impacts on Malaysia), and (5.2.3. The Legal Impacts on the ASEAN and the World Space Activities).

³ A few examples of such legal principles and rules include the following: the exploration and use of outer space should be carried on for the benefit and in the interest of all mankind; outer space and celestial bodies are free for exploration and use by all states on the basis of equality and in accordance with international law; and outer space and celestial bodies are not subject to national appropriation by claim of sovereignty. Further discussion is available in Chapter 2 of the thesis (2.3.4. Malaysia and the Five Outer Space Principles).

⁴ Such discussion is available in Chapter 4 of the thesis (4.3. Some Major Aspects of Drafting Malaysian Space Legislation).

⁵ The discussion is available in Chapter 4 of the thesis (4.4. Shaping the Malaysian Space Law).

⁶ *Id.*

chapter then proposes a feasible draft of the Malaysian Outer Space Act as the main outcome of the study. It is hoped that this draft of a Malaysian Outer Space Act will become a significant guideline for the realization of the actual Malaysian Outer Space Act.

5.2. THE MALAYSIAN OUTER SPACE ACT

This section specifically deals with the drafting of the Malaysian Outer Space Act. The draft is indeed the main product of the study. The proposed draft Act follows the style of Malaysian legislation: statement of purpose, reference to the Sovereign (King), preliminary part, short title, interpretative section, and so on. In brief, the draft consists of six parts: Part I (Preliminary); Part II (Authorization of Space Activities); Part III (Supervision and Monitoring of Space Activities); Part IV (Registration of Space Activities); Part V (Indemnification and Insurance Requirement); Part VI (Other Relevant Clauses).⁷ It is expected that the present construction of the draft will assist and contribute to the development of the actual Malaysian Outer Space Act. After proposing the draft, the study discusses the legal impacts of enacting the Outer Space Act on Malaysia. Lastly, the discussion highlights the legal impacts of the Act on the ASEAN and world space activities.

5.2.1. A Feasible Draft of a Malaysian Outer Space Act

This section presents the outcome of the study, a feasible draft of a Malaysian Outer Space Act. For an effective reading and a comprehensive understanding, it is paramount to note that this section should be read together with or cross-referenced with Chapter 4⁸ of the thesis.

⁷ *Id.*

⁸ Read also Chapter 4 of the thesis (4.4. Shaping the Malaysian Space Law).

“DRAFT”

MALAYSIAN OUTER SPACE ACT [YEAR]

(Act [No])

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MALAYSIAN OUTER SPACE ACT [YEAR]

(Act [No])

AN ACT to provide for and to regulate the Malaysian space activities.

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled and by the authority of the same as follows:

PART I PRELIMINARY

1. Short title.

This Act may be cited as the Malaysian Outer Space Act [year].

2. Commencement.

This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

3. Objects.

The objects of this Act are -

- (a) to regulate the Malaysian space activities in order to ensure compliance with the international space obligations;
- (b) to establish a licensing regime for the Malaysian space activities, as well as to confer the licensing power and other relevant powers on the appropriate Minister;
- (c) to establish a liability regime and indemnification rules for the Malaysian space activities;
- (d) to lay down rules of registration of Malaysian space objects;
- (e) to ensure safety of operational space activities performed under the Malaysian jurisdiction.

4. Application of Act.

- (1) This Act applies to space activities carried out either from or within Malaysia and her territorial waters or from Malaysian ships or aircraft.
- (2) This Act applies to space activities carried out by Malaysian nationals, firms and bodies incorporated by or under the Malaysian laws outside Malaysia.
- (3) Subject to subsection (1) or (2), this Act applies to the following space activities whether conducted or attempted in Malaysia or elsewhere:
 - (a) any activity carried out in outer space;
 - (b) launching or procuring the launch of a space object or human being;
 - (c) operating a space object;
 - (d) all other measures to manoeuvre or in any other way affect the objects or human beings launched into space.

5. Ministerial power.

For the purposes of this Act, the Minister may have power to issue regulations or others as necessary for the application of the Act.

6. Interpretation.

In this Act, unless the context otherwise requires:

“Authorization Committee” means Committee established under Part II.

“Complexity of operation” means level or degree of complexity involved in the operation of space activities in respect of safety and security evaluation, environmental assessment, human life involvement, and other matters that are appropriate.

“Launch facility” means a fixed or mobile facility or place from which a space object can be launched, and includes any other facilities at the facility or place that are necessary to conduct a launch.

“Launch vehicle” means any vehicle manufactured or adapted to carry payloads or human beings into outer space, or in suborbital trajectory, or in an Earth orbit, inclusive of suborbital and orbital rockets.

“Launch” means place or attempt to place the space object or human being from Earth in a suborbital trajectory, or in an Earth orbit, or in outer space.

“Licence and/or other authorized modes” means licences and/or other modes of authorization as prescribed under section 8 that are obtained and registered under this Act.

“Licensee” means a person who holds a licence or any other modes granted under this Act.

“Minister” means the Minister currently charged with responsibility for Malaysian space activities.

“Outer space” means an area, inclusive of the moon and other celestial bodies, that is outside the Earth’s atmosphere in which the operation of an object in an orbit around the Earth is possible.

“Payload” means any object that a person undertakes to place in outer space by means of a launch or re-entry vehicle, including the components of the vehicles.

“Re-entry vehicle” means a vehicle or reusable vehicle designed to return from outer space to Earth.

“Space damage” means any physical damage including death, bodily injury or other impairment of health, and loss of property as a result of launch, re-entry, or operation of the space object.

“Space object” means any object or thing launched or intended to be launched into outer space, or into a suborbital trajectory, or into an Earth orbit, including a launch or re-entry vehicle, orbital or suborbital rocket, and a payload, even if such object goes only some of the way towards or back from outer space.

“Suborbital rocket” means a vehicle, rocket-propelled in whole or in part, intended for flight on a suborbital trajectory.

“Suborbital trajectory” means the flight path of a launch or re-entry vehicle whose vacuum instantaneous impact point does not leave the surface of the Earth.

“Supervision and Monitoring Committee” means the Committee established under Part III.

PART II

AUTHORIZATION OF SPACE ACTIVITIES

Chapter 1

Requirement and Mode of Authorization

7. Requirement of authorization for space activities.

For the purposes of Section 4, space activities shall not be carried out unless with an authorized licence or other authorized modes as prescribed under Section 8.

8. Modes of authorization.

This Act offers four (4) modes of authorization:

- (a) Space Licences:
 - (i) space site or facility licence – required for operation of site or facility of space activities in Malaysia.
 - (ii) space launch or re-entry licence – required for operation of launch or re-entry of space object from and to Malaysia.
- (b) Overseas Launch or Return Certificate – required for operation of launch or re-entry space object conducted by Malaysian nationals, firms or bodies incorporated by or under Malaysian laws outside Malaysia.
- (c) Experimental Permit – required for operation of space activities solely connected to research or testing new design or concept or equipment or other experimental purposes.
- (d) Exemption Certificate – required for operation involving an acceptance of foreign authorization or where appropriate arrangement has been made between Malaysia and other states.

Chapter 2

Conditions for Granting Authorization

9. Conditions for granting licences or other modes of authorization.

For the purpose of Sections 7 and 8, the Minister may, acting on the recommendation of the Authorization Committee, grant to an applicant a licence or other authorized modes if the Minister and the Committee are satisfied that:

- (a) the applicant is competent to operate the site, or facility, and/or space object;
- (b) the insurance requirement under this Act has been satisfied;
- (c) all necessary environmental approvals under Malaysian law (if any) have been obtained, and an adequate environmental plan has been made for the construction and operation of the site, or facility, or the space object;
- (d) the applicant will conduct his/her operation in such a way as to prevent the contamination of outer space or adverse changes to the environment of the Earth;
- (e) the activities conducted will not jeopardize the public health, or the safety of person or property;
- (f) the applicant will conduct his/her operation in such a way as to avoid interference with the activities of others in the peaceful exploration and use of outer space;
- (g) the space object or objects concerned do not contain a nuclear weapon or a weapon of mass destruction of any other kind;
- (h) the activities conducted are consistent with the international obligations of Malaysia;
- (i) the activities conducted will not impair the national security of Malaysia.

Chapter 3

Powers of Minister

10. Power to establish an Authorization Committee.

For the purpose of Section 11, the Minister shall establish an Authorization Committee to assist him/her in exercising his/her power under Part II.

11. Granting of licences and other modes of authorization.

Subject to Chapter 2 of Part II, the Minister may, acting on the recommendation of the Authorization Committee, grant a licence or other authorized modes in accordance with the provision of this Act.

12. Authorization fees.

The Minister may, acting on the recommendation of the Authorization Committee, prescribe the amount of fees, but they shall not exceed an agreed limit, calculated on the basis of complexity of the operation.

13. Duration of authorization procedure.

The Minister shall, acting on the recommendation of the Authorization Committee, make a decision on the application not later than 6 months after receiving said application.

PART III**SUPERVISION AND MONITORING OF SPACE ACTIVITIES****Chapter 1***Powers of Minister***14. Power to monitor and supervise.**

For the purposes of this Act, the Minister shall monitor and continuously supervise the space activities registered under this Act.

15. Power to give direction.

The Minister may give direction to the licensee in the event of the licensee contravening the licences or other authorized modes' requirements and conditions under this Act, or to secure compliance with the international obligations of Malaysia.

16. Power to revoke, vary, or suspend licences and other authorized modes.

The Minister may revoke, vary, or suspend the licences or other authorized modes in the event that:

- (a) the conditions of licences and other authorized modes under this Act have not been complied with by the licensee; or
- (b) the revocation, variation, or suspension of the licences or other authorized modes is required in the interest of public health, national security, or to comply with the international obligations of Malaysia.

Chapter 2

Establishment, Powers, and Functions of Supervision and Monitoring Committee

17. Establishment of Supervision and Monitoring Committee.

For the purposes of Section 14, the Minister shall establish a Committee to assist him/her in exercising his/her power under Part III, and it shall be known as the Supervision and Monitoring Committee.

18. Assistance by a Committee.

For the purposes of Section 14, the Supervision and Monitoring Committee shall assist the Minister in the exercising of his power under Part III.

19. Composition of a Committee.

For the purposes of Part III, the Supervision and Monitoring Committee shall comprise a group of Malaysian technical and legal experts and a foreign technical expert (if necessary) designated on the basis of their technical and/or legal expertise and knowledge of the space activities involved.

20. Issuance and submission of identity cards.

- (1) For the purposes of Section 18, the Supervision and Monitoring Committee shall be issued with identity cards that include a recent photograph of the holder.
- (2) The identity card must be returned to the Minister as soon as is practicable after the holder has ceased to be a member of the Committee.

21. Powers and Functions of a Committee.

Powers and Functions of the Supervision and Monitoring Committee are:

- (a) to constantly monitor and ensure compliance of licensee with terms and conditions of licences and other modes of authorization;
- (b) to constantly supervise the licensee;
- (c) to ensure that no person or property is endangered by the operations conducted;
- (d) to hold authority to enter and inspect the site, facility, space object, or other equipment;
- (e) to hold authority to require the licensee to provide necessary information or assistance in terms of the operation;

- (f) to hold authority to take copies of documents in relation to operations when necessary;
- (g) to do anything that is reasonably necessary in order to perform its duty.

22. Compliance with Minister's instructions.

Pursuant to Section 18 and in performing the functions and exercising the power under Section 21, the Committee must comply with any instruction given by the Minister.

Chapter 3

Duties of Licensee

23. Cooperation of Licensee.

Licensee must cooperate with the Committee for the fulfilment of the functions and powers of the Committee under Section 21.

24. Permission to access sites and observe operations.

Licensee must allow the Committee to access the site or facility, and to perform its powers and functions under Section 21, as well to observe the operation.

25. Advance approval for a deviation of a space object.

Licensee must obtain approval in advance from the Minister of any intended deviation of a space object from its orbital parameter and to inform the Minister of any unintended deviation.

26. Notification of disposal of a payload.

Licensee must notify the Minister of any disposal of payload in outer space on the termination of the operation.

PART IV

REGISTRATION OF SPACE ACTIVITIES

Chapter 1

National Registry

27. Minister to establish and maintain a national registry.

The Minister shall establish and maintain a national registry of space objects.

28. Notification of establishment of a national registry to the United Nations.

For the purposes of Section 27, the Minister shall notify the Secretary-General of the United Nations of the establishment of a national registry of space objects.

29. Registration of space objects.

The licensee shall register the space object in the national registry before the launch of the object.

30. Allocation of registration numbers.

For the purposes of Sections 29 and 38, the Minister shall allocate a registration number to each space object by which the object shall be identified.

31. Entry of information on space objects.

For the purposes of Chapter I and Chapter II, the licensee shall enter in the national registry the following particulars of the space object:

- (a) registration number of a space object;
- (b) location of launch;
- (c) date and time of launch;
- (d) space object's general function;
- (e) the space object's main orbital parameters, including the nodal period, its inclination, apogee and the perigee;
- (f) name of manufacturer;
- (g) name of operator;
- (h) name of other launching state (if applicable);
- (i) main constituent elements on board the space object;

- (j) current status (functional/non-functional/no longer in orbit);
- (k) any other information that is necessary.

32. Time limit to enter information.

For the purposes of Section 31, the licensee shall enter the information not later than 30 days following the launch of the space object.

33. Updating information in the register.

For the purposes of Section 31, the licensee shall update the information when any modification has occurred.

34. Power to vary an entry on register.

For the purposes of Section 31, the Minister may vary an entry on the register when necessary.

35. Inspection of register.

For the purposes of Section 31:

- (a) The register shall be open to any member of the public for inspection.
- (b) The inspection can only be made after payment of fees as prescribed by the Minister.

36. Notification of information to the United Nations.

The Minister shall notify the Secretary-General of the United Nations of the information obtained under Section 31 and the updates on the space objects as soon as is practicable.

Chapter II

Supplementary Registry

37. Minister to establish and maintain a supplementary registry.

Notwithstanding Section 27, the Minister shall also establish and maintain a supplementary registry of space objects.

38. Circumstances in which registration is categorized under supplementary registry.

The circumstances in which information shall be entered in the supplementary registry are as follows:

- (a) a space object for which Malaysia has procured the launch but which appears on the registry of another state;
- (b) a space object whose title and control has been transferred to a Malaysian operator after its launch and the authorization granted under this Act.

PART V

INDEMNIFICATION AND INSURANCE REQUIREMENT

Chapter 1

Full Indemnification and Its Exception

39. Obligation to indemnify the Government in full against any claims.

The licensee shall indemnify the Government of Malaysia in full against any claims brought against the Government of Malaysia, internationally or locally, in respect of damage or loss arising out of activities carried on by the licensee under this Act.

40. Entitlement for exemption to indemnify the Government in full.

Subject to Section 41, the licensee is entitled to indemnify the Government of Malaysia not in full amount, but only to the licensee's utmost capable financial capacity, provided that such amount is not lower than the insured sum.

41. Conditions for entitlement of exemption to indemnify in full.

The entitlement under Section 40 shall only apply when all of the following have been successfully proven:

- (a) the licensee must sufficiently prove to the Government of Malaysia that the licensee is genuinely incapable of indemnifying the Government in full; and
- (b) the Government of Malaysia has satisfied itself to the fullest extent of the financial incapability of the licensee to indemnify in full; and
- (c) the entitlement will not jeopardize the interest of the Government of Malaysia in particular and Malaysia as a whole, especially in relation to its financial capacity.

42. Further safeguarding the interest of the Government against possible financial risk.

For the purposes of Section 40, in order to safeguard the interest of the Government of Malaysia against any possible financial risk, the entitlement under Section 40 will apply only once for the whole period of operation of the licensee under the licence or other modes authorized by the Act.

43. Power of the Government to claim the balance of the indemnification amount.

Notwithstanding Section 40, the Government of Malaysia has the right to recover the balance of the indemnification amount from the licensee to which it was previously entitled under Section 40 in the event that:

- (a) the Government of Malaysia strongly believes that it is necessary to do so in the interest of the Government and country; and/or
- (b) the licensee has the financial capacity to pay the balance of the indemnification amount.

44. Situation where entitlement for exemption to indemnify in full shall not apply.

Section 40 shall not apply to the licensee when the damage or loss has resulted from the wilful misconduct, negligence, or non-compliance with the requirement of the licence and other modes of authorization of the licensee, or any rules under this Act, or other relevant laws.

Chapter 2

Liability Insurance and Its Requirements

45. Requirement to obtain liability insurance.

The licensee shall insure him/herself against any liability incurred, after obtaining an authorization under this Act.

46. Circumstances in which liability insurance is required.

For the purposes of Section 45, the licensee shall insure him/herself against any liability incurred in respect of:

- (a) damage or loss of property or death or bodily injury suffered by a third party;

- (b) damage or loss of property or death or bodily injury suffered by the Government of Malaysia and its agents;
- (c) liability of the Government of Malaysia that might be incurred under international law;
- (d) any other circumstances the Government of Malaysia may think necessary.

47. Requirement to obtain maximum insurance coverage.

For the purposes of Section 45 and Section 46:

- (a) the licensee shall insure him/herself for the greatest amount of loss or damage of property and bodily injury that is reasonably expected to result from the authorized activity under this Act.
- (b) the licensee has the obligation to ensure the insured amount is the maximum liability insurance coverage available at the time of application.

PART VI

OTHER RELEVANT CLAUSES

48. Offences and penalties.

- (1) Every omission or failure to comply with, or any act committed or attempted that is contrary to this Act or its subsidiary legislation or any written instrument made under this Act, or in breach of the conditions subject to which any licence or other modes of authorization have been granted shall be an offence against this Act or its subsidiary legislation.
- (2) For such offence where the penalty is not otherwise specifically provided for, the offender shall, be liable to a fine not exceeding [...] or to imprisonment for a term not exceeding [...] or both.

49. Military outer space activities.

For the purposes of Malaysian military outer space activities, the Minister may give an exemption to Part IV if required in the interests of national security.

50. This Act prevails over other Acts.

In the event of any inconsistency or conflict between this Act and any other relevant written law, the provisions of this Act shall prevail to the extent of the inconsistency or conflict.

5.2.2. The Legal Impacts on Malaysia

Once a country has successfully enacted legislation, there will be legal impacts on that country. Thus, when the enactment of the Malaysian Outer Space Act has been successfully realized, there will be various legal impacts on the country. In view of this, this section attempts to identify a number of possible legal impacts on Malaysia following the enactment of the Malaysian Outer Space Act. These legal impacts will be assessed from various viewpoints. In this section, the study assesses the legal impacts on Malaysia based on three major approaches. They are: (1) the legal impacts on the Government of Malaysia itself; (2) the legal impacts on the space actors registered under the Malaysian Outer Space Act; and lastly, (3) the legal impacts on the Malaysian public and society.

The first approach is in relation to the legal impacts on the Government of Malaysia. At this juncture, five legal impacts are identified. The first is the legal protection of the Malaysian Government against financial risk. It is noted that the most significant legal impact on the Government of Malaysia following the enactment of the Malaysian Outer Space Act will be the securing of the Government's financial risk. It will be secured in the sense that the Malaysian Government's international liability in regard to its national space activities at the international level will be legally protected. This will be achieved by way of the indemnification rule imposed at the national level via the Malaysian Outer Space Act. In other words, although the Government of Malaysia must be responsible internationally for the liability arising from the space operations of its nationals, the liability amount of compensation can be recovered nationally under the Malaysian Outer Space Act. Such circumstances are derived the fact that the Government has the legal right to claim and recover the indemnification amount from the real owner of the space object that causes damage or loss. As prescribed by the Malaysian Outer Space Act, it is the obligation of the licensee to indemnify the Government in full against any claim brought against the Government of Malaysia with respect to damage or loss arising out of the activities carried

out by the licensee.⁹ Hence, with the indemnification rule incorporated in the Malaysian Outer Space Act, supported by the liability insurance clauses, the Government of Malaysia will be well protected against any financial risk that may arise under the international law.

The second is the legal assurance of compliance with the international outer space obligations. The second legal impact on the Government of Malaysia following the implementation of the Malaysian Outer Space Act will be the fact that the Government can legally ensure complete compliance with the international outer space obligations imposed by the United Nations space conventions. As noted, there are certain obligations that a state must observe when dealing with outer space activities under its capacity as a state. These include the obligation to take responsibility for the activities of its nationals, the obligation to monitor and supervise such activities accordingly, the obligation to register the object launched into space with the United Nations, the obligation to ensure the activities are carried out in a peaceful manner, the obligation to ensure the activities are carried out for the benefit of mankind, and many others. By incorporating those obligations in the Malaysian Outer Space Act, the Government can ensure that space actors will comply with the rules of international law especially with regard to the international outer space obligations when they are domesticated in the Act. In other words, the performance of the international outer space obligations is legally guaranteed in such a way that the Malaysian Government has the legal capacity under the Malaysian Outer Space Act to monitor and control such situations through its licensing and other modes of authorization prescribed by the Act.¹⁰ Therefore, the enactment of the Act has provided legal assurance with respect to complete observation of the international space obligations at both national and international levels.

The third legal impact on the Government of Malaysia after the enactment of the Malaysian Outer Space Act is the fact that the Government will have a well-organized space legal system. Prior to the enactment of the Act, there has been no specific legal system governing Malaysian space activity, especially in relation to the performance of the United Nations international space obligations. However, when the enactment is passed, the Government can be proud of a system which will provide systematic guidance for the Government and space

⁹ See Section 39 (Obligation to indemnify the Government in full against any claims), Part V (Indemnification and Insurance Requirement), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 of the thesis (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹⁰ See Part II (Authorization of Space Activities) and Part III (Supervision and Monitoring of Space Activities), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 of the thesis (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

actors to rely on when dealing with outer space activities. This is evidenced, for instance, by the fact that the Malaysian Outer Space Act will introduce a specific Committee to deal with the authorization matters,¹¹ and also a special Committee in charge of the supervision and monitoring tasks of the space activities.¹² Indeed, all these Committees will be established to assist the relevant Minister in dealing with the country's outer space matters. They will in fact be selected based on their experience and expertise corresponding to the tasks assigned. Thus, such circumstances will show that the country has a well-organized and systematic legal system.

The fourth legal impact on the Government of Malaysia following the implementation of the Malaysian Outer Space Act will be the fact that the national security of the country will be legally well preserved. This claim is based on the fact that the enactment of the Malaysian Outer Space Act will ensure that the space activities of space actors registered under the Act will not impair the country's national security.¹³ Should any activity impair national security, the Government will have the legal right to terminate the licence. This situation is significant for Malaysia since the nature of the space activities might expose the country, for instance, to the risk of leakage of private information on the country's internal security affairs. The same applies to other private domestic affairs that involve internal security, which shall be preserved at all times.

The fifth legal impact on the Government of Malaysia following the enactment of the Malaysian Outer Space Act will be the legal protection under this Act of the property of the Government of Malaysia and any loss suffered by the Government and its agents while performing their duty (as prescribed by the Act).¹⁴ For instance, it has been noted that the Malaysian Outer Space Act will establish a special Committee to deal with the supervision and monitoring of the space activities. Such Committee has a duty to visit the space site or

¹¹ See Section 10 (Power to establish an Authorization Committee), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 of the thesis (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹² See Section 17 (Establishment of a Supervision and Monitoring Committee), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 of the thesis (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹³ See Section 9(i) (Conditions for granting licences or other modes of authorization), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹⁴ See Section 46 (Circumstances in which liability insurance is required), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

facility in order to conduct an inspection if necessary. Thus, in the event of any loss or injury occurring during the visit or, in other words, during the performance of its task, the Committee will then be legally protected under the Act against any loss or injury suffered. The same applies to the property of the Malaysian Government. In the event of the property of the Government suffering damage or loss resulting from the space operation conducted under the Act, such damage or loss will be legally secured under the Malaysian Outer Space Act. This situation is secured by the imposition of rules on the space actor for obtaining the related liability insurance for indemnification of the loss suffered.

Returning to the three approaches in respect of the legal impacts on Malaysia, the second approach is in regard to the legal impact on the space actors who register their operations under the Malaysian Outer Space Act. At this juncture, as proposed in the Malaysian Outer Space Act,¹⁵ ‘space actor’ does not refer only to the Malaysian national who conducts such activities in Malaysia; ‘space actor’ may also refer to the Malaysian national who conducts space activities outside Malaysia and to the foreigner who conducts space activities within Malaysia. Under this point, four legal impacts are highlighted.

Firstly, it supplies the space actor with a solid legal guidance for his/her involvement in the space activities. The first legal impact on the space actor following the enactment of the Malaysian Outer Space Act is the fact that the Act offers the space actor a solid guideline with respect to his/her involvement in space activities. This signifies that, when the Malaysian Outer Space Act is enacted, the space actor will have a reliable guideline to follow in performing space operations either in Malaysia or elsewhere. This remark is made with reference to the point that the space actor under the Malaysian Outer Space Act can be either a Malaysian or a foreign national who conducts space activities in Malaysia or a Malaysian who performs the operations outside Malaysia. Thus, when the Malaysian Outer Space Act provides the space actor with legal rules in respect of, for instance, authorization of the activities, registration of the space object, indemnifications of the liability and many others,¹⁶ such space actor can indeed rely on this Act as his/her guidance for the entire operation of their space activities.

¹⁵ See Section 4 (Application of Act), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹⁶ Refer to Part II (Authorization of Space Activities); Part III (Supervision and Monitoring of Space Activities); Part IV (Registration of Space Activities); Part V (Indemnification and Insurance Requirement); and VI (Other Relevant Clauses), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

The second legal impact on the space actor following the execution of the Malaysian Outer Space Act is that the Act will provide a clear and transparent set of space legal rules for the space actor. On this point, the space actor will be provided with clear rules in respect of his/her legal obligation to conduct the space activities under the Malaysian law. Such rules include, for instance, the obligation to apply for an authorization before conducting the space activities.¹⁷ In such circumstances, the Malaysian Outer Space Act, for instance, provides clear categories of authorization that must be applied by the space actor and that must correspond to the space activities involved.¹⁸ Other rules include the requirement to register the object launched into space by providing certain clear and specific information to the Malaysian national registry.¹⁹ There is also a requirement to obtain liability insurance with respect to specific situations,²⁰ and many others. The Act also provides clear parameters on permissible and forbidden space activities.²¹

The third legal impact on the space actor after the implementation of the Malaysian Outer Space Act is that the Act will legally promote the growth and expansion of Malaysian private space activities. Such assertion is made based on the fact that the Malaysian Outer Space Act provides ample space for such activities to expand further. This can be realized through the flexible indemnification rule introduced by the Malaysian Outer Space Act.²² Under this rule, the space actor can request an exemption from making full payment of the indemnification amount to the Government of Malaysia in the event of the space actor satisfying certain prescribed conditions.²³ Such a proposed approach taken by the Malaysian Outer Space Act will indeed reflect the effort of the Malaysian Government to encourage and promote the growth of the space activities of private space actors in Malaysia.

¹⁷ See Section 7 (Requirement of authorization for space activities), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹⁸ Refer to Section 8 (Modes of Authorization), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

¹⁹ See Sections 29 (Registration of space objects) and 31 (Entry of information on space objects), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²⁰ See Section 45 (Requirement to obtain liability insurance), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²¹ See Section 9 (Conditions for granting licences or other modes of authorization), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²² See Sections 40 (Entitlement for exemption to indemnify the Government in full), and 41 (Conditions for entitlement of exemption to indemnify in full), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²³ *Id.*

The fourth legal impact on the space actor after the execution of the Malaysian Outer Space Act is that it will ensure that the activities of the space actor are legally in accordance with the law prescribed. This claim is based on the fact that, after the application for a licence or other modes of authorization has been granted, the operation conducted by the space actor will then be continuously monitored and supervised by a special Committee formed under the Malaysian Outer Space Act.²⁴ Since the Committee will function to ensure that the activities of the space actor are always in accordance with the law, in the event that the space activity appears to be against the law such Committee will then be obliged to supervise the space actor accordingly. Furthermore, the members of the Committee are designated based on their legal and technical expertise regarding the space activities involved. In such a situation, it is remarked that the operation will therefore be secured and protected from any unlawful activities and its performance will in accordance with the law.

After discussing the first approach, which is in respect of the legal impacts on the Government of Malaysia, and the second approach in regard to the space actors, we turn to the third approach, which is about the legal impact on the Malaysian public and society at large. Thus, the first legal impact on the Malaysian public and society following the enactment of the Malaysian Outer Space Act is the fact that the Act will provide legal assurance of the safety of the lives and property of the public.²⁵ With the enactment of the Act, the safety of the lives of the public and their property will be assured under the Malaysian Outer Space Act. They are assured in that the Malaysia Government will have the power to revoke and suspend the licence or any other modes of authorization granted to the space actor.²⁶ This can be done if it is satisfied that the space actor is conducting his/her operation in a way that threatens or affects the safety of the lives of the public and their property.²⁷

²⁴ See Chapter 2 of Part III (Establishment, Functions, and Powers of Supervision and Monitoring Committee), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²⁵ See Sections 9 (Conditions for granting licences or other modes of authorization) and 16 (Power to revoke, vary or suspend licences and other authorized modes), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²⁶ See Section 16 (Power to revoke, vary or suspend licences and other authorized modes), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²⁷ See *supra* note 25.

The second legal impact on the Malaysian public and society following the execution of the Malaysian Outer Space Act is about the legal assurance of public health and the Earth's environmental safety. Apart from providing the legal assurance of the safety of the lives and property of the public, the Act also ensures the safety of the health of the public and the Earth's environment.²⁸ Like the earlier situation, the Government of Malaysia has the legal right to terminate or suspend the licence or other modes of authorization previously granted to the space actor when the Government discovers that the space actor has conducted his/her activities in a way that will affect the health of the public and threaten the Earth's environmental safety.²⁹

The third legal impact on the Malaysian public and society following the implementation of the Malaysian Outer Space Act is that the Act will provide legal protection against any harm, damage or loss of the public's lives and property. At this juncture, it is observed that, while assuring the safety of the lives, property and health of the public, the Act also provides certain legal protections in cases where the damage or loss may possibly occur. Under the Malaysian Outer Space Act, the harm or loss will be protected in the sense that, when the damage or loss occurs to the property of the public, or in situations where the injury or loss of life occurs to them as a result of the space activities conducted under the Act, the space actor conducting the activities must compensate the victim as prescribed by the Act. This is done through the requirement imposed by the Act for the space actor to obtain third-party liability insurance.³⁰

The fourth legal impact of the execution of the Malaysian Outer Space Act on the Malaysian public and society is that the Act provides legal assurance of the public's right to obtain information about the space activities. Following the implementation of the Malaysian Outer Space Act, all the space objects launched into outer space under operations governed by the Malaysian Outer Space Act must be properly registered in the Malaysian national registry.³¹ The registration is performed by providing all the necessary information about the space

²⁸ See Section 9(c), (d) and (e), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

²⁹ See *supra* note 26.

³⁰ See Sections 45 (Requirement to obtain liability insurance), and 46 (Circumstances whereby the liability insurance required), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

³¹ See Section 29 (Registration of space objects), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

activities conducted.³² Thus, the information provided by the space actor is open for access by the public.³³ In other words, the public has the legal right under the Act to inspect or obtain the information regarding the space activities from the Malaysian national registry. In terms of procedure, the public will have legal access to the information upon payment of certain administration fees to the registry.³⁴ Thus, it is concluded that the legal right of the public to access the space actor's information is then assured.

5.2.3. The Legal Impact on the ASEAN and World Space Activities

The enactment of the Malaysian Outer Space Act will have various legal impacts not only on Malaysia but also on the ASEAN countries and on world space activities. Following the discussion of the legal impacts on Malaysia in the earlier part, this section attempts to identify the legal impacts on the ASEAN countries and on world space activities. The discussion is thus divided into two main categories: (1) the legal impacts on the ASEAN; and (2) the legal impacts on world space activities.

Firstly, the study will assess the legal impacts of the enactment of the Malaysian Outer Space Act on the ASEAN. As noted, there are ten ASEAN member states: Malaysia, Singapore, Thailand, Brunei, Indonesia, Burma, Philippines, Vietnam, Cambodia and Laos. Since Malaysia is one of the ASEAN member states, the discussion will then focus on the legal impacts following the enactment of the Malaysian Outer Space Act on all the member states. There are three legal impacts to note as follows: (1) Malaysia's emergence as the first ASEAN member state to enact specific outer space legislation; (2) a legal challenge to other ASEAN member states to develop their own national outer space legislation; and (3) promoting cooperation on space activities among the ASEAN countries.

The first impact among the members of ASEAN following the enactment of the Malaysian Outer Space Act is that Malaysia will emerge as the first ASEAN member state to enact specific space legislation to govern the country's space activities, especially in relation to the performance of the United Nations space obligations. It is observed that there is no specific

³² See Section 31 (Entry of information on space objects), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

³³ Section 35 (Inspection of register), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

³⁴ *Id*

outer space legislation available for any ASEAN countries to regulate space activities in fulfilling the United Nations space treaties' legal obligations. In the event of Malaysia successfully enacting its Malaysian Outer Space Act, the country will be the first ASEAN country to have legislation of this kind. Hence, this major effort will lead the way for other ASEAN member states to seriously consider enacting space legislation in their own countries. It is believed that enactment of such legislation will indeed boost the economies of the ASEAN member states, especially in relation to their space sectors. This claim is based on the fact that a state with reliable space legislation will encourage outside investors to invest their money in the country's related industry.

The second impact is the legal challenge to the ASEAN member states to develop their own national outer space legislation. The successful enactment of the Malaysian Outer Space Act will appear as a legal challenge for the ASEAN member states to develop their own national outer space legislation. This is a legal challenge to the members of ASEAN to make appropriate efforts to develop their own outer space legislations. Even though Malaysia is viewed as a small state with limited capacity and resources to conduct space activities, the country will have managed to enact its own national outer space legislation to govern these activities. This phenomenon will encourage the development of outer space legislation among the other ASEAN member states as well. Moreover, states such as Indonesia, Thailand and Singapore have already launched space objects into outer space. They should also seriously consider developing space legislation at the national level and making it a top priority on their agendas.

The third legal impact on the ASEAN member states, following the enactment of the Malaysian Outer Space Act, is that the Act will promote and encourage the cooperation of space activities among the members of ASEAN. This claim is made on the basis that, when Malaysia has successfully enacted its Malaysian Outer Space Act, the other members of ASEAN will tend to conduct their space activities with Malaysia. Such circumstances could occur because when a country has a good, reliable law to govern space activities it will then attract many space actors from other countries to become involved in the space activities of the country. This phenomenon could possibly occur especially in respect of Malaysia's neighbouring countries. At this juncture, the members of ASEAN could cooperate with one another in conducting space activities and their operations will be sheltered under the Malaysian Outer Space Act. Thus, under the Malaysian Outer Space Act, they can ensure that

their activities do not contravene the international space law and its obligations. From this point of view, the relationship between the members of ASEAN can also be strengthened.

Returning to the two categories of legal impacts discussed under this section, apart from the legal impacts on the ASEAN, the other legal impacts are on world space activities. In fact, there will be various legal impacts on world space activities following the enactment of the Malaysian Outer Space Act. In this section, the study remarks on five legal impacts. They are: (1) supporting the international space law to rule space activities effectively; (2) legal assurance that the information on the object launched into space will be furnished to the United Nations; (3) supporting the United Nations in promoting the peaceful use of outer space; (4) contributing to the world and outer space environmental protections; and (5) promoting the sustainable development of world space activities.

The first legal impact on world space activities after the successful enactment of the Malaysian Outer Space Act is that it will assist and support the international space law to ensure that space activities are conducted in accordance with the law. It is essential to note that having a space law only at the international level is not sufficient to govern outer space activities and ensure they are performed in accordance with the law. Thus, national outer space legislation is also necessary and it should come into existence to assist the international space law in performing its task. The enactment of the Malaysian Outer Space Act will legally support the international space law to rule and regulate space activities efficiently. The Act can legally support the international space law in the sense that the international space obligations or rules that space actors must observe at the international level will be domesticated in the Malaysian Outer Space Act. From this point of view, the Act can legally ensure that space actors registered under the Act will comply with the rules and obligations of the space activities either nationally or internationally. In the event of space activities being carried out against the rules and obligations, the Act has the legal right to punish the space actor or terminate the authorization of the space activities given to the space actor at the national level.³⁵ Thus, in such circumstances, the international outer space activities will be effectively controlled nationally and internationally.

³⁵ See Section 16 (Power to revoke, vary or suspend licences and other authorized modes), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

The second legal impact on world space activities, following the enactment of the Malaysian Outer Space Act, is that the Act will legally ensure that the information on objects launched into outer space under the Malaysian Outer Space Act will be furnished to the United Nations.³⁶ In controlling and monitoring outer space activities at the international level, the international law prescribes the state of registry to furnish certain information with respect to the object launched into space.³⁷ This is essential for the purpose of identifying the state of registry of the space object in the event of the object being lost, damaged or making an emergency landing outside the intended territory.³⁸ Thus, by incorporating rules in the Malaysian Outer Space Act that the space actor must register and furnish the information regarding the space object launched into outer space,³⁹ the Act will then be able to legally ensure that the information on the object is furnished to the national registry in the first instance. Then, the Act is able to further ensure that the same information is passed to the Secretary-General of the United Nations⁴⁰ for the fulfilment of the international obligation to furnish the information at the international level to the United Nations. Moreover, the Act prescribes that the entry of information should be done within a specific time limit, which is not later than 30 days after the launch took place.⁴¹ Such circumstances will indeed greatly assist the United Nations to identify the state of registry of the object when it is necessary to do so. This will in fact contribute to the proper administration of world space activities.

The third legal impact on world space activities, following the enactment of the Malaysian Outer Space Act, is that the Act will legally support the United Nations to promote the peaceful use of outer space. It is well established that the United Nations in its outer space conventions urges the space actor to utilize outer space for peaceful purposes only.⁴² Thus, following its enactment, the Malaysian Outer Space Act will support this principle as it has incorporated the rule requiring space activities to be conducted in a peaceful manner. For

³⁶ See Section 36 (Notification of Information to the United Nations), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

³⁷ See Article III, Registration Convention 1975.

³⁸ Article V, Outer Space Treaty 1967.

³⁹ Refer Sections 29 (Registration of space objects) and 31 (Entry of information on space objects), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

⁴⁰ See Section 36 (Notification of Information to the United Nations), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

⁴¹ See Section 32 (Time limit to enter information), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

⁴² See, for instance, the preamble of Outer Space Treaty 1967. See also Articles IV and IX, Outer Space Treaty 1967.

instance, the Act establishes rules such as those requiring the space actor to conduct operations in peaceful exploration and prohibiting him/her from carrying nuclear weapons in the space object.⁴³ The incorporation of such rules in the Malaysian Outer Space Act will ensure that space activities registered under the Malaysian Outer Space Act are performed in a peaceful manner. This will indeed demonstrate that the Malaysian Outer Space Act legally supports and promotes the peaceful use of world space activities as prescribed by the United Nations space conventions.

The fourth legal impact concerns the contribution to the world and outer space environmental protections. It is remarked that, while performing space activities, the space actor must preserve the environment of the Earth and outer space as prescribed by the international space law.⁴⁴ Thus, the incorporation of rules in the Malaysian Outer Space Act requiring the space actor to conduct his/her operation in a way that prevents the contamination of outer space or adverse changes in the environment of the Earth will then support and assist the international space law. This is essential to ensure that the world and outer space environments are preserved.⁴⁵ Therefore, it is submitted that the enactment of the Malaysian Outer Space Act will definitely contribute to world space activities, particularly in relation to environmental preservation.

The fifth legal impact is concerned with promoting the sustainable development of world space activities. It is noted that outer space is a new area of exploration after the Earth, sea and airspace. Many countries are taking the opportunity to compete with one another in utilizing the area for both profitable and non-profitable purposes. As this area has great potential to be explored continuously for various reasons by human beings, the growth of space activities should be sustained. The enactment of the Malaysian Outer Space Act will promote the sustainable development of world space activities in the sense that it will contribute to the development of the activities by affording national space legal rules, guiding space actors who are interested in participating in space activities. This means that when space actors have reliable space legislation to guide them in performing space activities, their

⁴³ See Section 9(f) and also (g), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

⁴⁴ See Article IX, Outer Space Treaty 1967.

⁴⁵ See Section 9(d), as proposed in the draft of Malaysian Outer Space Act [Year] (Act [No.]), available in Chapter 5 (5.2.1. A Feasible Draft of a Malaysian Outer Space Act).

participation and involvement in such activities will be encouraged. Such circumstances will then inevitably promote the sustainable development of world space activities.

5.3. CONCLUDING REMARKS

In this chapter, the study mainly focuses on the main outcome of the research, which is a feasible draft of a Malaysian outer space law. The proposed draft Act follows the style of Malaysian legislation: statement of purpose, reference to the Sovereign (King), preliminary part, short title and so on. In the draft Act, the proposed title is ‘Malaysian Outer Space Act [year]’. It is hoped that the construction of the draft will assist, contribute to and become a significant guideline in the realization of the actual Malaysian Outer Space Act.

There are six significant parts proposed in the draft Act: Part I - Preliminary; Part II - Authorization of Space Activities; Part III - Supervision and Monitoring of Space Activities; Part IV - Registration of Space Activities; Part V - Indemnification and Insurance Requirement; Part VI - Other Relevant Clauses. The chapter then concluded with the findings of several predictable future legal impacts that were discussed from three approaches: Malaysia, ASEAN, and world space activities.

After examining all legal impacts highlighted in this chapter, it is remarked that any efforts and attempts to realize the Malaysian Outer Space Act should be intensified and fortified. Hence, the outcome of the study - the draft specimen of the Malaysian Outer Space Act - is definitely one example of those efforts.