



COMPANIES ACT 1965: PRACTICE NOTE NO. 11/2011

RE: CLARIFICATION ON WHETHER A SOCIETY CAN BE A MEMBER OF A COMPANY

This Practice Note serves to assist the stakeholders in clarifying the issue on whether a society can be a member of a company.

BACKGROUND

1. The Companies Commission of Malaysia (SSM) has received numerous queries from the public on whether a society can be a member of a company (including in a company limited by guarantee).

LEGAL PROVISIONS

Companies Act 1965 (CA 1965)

2. Section 14(1) of the CA states that:

“Subject to this Act, any two or more persons associated for any lawful purpose may by subscribing their names to a memorandum and complying with the requirements as to registration form an incorporated company.”

3. Further, section 16(6) of the CA 1965 provides that :

“The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company”.

4. By virtue of the above provision, members are referred to as every *person* whose name has been entered in the company's register of members and he/she agrees to become a member.

Interpretation Act 1948 (IA 1948)

5. Section 3 of the IA 1948 defines “*person*” as to include a body or persons, corporate or unincorporate.

Society Act 1966 (SA 1966)

6. Section 2 of the Society Act 1966 (SA 1966) defines society as to include any club, company, partnership or association of seven or more persons whatever its nature or object, whether temporary or permanent. By virtue of this definition, society would fall under the definition of *person* under the IA 1948 and therefore, a society can be a member of a company.

7. Section 9 (a) of the SA 1966 further provides that:

“(a) the movable property of a society, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of the society, and in all proceedings civil and criminal, may be described as the property of the governing body of the society by its proper title if known;”

8. Further Section 9 (c) of the SA 1966 provides as follows :

“(c) A society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officers of the society for that purposes, and if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any officer-bearer of the society.”

9. Based on section 9 (a) of the SA 1966 above, a society is allowed to hold movable property including shares of a company. Such shares, being regarded as movable property, however, if not vested in the trustees of the society, shall be deemed to be vested for the time being in the governing body of the society.

10. By becoming a member of a company (the process which involves a contract to purchase/acquire the shares of the company), a society is indeed entering into transactions resulting in debts and liabilities. Thus, a society would have to act by agents which includes its registered public office or, if there is no registered public officer, in the name of an office bearer of the society.

11. As such, the Registrar further clarifies that the name of one of the office bearers must appear in the register of members, instead of only the name of the society as follows:

"Persatuan Penternak Ikan Air Tawar, Perak (represented by Ali bin Ahmad, President)"

REGULARISATION OF INFORMATION ON SOCIETY AS MEMBER

12. For existing companies whose members are registered in the name of a society, such companies are required to include the name of the registered public officer or office bearer of the society as illustrated in paragraph 11 above in its next Annual Return.

**REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
7 OCTOBER 2011**