



## **GUIDELINES RELATING TO PRACTISING CERTIFICATE FOR SECRETARIES UNDER SECTION 241 OF THE COMPANIES ACT 2016**

This guideline is issued pursuant to section 20C of the Companies Commission of Malaysia Act 2001.

### **OBJECTIVE**

This guideline serves as a guidance for individual who wish to act as a secretary pursuant to section 241 of the Companies Act 2016 (CA 2016).

### **GENERAL REQUIREMENTS**

2. Section 241 of the CA 2016 requires any person who is qualified to act as a secretary and who desires to act as a secretary to register with the Registrar before he can act as a secretary.
3. The Registrar will issue a practising certificate under section 241 upon satisfaction on the qualification and requirements specified under the CA 2016, regulation and guideline.

### **QUALIFICATION TO ACT AS SECRETARY**

4. Under section 235 of the CA 2016, a person is qualified to act as a secretary if he is:
  - (a) a natural person;
  - (b) eighteen years of age and above;

- (c) a citizen or permanent resident of Malaysia; and
- (d) a person licensed by the Commission under section 20G of the Companies Commission of Malaysia Act 2001 (CCMA 2001) , or a member of a body as set out in the Fourth Schedule of the CA 2016, as follows:
  - (i) Malaysian Institute of Chartered Secretaries and Administrators (MAICSA);
  - (ii) Malaysian Institute of Accountants (MIA);
  - (iii) Malaysian Bar (BC);
  - (iv) Malaysian Association of Company Secretaries (MACS);
  - (v) Malaysian Institute of Certified Public Accountants (MICPA);
  - (vi) Sabah Law Association (SLA); or
  - (vii) Advocates Association of Sarawak (AAS).

5. A person who has been appointed as a secretary of a company prior to the enforcement of section 241 of the CA 2016 may continue to act as a secretary to the company and is required to register with the Registrar within 12 months from the enforcement date.

6. A person who is not a citizen or permanent resident of Malaysia but has been appointed as a secretary prior to 31 January 2017 may apply for practising certificate to act as a secretary subject to the following conditions:

- (a) he shall only act as a secretary to the company of which he was appointed before 31 January 2017;

- (b) he shall not accept any new appointment as a secretary;  
and
- (c) he has complied with the requirements stated under paragraph 4(a), (b) and (d).

## **APPLICATION FOR PRACTISING CERTIFICATE TO ACT AS A SECRETARY**

### **Pre-requisites**

7. The applicant must ensure that the qualifications as specified under paragraph 4 is complied with before submitting the application to SSM.

8. Additionally, the applicant must also ensure that:

- (a) he is not disqualified under section 238 of the CA 2016;  
and
- (b) he does not have any pending legal action against him under any provision of the laws specified in the First Schedule of the CCMA 2001.

### **Documents and Processing Fee**

9. The applicant must provide all particulars specified under regulation 2 of the Companies (Practising Certificate for Secretaries) Regulations 2019. The application must be lodged through the electronic filing system which can be accessed at <https://esecretary.ssm.com.my>.

## **Practising Certificate**

10. If the Registrar is satisfied that the requirements as to the registration are complied with and that the applicant is fit and proper to be registered, the Registrar shall issue a practising certificate which shall be valid for a period of one year from the date of issuance.

11. For the purposes of this guideline, a person is fit and proper to hold a practising certificate if he is issued with a practising certificate by the Registrar after considering the following:

- (a) the character, qualification and experience of the person;
- (b) the interest of the public; and
- (c) whether the person has previously contravened any provisions of the laws specified in the First Schedule of the CCMA 2001.

## **RENEWAL OF PRACTISING CERTIFICATE TO ACT AS SECRETARY**

### **Renewal of practising certificate**

12. The application for renewal of the practising certificate shall be made not less than thirty (30) days before the expiry date by providing all particulars specified under regulation 2 of the Companies (Practising Certificate for Secretaries) Regulations 2019. It is imperative that the application for renewal must be made within the timeframe to avoid a lapse in time in the validity of the practising certificate.

13. The applicant must ensure that the following requirements are complied with before submitting an application for renewal to the Registrar:

- (a) The applicant has complied with paragraphs 7 and 8;
- (b) The applicant is fit and proper to be issued with a practising certificate pursuant to paragraph 11; and
- (c) The applicant has completed the Continuing Professional Education (CPE) requirements under this guideline.

14. Failure to comply with any of the above requirements will cause the application to be queried. The applicant is required to answer the query within fourteen (14) days from the date of the query. Failure to respond to the query within the timeframe may result in the application being rejected.

15. In the case where a secretary fail to apply for renewal after twelve (12) months from the expiry date of the practising certificate, the Registrar will cancel the practising certificate. In such situation the secretary will have to submit a new application and he will be treated as though he has never applied for a practising certificate.

#### **Validity of Renewed Practising Certificate**

16. The renewal of the practising certificate shall be valid for a period of not more than three years.

## **CESSATION AS HOLDER OF PRACTICING CERTIFICATE**

17. A person ceases to be a holder of a practising certificate if:
- (a) he is no longer qualified to act as a secretary under section 238 of the Act;
  - (b) his name ceases to be registered in the Register of Secretaries pursuant to section 241 of the Act; or
  - (c) his practising certificate has been revoked by the Registrar.

18. Where a person ceased to be a holder of practising certificate pursuant to paragraph (a) or (b), the person must notify the Registrar and the companies of which he is appointed as secretary, in writing within fourteen (14) days from the date of the event.

## **SUSPENSION OF PRACTISING CERTIFICATE**

19. A practising certificate may be suspended pursuant to regulation 5 of the Companies (Practising Certificate for Secretaries) Regulations 2019 on the following grounds:

- (a) the membership of the secretary has been suspended by the body specified under the Fourth Schedule of CA 2016; or
- (b) the licence has been suspended by the Commission under section 20H of the CCMA 2001.

20. If the suspension period exceeds thirty (30) days, the secretary shall notify in writing the company of which he has been appointed of the suspension.

## **REVOCAATION OF PRACTICING CERTIFICATE**

21. The Registrar shall have the power to revoke the practising certificate pursuant to regulation 6 of the Companies (Practising Certificate for Secretaries) Regulations 2019.

## **APPEAL TO MINISTER**

22. Any person who is aggrieved by the decision of the Registrar in relation to the application, renewal and revocation of a practising certificate may appeal to the Minister pursuant to regulation 7 of the Companies (Practising Certificate for Secretaries) Regulations 2019.

23. An appeal to the Minister referred to in paragraph 22 shall be made through the Registrar and be accompanied with a fee of RM300.

## **SURRENDER OF PRACTISING CERTIFICATE**

24. A secretary may surrender the practising certificate pursuant to regulation 8 of the Companies (Practising Certificate for Secretaries) Regulations 2019.

25. The surrender of a practising certificate shall not take effect until the Registrar is satisfied that adequate arrangements have been made by the secretary to meet all liabilities and obligations arising from his appointment that are outstanding at the time the notice of surrender was given to the Registrar.

## **DUTIES, RESPONSIBILITIES AND CONDUCT OF A SECRETARY**

26. In addition to the duties and responsibilities relating to a secretary in the CA 2016 or other written laws, a secretary must comply the duties and responsibilities under this guideline.

### **Duty in relation to registered office and registers**

27. A secretary must, either in person or his employee or by his agent:

- (a) be present at the registered office of the company on the days and at the hours during which the registered office is to be accessible to the public;
- (b) maintain and keep updated all the registers, records and books which are required to be kept at the registered office; and
- (c) provide the statutory documents within specific time as requested by any person who is entitled to inspect such document and records at registered office.

### **Duty to act honestly and use reasonable diligence**

28. A secretary must at all times act honestly and use reasonable diligence in the discharge of his duties as a secretary. The duties may include, but not limited to the following:

- (a) manage, attend and record the proceedings of the meetings of the board of directors;



- (b) manage, attend and record the proceedings of the meetings of shareholders;
- (c) manage the processes relating to the passing of resolutions of the board of directors and of the company;
- (d) advising the board of directors on statutory requirements under the CA 2016 and other disclosure and governance requirements relevant to the company;
- (e) ensure the statutory documents and records to be provided to the new company secretary or company at the registered office once he ceased office as company secretary; or
- (f) any other duties imposed under the CA 2016.

### **Duty as reporting institutions**

29. A secretary must comply with the requirements under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613] when the secretary, whether in person or through a firm or company, prepare or carry out the following activities –

- (a) act as a formation agent of legal entities;
- (b) act as or arrange for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities;
- (c) provide a registered office, business address or accommodation, correspondence or administrative

address for a company, a partnership, or any other legal entities or arrangement;

- (d) act as or arrange for another person to act as a nominee shareholder for another person; or
- (e) any other duties imposed under AML/CFT Guide issued by Bank Negara Malaysia.

30. For avoidance of doubt, paragraph 29 is applicable to any person who is issued with a practising certificate under section 241 of the CA 2016.

#### **Duty as member of approved body**

31. A secretary may be a member of more than one approved bodies. Notwithstanding, the secretary must designate one approved body for the purpose of applying for a practising certificate.

32. If there are any changes in the membership of the designated approved body, the secretary must update the Registrar on the changes within fourteen days from the date the change occurred.

33. If a secretary is a member of more than one approved bodies as specified under the Fourth Schedule of the CA 2016 and his membership in one of approved body has been suspended or revoked, he is deemed to be no longer qualified to act as secretary pursuant to paragraph 235(2)(a) of the CA 2016.

## Continuing Professional Education

34. A secretary must always enhance his knowledge and standard of professionalism by attending any course of studies, training and practical experience in the discharge of his duties and responsibilities.

35. For the purpose of paragraph 34, the minimum total CPE hours to be complied with during the validity period of a practising certificate are as follows:

	Validity period of practising certificate			Type of training/courses	Percentage of CPE hours allowed
	1 year	2 years	3 years		
Minimum CPE hours required	20 CPE hours	40 CPE hours	60 CPE hours (Cumulative*)	Courses relating to company secretarial practice, company and corporate law	Minimum of 60% of total minimum CPE hours
				Other courses relating to industry in which a company is operating	Maximum of 25% of total minimum CPE hours
				Personal development	Maximum of 15% of total minimum CPE hours

*\* If the validity period of a certificate is more than 1 year, the CPE hours may be accumulated in the duration of that period.*

36. The Registrar may issue circulars on continuing professional education requirements from time to time.

### **Duty relating to practising certificate**

37. A secretary must state the practising certificate number when executing any document in his capacity as a secretary or when lodging any document or in correspondences with the Registrar.

**Registrar of Companies**

Companies Commission of Malaysia

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