



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

COMPANY DIRECTORS'

RESPONSIBILITIES

Guide to Company Directors' on Principle Duties Imposed under
the Companies Act 2016

COMPANY DIRECTORS' RESPONSIBILITIES

Suruhanjaya Syarikat Malaysia
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INTRODUCTION

The Company Director's Responsibilities booklet provides the expected minimum standards of conduct required of all directors in carrying out their duties and responsibilities as directors under the Companies Act 2016 (CA 2016). The booklet intends to distil the main requirements of the CA 2016 to be more easily understood by directors and should not be construed as a definitive legal interpretation of the relevant provisions.

Apart from the general guide to the principal duties imposed by the CA 2016, directors shall also comply with other applicable written laws relating to duties and responsibilities of directors.



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

PART A

DIRECTORS

1. Who is a director?

Section 2 of the Companies Act 2016 (CA 2016) states that a “director”:

”includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act and an alternate or substitute director”.

Some companies will not necessarily use the designation "director". Some may designate their officers with various designations including "Chief Executive Officer" or "Managing Director". Companies limited by guarantee may sometimes use designation such as “Governor” or “Trustee”. These persons are directors of the company if they occupy such a position or performed functions of a director.

Nevertheless, a person may still be considered a director even though he is not formally appointed as a director if he fulfils the definition above.

2. Appointment of Directors

All companies are required to have a minimum of:

- (a) one (1) director in the case of private company; or
- (b) two (2) directors in the case of public company [Subsection 196(1) of the CA 2016].

The minimum number refers to the director who must ordinarily reside in Malaysia by having a principal place of residence in Malaysia and does not include an alternate or substitute director [Subsection 196(4) of the CA 2016].

If the number of directors of a company is reduced below the minimum number required by the CA 2016, the director of the company shall not resign or vacate his office unless a person is appointed in his place. Otherwise, the resignation or vacation of office shall be deemed to be ineffective [Subsection 196(3) of the CA 2016].

3. Who can be a director

A person has to satisfy the following requirements to become a director:

- (a) a natural person who is at least eighteen years of age [Subsection 196(2) of the CA 2016]; and
- (b) has not been disqualified from being a director pursuant to section 198 or 199 of the CA 2016.

Before a person can be appointed as a director, he:

- (a) must make a declaration pursuant to section 201 of the CA 2016 declaring that he has not contravened with section 198 or 199 of the CA 2016; and
- (b) has consented to the appointment.

A person becomes a director after being appointed by the Board or the members of the company.

A company must keep at its registered office a register of directors which contains the particulars as required under subsection 57(1) of the CA 2016.

4. Who can appoint directors?

(a) Appointment of first directors in a newly incorporated company

During the incorporation of a private company, at least one person must be named as a director. In the case of the incorporation of a public company, at least two persons must be named as directors. The names are provided by the person who applies for the incorporation of the company under section 14 of the CA 2016.

The person named as the first director(s) shall hold office from the date of incorporation until he ceases to be a director in accordance with the CA 2016.

(b) Appointment of subsequent directors by shareholders

Generally, directors are appointed by the company via an ordinary resolution.

For public company, the appointment of directors must be voted on individually where the members cannot pass a single resolution for the appointment of all the directors. A motion for the appointment of two or more persons as directors of a public company by one resolution is void [subsection 203(2)]. However, the directors may be appointed by a single resolution if there is prior unanimous agreement of shareholders to vote for the appointment of all the directors by one resolution [subsection 203(1)].

There is nothing in the CA 2016 that prevents the appointment of directors to represent a particular class of shareholders, debentures holders or, indeed any third parties.

The company may also, from time to time, by ordinary resolution passed at a general meeting increase or reduce the number of directors. The company may also determine the manner the directors retire from office.

(c) Appointment of subsequent directors by board of directors

The board of directors can also appoint a person to fill a casual vacancy resulting from the circumstances stated under section 208(1) of the CA 2016.

Any person who is appointed as a director to fill such casual vacancy shall hold office:

- (a) in the case of public company, until the next AGM; or
- (b) in the case of private company, in accordance with the terms of the appointment [subsection 208(4)].

A person who is appointed as an alternate or substitute director is placed in the same position as any other director.

5. Can a director retire or resign from office?**(a) Retirement of directors**

A director of a public company may retire as follows:

- (a) the first directors appointed at the incorporation will hold office until the first AGM where they automatically retire; and
- (b) at the subsequent AGMs, one third of the directors or nearest to one third shall retire.

The directors to retire in every year shall be the directors who have been longest since the directors' last election, but as between persons who became directors on the same day, the directors to retire shall be determined by a lot, unless they otherwise agreed among themselves. The retiring director can be reappointed if he is not disqualified under section 198 of the CA 2016 [subsection 205(5)].

In the case of a private company, a written resolution may be passed to determine the retirement of its directors [subsection 205(2) of the CA 2016] subject to the company's constitution or the term of appointment regarding the retirement of directors.

(b) Resignation of a director

A director may resign by tendering his resignation in writing to the company at its registered office [subsection 208(2)]. Since a director's consent is required before he may be appointed as a director, he cannot be forced to continue to serve the company if he wishes to resign.

However, a director cannot resign or vacate his office if by his resignation or vacation of office, the minimum number of directors in a company is not met. Such resignation is not effective until and unless another person has been appointed to replace him.

Where a company has only 1 director or he is the last remaining director, a meeting of members must be called to receive the notice of the resignation and to appoint one or more new directors [subsection 209(1)]. This provision is also applicable to a company whose sole director is also the sole shareholder.

6. Vacation of office of a director

The office of a director can be vacated due to various reasons such as follows:

- (a) resignation of a director;
- (b) retirement of a director and was not re-elected;
- (c) removal of a director;
- (d) when a director becomes disqualified;
- (e) when a director becomes unsound mind;
- (f) death of a director; or
- (g) vacation due to reasons stated in the constitution of a company.

If the office is vacated due to grounds of disqualification from being a director, unsound mind, death or in accordance with the constitution of the company [subsections 208(1)(d),(e),(f),(g)], the secretary shall, as soon as practicable, call a meeting of the next of kin, other personal representatives or a meeting of members.

7. Disqualification

There are statutory provisions restraining certain persons from managing companies. These persons are disqualified from taking part or being involved in the management of a company.

(a) Disqualification under section 198 of the CA 2016

The disqualified person under section 190 is not allowed to be appointed as a director or remain as a director. A person will be disqualified (applicable to circumstances in or outside Malaysia) if he is:

- (i) a person who is an undischarged bankrupt ;
(except with the leave of Official Receiver or the Court - provided that a notice of intention to apply for leave has been served on the Official Receiver and the Official Receiver is heard on the application);
- (ii) a person who is convicted of an offence relating to the promotion, formation or management of a corporation;
- (iii) a person who is convicted of an offence involving bribery, fraud or dishonesty;
- (iv) a person who is convicted of an offence the following sections:
 - Section 213 – Duties and responsibilities of directors;
 - Section 217 – Responsibility of a nominee director;
 - Section 218 – Prohibition against improper use of property, position, etc.;
 - Section 228 – Transactions with directors, substantial shareholders or connected persons; and
 - Section 539 - Liability where proper accounts not kept; and
- (v) a person who is disqualified by the Court under section 199.

The disqualification period will be for a period of five years after conviction or if sentenced to imprisonment, after his release from prison [subsection 198(6)].

The person must apply to the court if he wishes to be appointed as a director or remain as a director of a company and failure to obtain leave of court is an offence.

A person who intends to apply for leave of the Court have to give the Registrar a notice of not less than fourteen days of his intention to do so and in the case of undischarged bankrupt, to make the Registrar a party to the proceedings under subsection 198(3) of the CA 2016.

(b) Disqualification by the Court

The Registrar may apply to the court to make an order to disqualify any person from acting as or holding office of a director in a company or involve directly or indirectly in the management of the company if:-

- (i) the person has been a director of two or more companies which went into liquidation resulting from the company being insolvent due to his conduct as a director which contributed wholly or partly to the liquidation;
- (ii) the person has contravened his duties as a director; and
- (iii) the person has habitually contravened the CA 2016.

The disqualification period is not more than 5 years from the date of order.

8. Can a director be removed?

A director may be removed from his office before the expiration of his appointment.

In the case of a private company, subject to the constitution, a director may be removed by an ordinary resolution [Subsection 206(1) of the CA 2016]. The resolution must be passed at a meeting of members and cannot be passed as a written resolution [subsection 297(2) of the CA 2016].

In the case of a public company, a director may be removed by ordinary resolution in accordance with section 206 of the CA 2016. The right of shareholders of a public company to remove a director exists notwithstanding anything in the constitution or in any agreement with the company [Subsection 206(2)]. The removal however does not affect the

director's right to compensation for breach of contract if there is a contract of employment between the director and the company.

However, where any director who had been removed and he was appointed to represent the interest of a particular class of shareholders or debenture holders, the resolution to remove him is not effective until his successor has been appointed [Subsection 206(4)].

A special notice is required for any resolution to remove a director of a public company or to appoint another person instead of the director at the same meeting [Subsection 206(3)]. On receipt of notice of an intended resolution to remove a director, the company must send a copy to the director concerned and the director shall be entitled to be heard and given the right to make oral or written representation on the resolution to remove him at the meeting [Subsection 207(1) and subsection 207(2)].

Where the director to be removed makes representation in writing to the company and requests the written representation be notified to the members, any notice of the resolution to the members of the company must state the fact that the representation has been made and a copy of the representation must be sent to every member of the company [Subsection 207(3)]. If the representation is received too late or because of the company's default, the director can require that the representation be read out at the meeting [Subsection 207(4)]

PART B

THE POWERS AND DUTIES OF COMPANY DIRECTORS

The relationship between the board of directors and its shareholders is specified by the CA 2016 and in the company's constitution (if any). Section 211 of the CA 2016 specifies that the business and affairs of the company shall be managed or under the direction of the board of directors and that the directors have all the powers necessary for managing, directing and supervising the management of the company.

Notwithstanding the wide powers accorded to the directors, certain powers under the CA 2016 are reserved and to be exercised only by the members in a general meeting, albeit by ordinary resolution or special resolution. This is primarily to avoid abuses and to protect the company or its members as well as creditors of the company.

The powers that are reserved for members under the CA 2016 include:

- (a) alteration of the company constitution [section 36];
- (b) issuance of new shares of a company [section 75];
- (c) alteration or reduction of share capital of a public company [section 84 and section 115];
- (d) Transactions involving company's asset or property, for example acquisition and disposal of company's undertaking or property [section 223], substantial property transactions (exceeding RM250,000 or 10% of the net asset) involving directors, substantial shareholders of the company, its holding company or its subsidiary, or connected persons [section 228];
- (e) Appointment or removal of company directors [section 202 and section 206]; and
- (f) Appointment or removal of auditor in the case of a public company [section 267, section 271 and section 276].

Even in cases where the shareholders and the directors are the same people, clear and reasonable separation of powers are essential to safeguard the interest of the shareholders as well as the directors themselves.

1. How do Boards operate?

Directors normally act collectively as a board and exercise their powers in accordance with the CA 2016. In addition to the general power given under section 211 of the CA 2016, a company constitution may be adopted to give extensive powers to the directors to manage the companies' affairs, subject to any modification, exception or limitation contained in the act or in the constitution of the company.

If a company opted not to have a constitution, the company, its directors and members shall have the rights, powers, duties and obligations set out in the CA 2016. On this note, please note that the proceedings of the Board are set out in the Third Schedule of the CA 2016.

The board must act within the powers of the constitution and within the powers given to them under the CA 2016. The directors may delegate any power of the Board to any committee of the Board, director, officer, employee, expert or any other person [Section 216].

2. Directors' fiduciary duties

A director's fiduciary duties reflect a relationship of trust and good faith between the board and the company. This means that a director must act within the powers that have been given to him in good faith and in the best interest of the company [Subsection 213(1)]. Aside from not exceeding the limits of their powers, directors are also required to exercise their powers in a way that they were intended to be exercised.

The fiduciary duties imposed on a director are as follows:

- (a) A duty not to exceed his powers;
- (b) A duty to exercise his powers for a proper purpose;
- (c) A duty to maintain an unfettered discretion;
- (d) A duty not to compete with the company; and
- (e) A duty to avoid a conflict between a director's interests and the interests of the company.

If a shareholder, creditor or the company has suffered a loss or damage, they can take action against the director personally, but it is often that a company initiates legal actions against its directors who have failed their fiduciary duties. For example, a director may be removed from office due to the failure in carrying his duty or being issued with interim injunction with the intention of halting any ongoing actions in breach of director duties. It serves to reduce the potential for further financial loss and prevent irreversible damage to the company.

A director has a duty to act in the best interest of the company. To be able to do this, the director must be diligent and careful in performing the duties that have been entrusted with him/her. This means that the director shall not use his position or information to, for example, gain advantage for anyone other than the company and or cause harm to the company.

Where a director has a personal interest that may conflict with his fiduciary duties to the company, he should make disclosure to the company and obtain the approval of the company.

A director shall not improperly use the company's property, information, corporate opportunity or using his position as a director without the consent of the members at a general meeting. [Section 218]

A director must also exercise reasonable care and skill expected of a person of his experience and be diligent in managing the company's affairs. Thus, there is no such thing as a passive director. A director who is passive by not being involved in the company's management may have breached his duty of care, skill and diligence.

These duties, except those expressly limited to directors, apply equally to any officers of the company who are authorized to act on its behalf and particularly to those acting in managerial capacity.

The following are the steps that can be taken by directors to fulfil their fiduciary duties:

- (a) Exercise reasonable care, skill, and diligence. This applies to both executive and non-executive directors. When evaluating significant deals, contracts, new hires, investors and business partners, directors may rely on the advice or opinion of the board member, engage experts or professional consultant who is believed to be reliable, competent to provide information;
- (b) Make reasonable inquiry on maintenance issues, rules, violations, etc.;
- (c) Make reasonable decisions. When making decisions, a director must consider to:
 - (i) Maintain company's good business reputation to promote the success of the company for the benefit of its members as a whole;
 - (ii) The potential long-term consequences for the company;
 - (iii) The interests of the employees;
 - (iv) The need to promote good relationships with suppliers and customers;
 - (v) The company's impact on the environment and local community; and
 - (vi) The need to act fairly between members, for example, director must consider all members when exercising judgment, rather than an individual or particular group of shareholders; and
- (d) Respect the process for transparency in significant transactions. Directors must conduct a thoughtful and thorough board decision-making.

3. Directors' basic statutory obligations under the CA 2016

This part gives a general guide to the principal duties imposed on directors by the CA 2016.

(a) Duties as a company officer

A director is regarded as an officer pursuant to section 2 of the CA 2016. Section 2 provides that an "officer" in relation to a corporation includes any director, secretary or employee of the corporation.

Where a company adopts a constitution, or alters or amends its constitution, the company shall lodge the constitution with the Registrar within thirty days from the adoption, alteration or amendment of the constitution (Subsection 32(4) of the CA 2016). An officer is in default if he or she contravenes the subsection.

Further, it is the duty of an officer to ensure that statutory and important documents are kept at its registered office (Subsection 47(1) of the CA 2016) including-

- (i) Notice of registration issued under section 15;
- (ii) The Constitution of the company, if any;
- (iii) Certificates given under the CA 2016 or corresponding previous written law, if any;
- (iv) All registers, books, records and documents as required under the CA 2016;
- (v) Minutes of all meetings of members and resolutions of members;
- (vi) Minutes of all meetings and resolutions of the Board and committees of the Board;
- (vii) Copies of all written communications to all members or all holders of the same class of shares;
- (viii) Copies of all financial statements and group financial statement;
- (ix) The accounting records of the company required under section 245 of the CA 2016;
- (x) Copies of all instruments creating or evidencing charges as required under section 357 of the CA 2016; and

(xi) Such other documents required to be kept by the Registrar.

Every company is obliged to take reasonable precautions to prevent documents and records kept from being falsified. If a company discovers that a document or record has been falsified, the company shall immediately inform the Registrar and take remedial actions.

(b) Duty to keep adequate accounting records

The directors must keep accounting and other records to sufficiently explain the transaction and financial position of the company and enable true and fair profit and loss accounts and balance sheet and any documents required to be attached thereto to be prepared and cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited (Subsection 245(1) of the CA 2016).

(c) Obligations to have statutory audited financial statements

The directors of every company are obliged to prepare financial statements within eighteen months from the date of its incorporation and subsequently within six months from its financial year end (Subsection 248(1) of the CA 2016). The financial statements must be prepared in accordance with applicable approved accounting standards.

The circulation of financial statements shall be within six months of its financial year end or in the case of public company, at least twenty one (21) days before the date of its AGM [Subsection 258(1)].

For each financial year end, the financial statements must be lodged with the Registrar. In the case of a private company, the lodgement must be made within thirty (30) days from the date of circulation or in the case of a public company, within thirty (30) days from the date of the annual general meeting [Subsection 259(1)].

The financial statements shall include:

- (i) A profit and loss account;
- (ii) A balance sheet as at the date to which the profit and loss account is made-up;
- (iii) A directors' report^{*1};
- (iv) An auditors' report;

- (v) Notes to the accounts; and
- (vi) Group accounts (if applicable).

***1 Directors' Report**

Section 252 of the CA 2016 also requires directors to prepare a directors' report to be attached to the financial statements. The report shall be approved by the board of directors and signed on behalf of the directors by at least two directors. Where it is a private company with only one director, it must be signed by the sole director.

The contents of the directors' report are as follows:

- (i) The name of every person who was a director of the company-
 - during the financial year; and
 - during the period commencing from the end of the financial year and ending on the date of the report;
- (ii) The principal activities of the company in the course of the financial year including its subsidiaries;
- (iii) The matters set out in the Fifth Schedule:
 - The net amount of profit or loss of the company for that financial year after provision for income tax;
 - The amounts and particulars of any material transfers to or from reserves or provisions;
 - If the company has issued any shares during the financial year, then the purpose of the issue, classes of shares and the number of shares of each class;
 - If at the end of the financial year, there is a subsist arrangements to which the company is a party, being arrangements with the objects of enabling directors of the company to acquire benefits by means of acquisition of shares, the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time that year were directors of the company;
 - The number of dividends recommended by directors and any amount which have been paid or declared as dividends;
 - Any circumstances which may render the accounts misleading;

- The particulars of collaterals securing the liabilities of third parties given during the financial year;
 - The fees and other benefits received by directors and past directors;
 - The amount paid out as indemnity or premium for insurance effected for any director, officer or auditor; and
- (vii) Business Review² or any other reporting as prescribed in Part II of Fifth Schedule of the CA 2016 along with the directors' report [Subsection 253(3)] - optional.

² Note : Please refer to SSM's "Best Business Practice Circular 6/2017 on Business Review Report : Guidance to Disclosure and Reporting" for guidance on how to prepare a comprehensive and effective business review report.

(d) Duty to lodge certificate relating to exempt private company

In lieu of the lodgment of financial statements with the Registrar, an exempt private company may lodge a certificate relating to its status as an exempt private company within thirty days from the circulation of the financial statements and reports for each financial year [subsection 260(1)].

The certificate shall be signed by a director, auditor and secretary of the company confirming that—

- (i) the company is and has at all relevant times been an exempt private company;
- (ii) a duly audited financial statements and reports required under this Act has been circulated to its members; and
- (iii) as at the date to which the financial statement has been made up, the company appeared to have been able to meet its liabilities as and when the liabilities fall due.

(e) Duty to prepare Annual Return

A company shall lodge with the Registrar an annual return for each year not later than thirty days from the anniversary of its incorporation (Subsection 68(1) of the CA 2016). However, this requirement is not applicable in the calendar year in which the company was incorporated.

The annual return of a company shall contain the following particular:

- (i) The address of its registered office;
- (ii) The nature of its business;
- (iii) The address of the places where its business is carried on including branch, if any;
- (iv) The address at which its register of members is kept, if not kept at the registered office;
- (v) The address at which its financial records are kept, if not kept at registered office;
- (vi) In the case of a company with a share capital, the summary of its shareholding structure, including debentures;
- (vii) The total amount of its indebtedness;
- (viii) The particulars of directors, managers secretaries and auditors;
- (ix) The list of its members; and
- (x) such other information as the Registrar may require.

The directors must ensure that the annual return of the company is lodged with the Registrar for each calendar year within thirty days from the anniversary of its incorporation date. The Registrar may strike a company off the register if the company fails to lodge its annual return for three or more consecutive years [section 68].

HOW TO COMPLY WITH ANNUAL RETURN AND FINANCIAL STATEMENT FILING REQUIREMENT?



ANNUAL RETURN

Lodge **Annual Return** with SSM within 30 days from the incorporation anniversary date

[Max. penalty for non-compliance: RM50,000 (Section 68(1) of the CA 2016)]



Directors should alert and comply with all the timeline



FINANCIAL STATEMENT

Prepare the 1st **Financial Statement** (FS) within 18 months from the incorporation date
AND
subsequent FS within 6 months from the

[Max. penalty for non-compliance: RM500,000 (Section 248(1) of the CA 2016)]



Lodge FS to SSM within 30 days from the date of circulation to members (For private company) OR 30 days from the AGM date (for Public Company)

[Max. penalty for non-compliance: RM50,000 (Section 259(1) of the CA 2016)]



Circulate the audited FS to members within 6 months from the financial year end (for private company)

OR
Within 21 days before the Annual General Meeting (AGM) date (for public company)

[Max. penalty for non-compliance: RM500,000 (Section 248(1) of the CA 2016)]

AGM must be convened 6 months from the date of FYE
AND
within 18 months from the incorporation date (in case of 1st AGM)
OR
not later than 15 months from the last AGM date
(in case of subsequent AGM)



Table the audited Financial Statement in the AGM (applicable to public company only)

[Max. penalty for non-compliance: RM20,000 (Section 340(2) of the CA 2016)]

4. Annual General Meeting

An annual general meeting shall be held by a public company in every calendar year in addition to any other meetings held during that period, to transact the following business [Subsection 340(1)] :

- (a) The laying of audited financial statements and the reports of the director and auditors;
- (b) The election of directors in place of those retiring;
- (c) The appointment and the fixing of the fee of auditors; and
- (d) Any resolution or other business of which notice is given in accordance with this act or the constitution.

The annual general meeting shall be held within six (6) months of the company's financial year-end and not more than fifteen (15) months after the last preceding annual general meeting [Subsection 340(2)]. However, if the company holds its first annual general meeting within 18 months after the date of its incorporation, the company need not hold an annual general meeting for the year of its incorporation or following year.

This means that if XYZ Sdn Bhd is incorporated in January 2017, its first annual general meeting must be held latest by end of June 2018. No annual general meeting needs to be held for 2017. However, the next annual general meeting for 2019 must be held latest by September 2019. This is because the subsequent annual general meeting must be held at least once in every calendar year and not more than 15 months from the last preceding annual general meeting.

The company may apply to Registrar to extend the period of annual general meeting and may be extended upon the Registrar being satisfied with the reasons provided.

5. Appointment of Auditors

(a) Appointment of auditors of private company

Each private company has to appoint an auditor for each financial year of the company for purposes of auditing its financial statements [Subsection 267(1)].

The Board should appoint an auditor at least thirty days before the end of the period for submission of the financial statement to the Registrar.

The auditor ceases to hold office 30 days after the financial statements has been circulated. If there is no appointment either by the board or members, the auditor is deemed to be re-appointed unless there is an objection received from the shareholders at least 30 days before the financial statements are circulated.

A casual vacancy as a result of an auditor ceasing in office can be filled by the board of directors or through an actual re-appointment by the members (must be stated in the constitution).

A private company is exempted from the requirement to appoint an auditor if it fulfils the conditions as determined by the Registrar.

The qualifying criteria for private companies exempted from having to appoint an auditor in a financial year (audit exemption) are set out in the Practice Directive No. 3/2017 which was issued by the Registrar on 3 August 2017.

(b) Appointment of auditors of public company

Each public company has to appoint an auditor for each financial year [Subsection 271(1)]. The Board should appoint an auditor at any time before the first annual general meeting of the company or to fill casual vacancy in the office of the auditor.

Any auditor ceased to hold office until the next annual general meeting unless re-appointed.

6. Appointment of Company Secretaries

The Board shall appoint at least one (1) qualified company secretary within 30 (thirty) days from the date of incorporation of a company [section 236].

The appointed company secretary must be a member of a prescribed body as set out in the Fourth Schedule of the CA 2016 or a holder of a secretary license issued by the Commission [Subsection 235(2)].

Directors must ensure that the appointed company secretary holds a valid practising certificate as required under section 241 of the CA 2016.

7. Establishing a registered office

Every company must at all times have a registered office within Malaysia to which all communications and notices may be addressed [section 46].

The registered office shall be open and accessible to the public during ordinary business hours.

If there is any changes on the address of registered office or the address of the place where documents required under section 47(1) are kept, the Registrar must be notified within 14 (fourteen) days from the date of changes.

8. Display of company name and number

The company's registered name and registration number must be displayed at—

- (a) its registered office;
- (b) every place where the business is carried on; and
- (c) every place where the statutory books are kept.

The registered name and company registration number must also be disclosed on:

- (a) its business letters, notices and other official publications, including in electronic form;
- (b) its websites;

- (c) its bills of exchange, promissory notes, endorsements and order forms;
- (d) cheques purporting to be signed by or on behalf of the company;
- (e) orders invoices and other demands for payment, receipts and letters of credit purporting to be issued or signed by or on behalf of the company; and
- (f) all other forms of its business correspondence and documentation.

9. Change of company name

Where a company has changed its name, the former name of the company shall also appear beneath its present name for a period of not less than twelve (12) months from the date of the change [Subsection 30(4)].

10. Lodgement of Documents

General requirements for the documents required to be lodged to the Registrar under CA 2016 or for the execution by directors, officers, members and companies are specified in the Practice Directive 1/2017 (PD 1/2017).

The fees in respect of the lodgement of a document are specified in the Schedule of Companies Regulations 2017 and must be paid at the time the document is lodged, unless otherwise directed by the Registrar.

If a document is lodged later than the prescribed time frame, late lodgement fee will be imposed [paragraph 17 of PD 1/2017].

11. Books and Registers

A company is required to keep the following Books and Registers:

- (a) Register of Options [section 129];
- (b) Register of Substantial Shareholders [section 144];
- (c) Register of Debenture holders [section 60];
- (d) Register of Charges and the Instrument/copy of such Instrument [section 362];

- (e) Register of Directors' Shareholdings [section 59];
- (f) Register of Directors, Managers and Secretaries [section 57];
- (g) Records of Resolutions and Minutes of Meetings [section 341 and 3427];
- (h) Register of Members and index [section 55]; and
- (i) Such accounting and other records as will correctly explain the transactions and financial position of the company [section 245].

Registers and books must be kept at the registered office of the company.

Notification must be made to the registrar if registers and books are kept at a place other than at the registered office of a company.

The accounting records may be kept at such other place within Malaysia, as the directors think fit and must at all times be open to inspection by the directors [Subsection 245(4)].

12. Details of Charges

A statement of particulars of the charge created by the company must be lodged to the Registrar in the form and manner as may be determined by the Registrar together with the prescribed fee [subsection 352(1)]. Charges that require registration (RC) are set out in section 353 of the CA 2016. If a charge is not lodged within 30 days after the charge is created, it shall be void against a liquidator [subsection 352(2)].

A charge will not be registered by the Registrar if the Statement of Particulars To Be Lodged With Charge is not lodged within 30 days after the creation of the charge, unless it is accompanied with a Court order extending the time for registration [section 361].

If a company acquires property subject to a RC, details of the charge must be lodged within 30 days after the acquisition is completed [subsection 356(1)].

If a person other than the original charge becomes the holder of the charge, that person must lodge to the Registrar a Notice of Assignment of Charge under subsection 359(1) within 30 days after he becomes the holder of the charge.

Where there is a variation in terms of the charge which will increase the amount of the debts or increase the liabilities secured by the charge; or will prohibit or restrict the creation of subsequent charges on the property, the company must lodge to the Registrar a Notice Of Variation In Terms Of Charge under section 359(1) setting out details of the variation within 30 days after the variation occurs.

Where a charge is wholly or partially satisfied or the property charged is released or no longer forms part of the undertaking or property of the company, the company must lodge to the Registrar the particulars as determined by the Registrar within 14 days after the payment, satisfaction, release or cessation referred to above.

PART C

OTHER BASIC OBLIGATIONS

1. Director's contracts with company

A director has the responsibility to disclose his interest, whether directly or indirectly, in a contract or a proposed contract relating to the company.

He has a duty to declare the nature of his interest at the board of directors' meeting. Where his spouse, natural child, adopted child or stepchild has interest in the shares of the other contracting party, he is also deemed to have an interest in the contract and should declare that interest [subsection 221(9)].

The director shall disclose such interest during the board meeting and subsection 221(4) of the CA 2016 allows a director to give a general notice to the board of directors of his membership or position in a specified corporation or firm.

The general notice must be given either at the board of director meeting or if not, must be brought up and read at the next board meeting after the notice is given [subsection 221(5)]. With such notice, the interested director is not required to make specific disclosure of interest each time the company enters into a contract with the said corporation or firm related to him. However, he has to make a specific disclosure if there is any change in the nature and extent of his interest.

During the board meeting, the interested director may attend, but cannot deliberate or vote on the resolution. However, subsection 222(2) of the CA 2016 provides that the interested director may attend, deliberate and vote on the resolution if:

- (a) the company is a private company which is not a subsidiary of a public company;
- (b) the company is a private company and is a wholly owned subsidiary and the other contracting party is its holding company or a wholly owned subsidiary of its holding company;
- (c) the contract is an indemnity for any losses which may be suffered by the director in his capacity as a guarantor for the company;
- (d) the director is also a director of the other contracting party and the number of shares held by him is not more than the number of qualifying shares; or
- (e) the director has interest in not more than 5% of the other contracting party's paid up capital.

2. Loan to Directors

A company is generally prohibited from making a loan to a director of the company or a company that is deemed to be related to that company or from entering into any guarantee or providing any security in connection with a loan made to such a director by any other person [subsection 224(1)].

However, a loan can be given if the company is an exempt private company. Moreover, a company may also give a loan to a director to enable him to meet expenses incurred by him for the purpose of the company or to perform his duties as an officer of the company [subsection 224(2)(b)]. A company may also give a loan to its director who is also a full-time employee of the company or its holding company for the purpose of purchasing a home [subsection 224(2)(c)].

Before the loan can be given, the purpose and amount of the loan must be disclosed to the members and the members must give their approval [subsection 224(3)]. If there is no approval, in the case of a public company, subsection 224(5)(a) provides that the loan shall be repaid or the liability under the security shall be discharged after 6 months from the conclusion of the company's AGM.

Where the company is a private company, subsection 224(5)(b) provides that the loan shall be repaid or the liability under the security shall be discharged after 12 months from the giving of the loan or the security.

A company may give a staff loan to its director where the company has passed such resolution to approve a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme. Thus, the scheme must be approved by the members at the general meeting.

A director would be liable under subsection 224(10) if he authorises any loan or security which is not in compliance with CA 2016. He will be guilty of an offence and liable to imprisonment not exceeding five years or to a fine not exceeding RM3 million or to both.

Where the loan or security is to enable the director to perform his duties as a director [subsection 224(2)(b)] or to purchase a home [subsection 224(2)(c)], the loan must be approved by the members. Subsection 224(6) provides that if the members do not approve it, the directors who authorise the loan or security will be jointly and severally liable to indemnify the company against any loss incurred.

3. Loan to persons connected with Directors

Section 225 prohibits a company from giving a loan or providing a security for a loan granted to a person connected with its director or a person connected with the director of its holding company.

A person is deemed to be connected with a director if the person is a member of the director's family – spouse, his child (natural/adopted/step), his parent, his brother or sister or the spouse of his child, brother or sister.

A body corporate which is associated with the director, a trustee of trust under which that director or a member of the director's family is a beneficiary, a partner of that director or a partner of a person connected with that director are also deemed to be the persons connected with the directors.

Further, it has to be noted that under section 197, a body corporate is deemed to be connected with a director if the director and or persons connected with him are entitled to exercise or control 20% or more of its voting power.

4. Distribution of dividends to the shareholders

A director should only authorize the distribution of dividends to its shareholders out of profits of the company available only if the company is solvent [Section 131 and 132].

5. Approval for fees of directors

Subject to its constitution, the board of directors of a private company may approve the fees of the directors and benefits payable to them including any compensation for loss of employment.

The directors' approval must be recorded in the minutes of directors' meeting. In addition, the Board must also notify the shareholders of the approved fees and benefits payable within 14 days from the approval date [Section 230].

Disclaimer:

This booklet is intended to be a general guide to company directors to provide better clarity and understanding of the Companies Act 2016. The contents of this booklet outline the best practices to be adopted by company directors in Malaysia. It should not be relied upon as an alternative to specific advice from professional service provider(s).

If you have any specific issues and/or questions concerning your roles and responsibilities as a company director, you are advised to consult your professional service provider(s). The Companies Commission of Malaysia (SSM) shall not be liable for any damages, whether in an action of contract, negligence or other torts, arising out of the contents of this booklet.

