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Tarikh : 6 September 2012

Kepada Presiden/ Setiausaha

Badan Profesional / Persatuan Setiausaha / Dewan Perniagaan

Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan

**PENGUMUMAN BERHUBUNG PENERBITAN NOTA AMALAN
SURUHANJAYA SYARIKAT MALAYSIA:**

- **PRACTICE NOTE NO. 14/2012: CLARIFICATION ON THE EXECUTION OF FORM 48A FOR THE PURPOSES OF E-LODGEMENT**

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Untuk makluman pihak Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan, bersama-sama ini dilampirkan pengumuman Nota Amalan No. 14/2012 yang dikeluarkan oleh Suruhanjaya Syarikat Malaysia (SSM) berkaitan dengan perkara yang disebut di atas.

3. Untuk makluman Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan seterusnya, Nota Amalan ini dikeluarkan dengan tujuan untuk memaklumkan keperluan penyempurnaan Borang 48A bagi tujuan pemfailan secara elektronik.

4. Di sini kami ingin memohon perhatian dan jasa baik pihak Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan untuk menyebarkan dan menghebahkan makluman ini kepada semua ahli persatuan melalui laman web, emel dan pos.

5. Sebarang maklumat lanjut bolehlah menghubungi kami di talian telefon 03-2299 5489 atau dengan melayari laman web SSM: www.ssm.com.my

Segala sokongan, perhatian dan kerjasama yang diberikan dalam perkara ini amat dihargai.

Sekian terima kasih.

"KE ARAH KECEMERLANGAN SSM"

Yang benar,

MOHAMAD SHAHREN MOHAMAD YUSRI
Suruhanjaya Syarikat Malaysia



COMPANIES ACT 1965: PRACTICE NOTE NO. 14/2012

**RE: CLARIFICATION ON THE EXECUTION OF FORM 48A
FOR THE PURPOSES OF E-LODGE MENT**

1. This Practice Note serves to clarify on the execution of Form 48A for the purposes of e-Lodgement.

BACKGROUND

2. Section 123(4) of the Companies Act 1965 (CA 1965) requires every director to make and lodge with the Registrar and the Official Receiver a statutory declaration via Form 48A stating his consent to act as a director of a company. In addition, he is also required to state that—

- (a) he is not an undischarged bankrupt; and
- (b) he is not convicted of –
 - (i) any offence in connection with the promotion, formation or management of a corporation;
 - (ii) any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or
 - (iii) any offence under section 132 or 303 of the CA 1965.

3. Such statutory declaration must be executed before the appointment of a director.

4. In tandem with the advent of ICT, the CA 1965 was amended in September 1998 to allow the lodgement of documents electronically through the introduction of section 11A. The section was further amended in August 2007 to facilitate electronic lodgement which, amongst others, introduced a new provision to replace the requirement for statutory declaration with an electronic declaration. Subsection 11(6A) and (6B) stipulates the following:

“(6A) Where a document is to be filed or lodged electronically, in place of a statutory declaration that must be made by a person under this Act, there shall be filed or lodged with the Registrar electronically a declaration made by the person in the manner prescribed by the Registrar and the Registrar may accept such statements as sufficient evidence of compliance.

(6B) Statements made by virtue of subsection (6A) shall be deemed to be such declarations as are referred to in sections 199 and 200 of the Penal Code [Act 574].”

5. Currently, as access to lodge documents electronically with the Registrar is only given to company secretaries, this raises the question as to whether Form 48A must still be executed by directors in cases where the lodgement of the form is made electronically to fully comply with the relevant provisions of the CA 1965.

STREAMLINING THE LEGAL REQUIREMENTS AND PRACTICE

6. To streamline the legal requirements and the practice, it is imperative that Form 48A must still be executed by a director (or a promoter) to fulfil the requirements under section 123(4) of the CA 1965.

7. Only upon execution of Form 48A can company secretaries lodge such consent electronically and such lodgement is considered to have fully complied with the requirement under section 11A(6A) of the CA 1965.

8. Upon lodgement to the Registrar and thereafter with the Official Receiver pursuant to the requirements of section 123(4), a copy of the duly executed Form 48A must also be kept at the registered address of the company.

9. This Practice Note serves to reiterate the importance of the declaration of consent and qualification to act as director under the CA 1965.

REGISTRAR OF COMPANIES

COMPANIES COMMISSION OF MALAYSIA

5 September 2012