PART N	SHARES AND SOLVENCY STATEMENT

(i) SHARES AND NO PAR VALUE REGIME

1. What is the rationale for migration to the new par value regime?

Answer:

(a) Nominal or par value is only applicable at the point of issuance of shares. The actual value of shares in a company varies in accordance with the current situation faced by the company;
(b) The issued price of shares will be determined by the current value of the company, factors affecting the business of the company and the capital that the company is seeking to raise;
(c) The nominal value, per se, does not accord protection to the shareholders. Instead, the rights of shareholders are attached to the shares, which are the right to attend, speak and vote at meetings of shareholders and the right to receive dividends; and
(d) The rights of shareholders depend on the number of shares held and not the value of shares when it was first purchased.

2. In a no par value regime, how would the Board of Directors determine the pricing for issuance of shares?

Answer:

In an ordinary corporate scenario, a company allots new shares in order to raise additional capital to fund its business operations;

The valuation method to determine the share price would vary between companies. One way could be based on the financial performance of the company. Using the financial statements as the guide, the Board may perform a quantitative analysis to determine a proportionate share pricing. At the same time, there are also some qualitative analysis that a company may want to use. The prospects, the risks associated with the company, issue of control etc.

In determining the share pricing, the Board must also consider all issues and act in the best interest of the company.

(ii) SUBSTANTIAL SHAREHOLDER *(updated on 9 June 2017)*

1. Notification of substantial shareholder under section 141. How will a substantial shareholder "serve" the notice under section 141 to SSM? Can it be by fax or email?

Answer:

Via mail/post or over the counter (until notification by SSM is given to allow for notification by email)

2. Lodgement will be done by substantial shareholder or through company secretary? Does it attract payment of RM100 under item 48 in the Schedule of Fee?

Answer:
By substantial shareholder and there is no fee for notification.

3. What are the documents fall under item 48 of the Schedule of Fee?

Answer:

Item 48 refers to any applications/requests for Registrar to approve/take action

4. How does the 3 or 5 days' notification period apply if the acquisition or change of substantial interest is on Friday and Monday is a public holiday? Can we apply the concept in Interpretation Act, i.e. excluding Sunday and public holidays?
Answer:

The computation of 3 or 5 days should be based on section 54 of the Interpretations Act 1948 and 1967 as follows:

"Section 54 (1) of the Act 388

In computing time for the purposes of any written law—

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is a weekly holiday or a public holiday (referred to in this subsection as excluded days) the period shall include the next following day which is not an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day; and

(d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time."

5. Substantial shareholder will now need to give two (2) notices, one under sections 137, 138 or 139 and another one under section 141? Why can't the substantial shareholder submit to SSM the same notice served to the company, instead of submitting another form under section 141?

Answer:

Notices must be submitted via notification under section 141 by attaching notices issued under sections 137, 138 and/or 139 respectively.

6. If the notification under section 141 is to be lodged by the secretary of the company [as referenced in section 134(2)], does it mean that the secretary will have to lodge two (2) documents, one under section 141 (on the same day when the notice under sections 137, 138 or 139 has been given to the company) and another one under Section 51 on changes to the Register of Members assuming it is a non-listed company (within 14 days)?

Answer:

Lodgement under section 141 is to be lodged by the substantial shareholder. Changes to the Register of Members under section 51 must be lodged by company secretaries within 14 from the changes entered into ROM.

(iii) ALTERATION OF SHARE CAPITAL *(updated on 4 July 2018)*

1. Can a company alter its share capital by way of ordinary resolution as part of its corporate exercise pursuant to section 84 of the Companies Act 2016?

Answer:

A company is required to comply with section 84 of the Companies Act 2016 when it intends to alter its share capital by passing a special resolution to—

(a) consolidate and divide its share capital;

(b) convert its paid-up shares into stock and vice-versa; or

(c) subdivide its shares.

However, the company is permitted to carry out the alteration of its share capital under section 84 of the Companies Act 2016 by way of ordinary resolution if it is specifically stated as such in the company's constitution.

Further, the company's constitution may exclude or restrict the exercise of any of the power conferred by this section where it is permitted by the Act.

(iv) PREFERENCE SHARES *(updated on 5 September 2019)*

1. Does a holder of preference shares have the right to vote if it is provided for in the constitution of the company?

Answer:

Subsection 2(1) of the Companies Act 2016 defines "preference share" as a share by whatever name called, which does not entitle the holder to the right to vote on a resolution or to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise.

Although in general preference shares do not allow its holder the right to vote on a resolution as that of ordinary shares, the shares may still carry certain voting rights which must be specified in the constitution of the company. As such they may be able to vote on matters relating to their respective class of shares provided that such rights are stated in the constitution as required under subsection 90(4) of the Companies Act 2016. Therefore, the Companies Act 2016 has generally retained the policy on the rights to vote for preference shareholders from the Companies Act 1965 (Repealed).

(v) REDUCTION OF CAPITAL *(updated on 7 August 2019)*

1. Can a company modify and tailor the solvency statement template to suit the nature of the company's business?

Answer:

The solvency statement template is provided as a guide only and companies may modify the template to suit their respective requirements.

Please refer to applicable approved accounting standards for guidance with respect to completing the solvency statement.

(vi) CONVERSION OF SHARES *(updated on 11 October 2021)*

1. Can ordinary shares be converted to preference shares under the Companies Act 2016?

Answer:

Ordinary shares may be converted to preference shares if such terms are prescribed at the time of the issuance of the shares and are stipulated in the company's constitution.

However, the company is not allowed to convert all the issued ordinary shares to preference shares as it will violate subsections 9 (b) and 9(c) of the Companies Act 2016. This is due to the minimal requirement for the company to have at least one (1) issued ordinary share.

(vii) SOLVENCY STATEMENT *(updated on 2 December 2022)*

1. Pursuant to section 112 of the Companies Act 2016, a company that carries out a corporate exercise, either for the purposes of redemption of preference shares, reduction of share capital, share buyback or providing financial assistance, it must satisfy the solvency test in relation to the respective transactions. In forming an opinion, the director shall inquire into the company's state of affairs and prospects and take into account all the liabilities of the company.

Should contingent liabilities be considered as part of the solvency statement?

Answer:

A company that carries out a corporate exercise must satisfy the solvency test in relation to the transaction if it involves the redemption of preference shares, reduction of share capital, share buyback or providing financial assistance.

During the preparation of the solvency statement, a director must take into consideration contingent liabilities. This is pursuant to a specific provision under subsection 113(4) which states that "In forming an opinion for the purpose of making a solvency statement, a director shall inquire into the company's state of affairs and prospects and take into account all the liabilities of the company including contingent liabilities".

Therefore, SSM has issued a template which can be adapted and adopted by a company when making the solvency statement.

2. What are contingent liabilities?

Answer:

Generally, contingent liabilities are possible obligations whose existence will be confirmed by uncertain future events that are not wholly within the control of the entity. Therefore, contingent liabilities that are to be included in a solvency statement should be recognized based on applicable approved accounting standards.

3. How to determine whether a contingent liability needs to be included into the solvency statement or not?

Answer:

Section 113(4)(b) of the Companies Act 2016 requires the directors to take into account all liabilities of the company, which will include contingent liabilities. The director has to determine whether the exclusion of the contingent liability will have a significant impact on the solvency statement that could influence the solvency of the company for the next six or twelve months after the date of the transaction or declaration.

Hence, when a director makes the solvency statement, he has to take into account these factors if it relates to contingent liabilities.

The measurement and inclusion of contingent liabilities in a solvency statement are to safeguard the company from being insolvent within that prescribed timeframe as regulated in the Companies Act 2016.

It is the company's discretion to decide whether a liability is likely to be included or otherwise in the solvency statement. Ultimately, the directors will be held responsible with the solvency statement that does not meet the requirements of the Companies Act 2016.