

Plenary Session 1: Governing Under New Normal

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SCOPE

- **Board's Role in Crisis -Corporate Governance: Covid-19 and the Board of Directors**
- **Effect of Covid -19 : Introduction of new legislation and related regulations**
- **Directors' duties and liabilities in financial distress during Covid -19**

Board's role in Crisis- Corporate Governance: Covid 19 and the Board of Directors

- Identifying , prioritizing and implementing governance framework to deal with strategies and oversight challenges of Covid -19
- To ensure management has ability to act quickly in a constantly evolving landscape (**section 213 Companies Act 2016**)
- To prioritize the safety and well being of company employees as well as those who depend on the company for essential services (**PCIDA 1988, OSHA 1994, PDPA 2010, MOHR Guidelines**)
- To evaluate the impact on workforce health, remote work challenges, demand patterns and supply disruptions
- To coordinate and liaison with shareholders and stakeholders
- To assess if revisions to the governance structure are necessary (and appropriate within each relevant jurisdiction)
- To ensure adequate performance for the current pandemic
- To understand the risk to the company and to its various stakeholders arising from the pandemic and the consequent economic downturn
- To carefully consider the balance between indebtedness and if necessary the need for immediate liquidity
- To consider the business judgment rule – to act on an informed basis, good faith, honest belief , best interest of the company (**Section 214, Companies Act 2016**)

Introduction of new legislation and related regulations

- Temporary measures for Reducing the Impact of Coronavirus Disease 2019 Act 2020 (**Covid - 19 Act 2020**)
 - ❖ Inability to perform contractual obligations, contractual moratorium
 - ❖ Mediation process
 - ❖ Modifications to other legislations and Ordinances -Implication on housing development laws, modification to personal bankruptcy laws- **Insolvency Act 1967**, power of Chief Justice to issue directions and modify Rules of Court, changes to **High Purchase Act 1967**, **Consumer Protection Act 1999**, **Industrial Relation Act 1967**, etc
 - ❖ Extension of time to perform statutory duty or obligation
 - ❖ Alternative arrangement for statutory meeting
- Prevention and Control of infectious Diseases (Measures within the Infected Local Areas) Regulations 2020
- **Issuance of Guidelines & Regulation** from Ministries : PMD, MID, MDTCA, MOT, MOW, MOHE, MOHR etc

Directors duties and liabilities in financial distress during Covid -19

- Insolvent Trading – S 539(3) Companies Act 2016
- Responsibility for Fraudulent Trading – S 540(2) Companies Act 2016
- Misapplication of property , misfeasance or breach of duty to company – S 541(1) Companies Act 2016
- Potential Circumstances – Engage in corporate rescue mechanisms (Corporate Voluntary Administration (S 395-402), Judicial Management (S 403- 430) , Scheme of Arrangement (S365- 371)

**Thank you
Terima kasih
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