

1. Can a single member/single director company be incorporated as a public company?

Answer:

No, a single member/single director company can only be incorporated as a private company. Although a public company can be incorporated with only a single member, the minimum requirement for directors of a public company is two.

2. Can a single member/director can also be the secretary of the company?

Answer:

Yes, a person who is a single director (who is also the single member) can act as the secretary of the company. However, the Companies Act 2016 prohibits acts in dual capacity i.e. where the act is required to be done by both a director and a secretary, that act must be executed by two different persons.

3. Under the new Act can a foreigner in Malaysia i.e non-citizens /non-residents be allowed to form a company as sole shareholder/director?

Answer:

A foreigner can form a company as the sole shareholder. However, if he also wants to be the sole director of the company, he has to fulfil the requirement under section 196(4) Companies Act 2016, in that he must ordinarily reside in Malaysia, by having a principal place of residence in Malaysia.

4. Can we incorporate a company by single corporate body since the new Companies Act 2016 allows for a single member and director?

Answer:

Yes.

5. For directorship under the new Companies Act, why does the residential status still being required?

Answer:

Under the Companies Act 2016, section 196(4) provides the requirement for a director that he must ordinarily reside in Malaysia by having a principal place of residence in Malaysia. This requirement is only applicable to the minimum number of directors (in the case of a private company, at least one. In the case of a public company, at least two).

6. Can companies switch between having a single director to multiple directors and back again anytime they like?

Answer:

Yes, provided there are no restrictions as contained in the constitution of the company and the follow the requirements as stipulated in the Companies Act 2016.

7. What will happened to a company if a single director who is also the single shareholder passed away?

Answer:

In the event a single director who is also the single director passed away, the company secretary has the duty under section 209(3) to call a meeting of next of kin for the purposes of appointing a new director. If the next of kin failed to appoint a director within 6 months of the death of the director, the Registrar may direct the company to be struck off the register.

8. What is the definition of "next of kin" referred to under section 209(3)?

Answer:

The "next of kin" referred to under section 209(3) is not defined in the Companies Act 2016. However, for the purposes of the section, a Practice Note will be issued to address the definition.

9. What are the differences between a private limited company, sole proprietor and limited liabilities to run a business?

Answer:

Besides limited liability status, a company is required to fully comply with the provisions of the Companies Act 2016. The Companies Act provides a more structured approach which codifying the requirements of establishing, managing and dissolving a company. Such requirements include the keeping, preparing and auditing of its financial statements and other corporate governance provisions (disclosures, rules of conflict, reporting, etc.) contained in the Companies Act 2016.

Therefore, running a business as a company can be said to be more credible because of such assurance which is required under the law.

10. The Companies Act 2016 introduces a super form for incorporation. What is actually the super form?

Answer:

The super form is an electronic template which will replace the various form currently required for incorporation process (i.e. Form 6, Form 48A and M&A under the previous Companies Act 1965). The form is accessible through the MyCoID 2016 Portal.

Section 14 of the Companies Act 2016 provides for the incorporation process. Amongst others, a person is required to provide a set of information as follows:

Name of proposed company;

Status of private or public company;

Nature of business;

Proposed registered address; and

Details of the proposed directors, members & company secretary.

11. Can a company submit the Memorandum & Articles of Association (M&A) at the point of incorporation?

Answer:

In general, a company is only allowed to submit its Constitution after incorporation. The company may adopt a Constitution by way of a special resolution and lodge the Constitution with SSM within 30 days after it is adopted by the company.

Under section 38 of the Companies Act 2016, a company limited by guarantee ('CLBG') must submit its Constitution at the point of incorporation.

12. Can a company secretary be appointed at the point of incorporation?

Answer:

The appointment of a company secretary at the point of incorporation is optional. Under section 236 of the Companies Act 2016, the Board must appoint a company secretary within 30 days from the date of incorporation of a company.