



KEMENTERIAN PERDAGANGAN DALAM NEGERI
& HAL EHWAL PENGGUNA



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA
(Agensi di bawah KPDNHEP)

CONSULTATIVE DOCUMENT ON THE PROPOSED COMPANIES (PRACTISING CERTIFICATE) REGULATIONS 2019

**CONSULTATION DOCUMENT ON THE PROPOSED COMPANIES
(PRACTISING CERTIFICATE) REGULATIONS 2019**

The Companies Commission of Malaysia (SSM) invites comments on the Consultative Document by **30 October 2018**.

Please provide your name and the organisation you represent (where applicable) and to provide reference on the questions you are commenting.

Comments must be forwarded by email to: lrpia@ssm.com.my

Confidentiality: Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

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SECTION A

INTRODUCTION

1. The Companies Act 2016 (Act 777) ("CA 2016") came into force on 31 January 2017 and the new CA 2016 repealed the 1965 Act which has been in operation for over 50 years. The study of other legislations, consultation and discussion with various regulatory, professional and industry stakeholders has contributed positively toward formulating the CA 2016 in the ease of doing business in Malaysia.
2. The implementation of CA 2016 is intended to improve the ease of doing business in Malaysia where corporate procedures for companies have been simplified. This will significantly reduce the administrative and compliance costs towards fostering a more business-friendly environment.
3. The CA 2016 has been implemented in stages where the first phase of the CA 2016 implementation has commenced since 31 January 2017.
4. Section 241 of the CA 2016 relating to the register of secretaries and practicing certificate of a secretary is the final phase of implementation of the CA 2016.

BACKGROUND

5. This draft Regulations set out the requirements and seeks responses on the following:-
 - i) the introduction of practicing certificate for secretary; and

ii) the establishment of a registry for secretary in Malaysia by Companies Commission of Malaysia ("SSM").

6. This Regulations on Companies (Practising Certificate) are issued pursuant to section 241 of the CA 2016.
7. This Regulations serve to outline the parameters of the registration of practicing secretaries.
8. Generally, the function of a secretary in a company is administrative in nature. The fundamental duties of the secretary are related to statutory duties, particularly in ensuring compliance by the company and the Board of Directors to the requirements of the CA 2016 and adherence by the board to the procedures. Public confidence on the accuracy of public documents should also be taken into consideration. Increasingly, this function and the role have evolved to include the advisory capacity of secretaries with regards to the whole compliance spectrum expected of a company.
9. The Corporate Law Reform Committee ("CLRC") recognizes the increasingly vital role played by secretaries in the day to day management providing independent advice to the board. It is a known fact that secretaries play an important role in corporate governance in ensuring that a company complies with the relevant laws and regulations governing companies.
10. For that purpose, the CLRC was concerned about formulating the right policy on competency and professionalism of the company secretaries.

11. The CLRC believes that professional qualification of secretaries will enhance the standard of professionalism and competency within the profession. However the responsibility to monitor secretaries should not be left entirely to the professional bodies, as not all members of the prescribed bodies practice as company secretaries. In this respect, the CLRC proposed that a monitoring mechanism in the form of a register of secretaries be established by SSM.
12. The CLRC was also concerned that the appointment of non-professionally qualified secretaries could have an adverse effect on the level of compliance and enforcement as well as corporate governance standards. The CLRC was of the view that to ensure that company secretaries remain competent and display a high standard of professionalism, a uniform monitoring mechanism should be introduced.
13. Therefore, with the introduction of section 241 of the CA 2016 and the Regulations, all qualified persons who wish to act as a secretary must register with the Registrar irrespective of their professional background.
14. This is to ensure that the standards and professionalism of those acting as secretaries can be effectively monitored by SSM through a central database mechanism.

INVITATION TO COMMENT

15. The public is invited to comment on the draft Companies (Practising Certificates) Regulations 2019 before or by 30 October 2018.

SECTION B

**THE PROPOSED COMPANIES (PRACTISING CERTIFICATE)
REGULATIONS 2019**

COMPANIES ACT 2016

COMPANIES (PRACTISING CERTIFICATE) REGULATIONS 2019

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Regulation

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SCHEDULE

COMPANIES ACT 2016

COMPANIES (PRACTISING CERTIFICATE) REGULATIONS 2019

IN exercise of the powers conferred by sections 241(4) and 613 of the Companies Act 2016 [Act 777], the Minister makes the following regulations:

PART I

PRELIMINARY

Citation and commencement

1. (1) These regulations may be cited as the **Companies (Practising Certificate) Regulations 2019**.

(2) These Regulations come into operation on XXX.

Interpretation

2. (1) In these Regulations—

“practising certificate” means a certificate issued to a qualified person under subsection 235(2) pursuant to subsection 241(4) of the Act;

“practising certificate number” means the authorisation number assigned as stated in the practising certificate;

“reporting institutions” means a secretary, whether in person or through a firm or company, who carries on any activity listed in the First Schedule of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613]; and

“secretary” means a qualified person under subsection 235(2) of the Act and has been issued with a valid practising certificate.

(2) For the purposes of regulations 4 and 8, a person is deemed to be fit and proper to be registered or continue to be registered in accordance with these Regulations if he has demonstrated compliance to the requirements pertaining to the

registration or if there is no reason for the Registrar to be concerned as to his duties, responsibilities and conduct, as specified under Part III.

PART II
REGISTRATION, RENEWAL AND CESSATION AS SECRETARY

Application for registration to act as a secretary

3. (1) For the purposes of subsection 241(1) of the Act, any person referred to in subsection 235(2) may apply to the Registrar to be registered to act as a secretary.

(2) The application under subregulation (1) shall contain the following particulars:

- (a) the name, identification number, contact information and address of the principal place of residence in Malaysia of the applicant;
- (b) the business address in Malaysia of the applicant, if applicable;
- (c) the details of the designated membership of approved body or license number referred to in subsection 235(2) in support of the application; and
- (d) a declaration by the applicant that he –
 - (i) is not an undischarged bankrupt;
 - (ii) has not been convicted whether in or outside Malaysia of any offence referred to in section 198 of the Act; and
 - (iii) does not have any pending legal action against him under any provision of the Act or the laws specified in the First Schedule of the Companies Commission of Malaysia 2001 [Act 614]; and
- (e) such other information as the Registrar may require.

(3) The application made under subregulation (1) shall be accompanied with the fee as specified in the Schedule.

Issue of practising certificate

4. If the Registrar is satisfied that the requirements as to the application for registration are complied with and that the applicant is fit and proper to be registered as a secretary, the Registrar shall—

- (a) enter the particulars of the applicant in the register;
- (b) issue a practising certificate bearing an authorisation number to the applicant, in the form and manner as the Registrar may determine.

Power to refuse registration

5. (1) Without prejudice to the powers of the Registrar under regulation 4, the Registrar shall not register an application as a secretary unless he is satisfied that all the requirements in respect of the registration and any matter relating to the registration has been complied with.

(2) The Registrar shall notify the applicant in writing of his refusal to register an application for a practising certificate.

Compliance with conditions or restrictions imposed on practising certificate

6. (1) The Registrar may impose any conditions or restrictions upon the issuance of a practising certificate under subregulation 4(1), and may, at any time, amend the conditions or restrictions imposed.

(2) A person issued with a practising certificate shall comply with the conditions or restrictions imposed on the practising certificate.

Validity of practising certificate

7. (1) A practising certificate issued under regulation 4 shall be valid and remain in force from the date of issuance to the end of the validity period unless sooner revoked by the Registrar referred to under regulation 10 or upon cessation referred to under regulation 11.

(2) The secretary whose membership has been suspended by the approved body or whose licence has been suspended by the Commission shall be deemed as if he has not been given a practising certificate during the suspension period for the purpose of the Act.

(3) For the purposes of subregulation (1), the validity period of a practising certificate shall be—

- (a) in the case of registration, shall be for a period of 12 months from the date of the issuance; or
- (b) in the case of renewal of registration, from the date of the renewal in the year to the end of the period specified in the practising certificate or such other longer period as the Registrar may allow.

Renewal of practising certificate

8. (1) A secretary shall apply for the renewal of the practising certificate not later than thirty days, or such other period as the Registrar may specify, before the expiry of the validity period as specified in regulation 7.

(2) An application to renew the practising certificate under subregulation (1) may be considered upon the satisfaction of the following:

- (a) that the secretary has complied with the requirements as specified under paragraph 3(2)(d);
- (b) that the secretary is fit and proper to continue to be registered under subsection 241; and
- (c) that the secretary has fulfilled the requirements relating to Continuing Professional Education.

(3) If the Registrar is satisfied that a secretary complied with the requirements of the application for the renewal of a practising certificate and upon the payment of the prescribed fee as specified in the Schedule, the Registrar may renew the practising certificate for a period stated in the notice of renewal.

(4) If the Registrar is not satisfied that the requirements relating to the application for renewal of a practising certificate has been complied with, the Registrar shall notify the secretary in writing of his refusal to renew the practising certificate.

Suspension of practising certificate

9. (1) The Registrar shall suspend a practising certificate issued to any secretary if—

- (a) the membership of the of the secretary has been suspended by an approved body; or
- (b) the licence has been suspended by the Commission under section 20H of the Companies Commission of Malaysia Act 2001.

(2) The Registrar shall give the secretary a notice that states the ground and period for the suspension.

(3) Any such suspension under subregulation (1) shall be for such period not exceeding thirty days or such other longer period as the Registrar thinks fit.

(4) At the expiry of the suspension period, as the Registrar shall specify, the Registrar may –

- (a) terminate the suspension either unconditionally or subject to such conditions as the Registrar may think fit;
- (b) revoke the practising certificate as provided under regulation 10; or
- (c) impose any other order as the Registrar thinks fit.

(5) A suspension under this regulation may only be extended once under subregulation (1).

(6) The secretary whose practising certificate has been suspended under subregulation (1) shall not carry out his duty as secretary but he shall be deemed to remain in office.

Revocation of practising certificate

10. (1) The Registrar shall have the power to revoke a practising certificate at any time on the following grounds:

- (a) if the secretary is convicted of an offence under the Act in relation to a company;
- (b) if the secretary is convicted of an offence under any other laws in Malaysia; or
- (c) if the secretary is no longer a member of an approved body as specified under the Fourth Schedule of the Act or licensed by the Commission;
- (d) if the secretary has failed to act honestly or use reasonable diligence in the discharge of his duties as a secretary under subsection 238(2) or
- (e) if the secretary fails to comply with the conditions or restrictions of the practising certificate.

(2) The Registrar may require the secretary to show cause why his practising certificate should not be revoked or why he should not be disqualified from acting as a secretary of a company.

(3) A secretary may provide written representation to the Registrar within thirty days from the date of receipt of the show cause or within a specified period as the Registrar may specify.

(4) After considering the written representation made by the secretary under subregulation (3); or if no written representation is made by the secretary under subregulation (3), the Registrar shall decide whether to revoke the practicing certificate or otherwise.

(5) The Registrar may impose conditions or restrictions under subregulation (4), and may, at any time, amend the conditions or restrictions as the Registrar thinks fit if the practicing certificate is not revoked.

Cessation as holder of practising certificate

11 (1) A person shall cease as a holder of a practising certificate if —

(a) he is no longer qualified to act as a secretary under section 238 the Act;

(b) his practising certificate has been revoked by the Registrar; or

(a) his name ceases to be registered in the Register of Secretaries pursuant to section 241 of the Act.

(2) Any person who acts without a valid practising certificate commits an offence and shall, upon conviction, be liable to a fine not exceeding fifty thousand ringgit.

(3) If a person uses a practising certificate for a fraudulent purpose, the person shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Requirement to state practising certificate number

12. (1) A secretary shall state the practising certificate number when executing any document in his capacity as a secretary or when lodging any statutory document on behalf of a company or the directors with the Registrar.

(2) A secretary who contravenes this subregulation (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) A person who states a practising certificate number without a valid practising certificate commits an offence and shall, on conviction, be liable to a fine not

exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART III

DUTIES, RESPONSIBILITIES AND CONDUCT OF A SECRETARY

Duty in relation to registered office and registers

13. (1) Without prejudice to the provisions in the Act, a secretary shall, either in person or his employee or by his agent—

- (a) be present at the registered office of the company on the days and at the hours during which the registered office is to be accessible to the public; and
- (b) maintain and keep updated all the registers, records and books which are required to be kept at the registered office.
- (c) to provide the statutory documents within specific time as requested by any person who is entitled to inspect such document and records at registered office

Duty to act honestly and use reasonable diligence

14. (1) A secretary shall at all times act honestly and use reasonable diligence in the discharge of his duties as a secretary.

(2) The duties referred to in subregulation (1) may include, but not limited to the following:

- (a) manage, attend and record minutes of the meetings of the board of directors;
- (b) manage, attend and record minutes of the meetings of shareholders;
- (c) manage the processes relating to the passing of resolutions of the board of directors and of the company;
- (d) advising the board of directors on its role and responsibilities;
- (e) advising the board of directors on statutory requirements under the Companies Act 2016 and other disclosure and governance requirements relevant to the company;

- (f) ensure the statutory documents and records to be provided to the new company secretary or company at the registered office once he ceased office as company secretary; or
- (g) any other duties imposed under the Companies Act 2016.

Duty as reporting institutions

15. A secretary shall comply with the requirements under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [*Act 613*] when they, whether in person or through a firm or company, prepare or carry out the following activities for his clients–

- a. act as a formation agent of legal entities;
- b. act as or arrange for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities;
- c. provide a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal entities or arrangement;
- d. act as or arrange for another person to act as a nominee shareholder for another person; or
- e. any other duties imposed under AML/CFT Guide issued by Bank Negara Malaysia

Duty to update prescribed particulars

16. A secretary shall notify the Registrar within fourteen days from the date any changes in the prescribed particulars referred to under paragraph 3(2)(a), (b) or (c).

Duty as member of approved body

17. (1) A secretary may be a member of more than one approved bodies.

(2) Notwithstanding subregulation (1), the secretary shall only designate one approve body for the purpose of registration of practising certificate.

(3) If there are any changes in the membership of approved body, the secretary shall update the Registrar on the changes within fourteen days.

(4) If a secretary is a member of more than one approved bodies as specified under the Fourth Schedule of the Act and his membership in one of approved body has been suspended or revoked, he shall be deemed to be no longer qualified to act as secretary as specified in the Fourth Schedule of the Act.

Continuing Professional Education

18. (1) A secretary shall fulfil the requirements of and attend the required continuing professional education learning activities during the validity of the practising certificate.

(2) The Registrar shall have the power to determine the type, number of points and length of the training and other requirements relating to the continuing professional education.

PART IV MISCELLANEOUS

Appeal

19. (1) For the purposes of an appeal relating to the refusal to issue a practising certificate under regulation 4, the refusal to renew a practising certificate under regulation 8 or revocation of a practising certificate under regulation 10, any aggrieved person may appeal to the Minister in writing within thirty days from the date of receipt of the notification.

(2) For the purpose of subregulation (1), the aggrieved person shall—

(a) submit such appeal to the Registrar through the electronic filing system unless otherwise directed by the Registrar;

(b) state the grounds of appeal; and

(c) pay the fee as specified in the Schedule.

(3) Upon receipt of the appeal under subregulation (1), the Registrar shall, as soon as practicable, submit the appeal together with the grounds of appeal to the Minister.

(4) On an appeal, the Minister may, upon the recommendation of the Registrar, affirm, vary, set aside the decision or make any decision that he thinks fit and cause the decision to be communicated in writing to the aggrieved person.

(5) The decision of the Minister under subregulation (4) shall be final.

Fees

20. (1) The fees as specified in the Schedule shall be paid to the Registrar in such manner as the Registrar may direct.

(2) Any failure to pay the fees referred to in subregulation (1) shall render the application for registration under regulation 4 or application for renewal under regulation 8 or appeal under regulation 19 void.

Saving and Transitional

21. (1) For the purposes of subsection 241(5), any person who has been appointed as a secretary prior to the commencement of these Regulations shall be given a transitional period of twelve months from the commencement of these Regulations to comply with regulation 4.

(2) Notwithstanding subregulation (1), the Registrar may extend the twelve-month transitional period to any such longer period as the Registrar thinks fit.

(3) For the purposes of the transitional periods referred to in subregulations (1) and (2), in addition to the requirement to state the practising certificate number pursuant to regulation 12, a secretary shall state the number issued by the approved bodies as set out in the Fourth Schedule of the Act or the licence number issued by the Commission under section 20G of the Companies Commission of Malaysia Act 2001 [Act 614], as the case may be.

SCHEDULE
(Regulation 4, 8 and 19)

FEES

(1) <i>Item</i>	(2) <i>Matter</i>	(3) <i>Fee</i> (RM)
1.	Application for the registration as a secretary under regulation 3 for period of 1 year	100
2.	Application for renewal of practising certificate as a secretary under regulation 8 for a period of every 12 months	100
3.	Appeal to the Minister against the refusal to grant or renew practising certificate, or revocation of practising certificate	300

Made January 2019

[KPDNKK 600-1/2/27; PN (PU2)626]

DATO' SAIFUDDIN NASUTION BIN ISMAIL
Minister of Domestic Trade and
Consumer Affairs