



COMPANIES ACT 1965: SSM'S PRACTICE NOTE NO 10/2011

RE: LODGEMENT OF ANNUAL RETURN WHERE ANNUAL GENERAL MEETING CANNOT BE CONVENED

1. This Practice Note serves to inform the requirements for the lodgement of annual return where Annual General Meeting (AGM) cannot be convened due to lack of quorum.

THE HOLDING OF AGM AND LODGEMENT OF ANNUAL RETURN

2. Pursuant to section 143 of the Companies Act 1965 (CA 1965), companies are required to strictly observe the requirements relating to the holding of AGM as follows:

- (i) A company is required to hold an AGM in every calendar year end; and
- (ii) The AGM must be held not more than fifteen (15) months after the holding of the last preceding AGM.

3. Section 165 of the CA 1965 requires all companies to lodge annual return within one (1) month after an AGM. The annual return of a company shall be in accordance with the Eighth Schedule of CA 1965 and be accompanied by such copies of

documents as are required or such certificates or other particulars as prescribed in Part II of that Schedule.

4. The above provisions form part of the corporate disclosure and transparency requirements under CA 1965 towards ensuring that the public have access to regularly updated information relating to a company's members, directors and other relevant information.

5. The lodgement of annual return will only be considered as complete and in accordance with the provisions of the law if an AGM has been duly convened. SSM will not accept the lodgement of annual return by companies where no AGM is held save in the circumstances outlined in the paragraphs below.

DIFFICULTIES IN HOLDING AN AGM IN CERTAIN CIRCUMSTANCES

6. SSM recognises that there may be situations where a company may encounter difficulties to convene its AGM due to lack of quorum in the following circumstances:

- (i) when the absent member(s) cannot be contacted by the company; or
- (ii) when a member(s) has passed away;
- (iii) when a member(s) has been disqualified (e.g. recently adjudicated bankrupt); or
- (iv) any other reasons where the Registrar is satisfied that the non-holding of AGM is due to circumstances beyond the control of the company or shareholders.

7. As a result of any of the above, the company is unable to increase its membership immediately or to meet the quorum requirement to enable a valid AGM to be convened even though the company has complied with the procedures for lack of quorum in its Articles of Association.

8. SSM is prepared to accept the lodgement of an annual return without the AGM being held under the circumstances highlighted in paragraph 6 above **AND** where the company is only aware of such impending lack of quorum after the notice of the AGM has been issued.

9. Where the company is aware or has prior notice that there will be a lack of quorum as a result of circumstances highlighted in paragraph 6 prior to the issuance of the notice of the AGM, the company must apply for an extension of time under section 143(2) of CA 1965 to rectify the matter.

LODGEMENT OF ANNUAL RETURN WHERE NO AGM IS CONVENED

10. In order to lodge an annual return where an AGM could not be convened due to a lack of quorum, a company shall make prior application to the Registrar within 1 month after the date of the purported AGM. The application as per **Appendix 1** shall be accompanied with a fee of RM120 and must be substantiated with the following documents (whichever is applicable):

- (i) proof of service of the notice of AGM within the time period prescribed in the CA 1965 and proof that the notice cannot be delivered/effectuated;
- (ii) a copy of the adjudication and receiving orders of the member(s) who has been an adjudged bankrupt;
- (iii) a copy of certificate of death of the deceased member; or
- (iv) a detailed explanation on the (accompanied by any other proof evidencing) circumstances which renders the situation beyond the control of the company or shareholders resulting in the company's inability to conduct the AGM.

11. The Registrar shall have the discretionary power to approve such an application based on its merits. In the case where an approval is granted, the company shall lodge the annual return within 1 month after such approval is given. In the case where the application is rejected, the company shall still be liable for the penalty imposed under section 143 of the CA 1965.

12. However, after the annual return is filed, the company must take immediate steps to rectify the situation to avoid a situation of a lack of quorum at the AGM of the following calendar year. SSM shall reject any repeat application for the lodgement of annual return where an AGM could not be held due to lack of quorum.

13. This Practice Note serves to reiterate the importance of complying with the provisions under section 143 of the CA 1965.

**REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
7 OCTOBER 2011**

APPENDIX 1

THE REGISTRAR
COMPANIES COMMISSION OF MALAYSIA
2, 10-19th FLOOR, PUTRA PLACE
100 JALAN PUTRA
50622 KUALA LUMPUR

Date:

Sir,

**APPLICATION TO LODGE ANNUAL RETURN WHERE ANNUAL
GENERAL MEETING CANNOT BE CONVENED**

I, being the director/secretary of (*Company's name and number*) hereby apply for the lodgement of annual return where the annual general meeting could not be convened due to a lack of quorum.

The company has called for its annual general meeting pursuant to section 143 of the Companies Act 1965 on and its adjourned annual general meeting in accordance with the company's Articles of Association on

I attach herewith the following*:

- * Proof of service of the notice of AGM within the time period prescribed in the CA 1965 and proof that the notice cannot be delivered/effected
- * an office copy of the adjudication and receiving orders
- * a copy of certificate of death of the deceased member

* others (please specify and where necessary substantiated with proof attached) _____

Dated this day of 20...

.....

Director/Secretary¥

* Tick whichever is applicable

¥ Delete whichever is not applicable