



Session 10: 'SSM SPEAKS'

YAP WENG SEONG

HEAD OF SECTION

**REGULATORY DEVELOPMENT AND SERVICES DIVISION
COMPANIES COMMISSION OF MALAYSIA**

24 JULY 2019



COMPANIES (AMENDMENT) BILL 2019

STATUS OF THE BILL IN PARLIAMENT

The Companies (Amendment) Bill 2019 –

- **is tabled and approved in Dewan Rakyat on 10 July 2019; and**
- **will be tabled in Dewan Negara on 25 July 2019.**

PURPOSE

The Companies (Amendment) Bill 2019 is in line with SSM's objectives to –

- ensure an effective implementation of the law;**
- to improve corporate governance; and**
- to provide clarity to provisions in the Companies Act 2016.**

PRESENTATION SCOPE

- **Background**
- **Amendments to the Companies Act 2016
(CA 2016)**

BACKGROUND

BACKGROUND

- **The implementation of the Companies Act 2016 [Act 777] (CA 2016) is staggered into three stages:**
- **Stage I - CA 2016 has been enforced on 31 January 2017 which repealed the Companies Act 1965 [Act 125].**
- **Stage II - Division 8 Part III of CA 2016 on the corporate rescue mechanism (CRM) was enforced on 1 March 2018.**
- **Stage III (Final) - Section 241 CA 2016 on certificates of secretary practice was enforced on 15 March 2019.**

AMENDMENTS TO THE COMPANIES ACT 2016

No of amendments to the Companies Act 2016 - 13

AMENDMENTS TO COMPANIES ACT 2016

- The amendments will –
 - give clarify existing provisions;
 - enable a more systematic implementation of the provisions of CA 2016; or
 - reintroduce policies that have been enacted in the Companies Act 1965 [Repealed] to be included in the Companies Act 2016.

AMENDMENTS TO COMPANIES ACT 2016

Among the amendments to the Companies Act 2016 include -

- i. Amendments to the definition of “subsidiary and holding company” in subparagraph 4(1)(a)(iii) to provide that a corporation is deemed to be a subsidiary of another corporation if the corporation holds more than half of the total number of issued shares.

“...holds more than half of the **total number of issued shares** of the corporation, excluding any part of the share capital which consists of preference shares;..”

AMENDMENTS TO COMPANIES ACT 2016

- ii. Amendment to section 66 to provide a definition for "document" with a new subsection (6) to clarify that only certain documents are required to be executed in accordance with the provisions of subsection 66(1).

“66(6) For the purposes of this section, ‘document’ means “a document which is required to be executed pursuant to subsection (1) by any written law, resolution, agreement or constitution”.

AMENDMENTS TO COMPANIES ACT 2016

- iii. Amendments to subsections 72 (4) and (5) to provide that if the shares are redeemed out of profit and is available for dividend, a sum of equal to the amount of the shares redeemed shall be transferred into the share capital account.

“72(4) **Subject to subsections (5) and (6), the shares shall be...**”

“(5) Where any such shares are redeemed **out of profits pursuant to paragraph 4(a)** which would otherwise have been available for dividend, **there shall** be transferred into the share capital accounts of the company, a sum equal to the amount of the shares redeemed...”

AMENDMENTS TO COMPANIES ACT 2016

iv. Amendments to subsection 84 (1) to provide that a company may alter its share capital through ordinary resolution instead of special resolution as practiced under CA 1965 (Fourth Schedule-Table A).

“Subsection 84(1) - Unless otherwise provided in the constitution, a company may alter its share capital in any one or more of the following ways by passing a **resolution** to...”

AMENDMENTS TO COMPANIES ACT 2016

- v. Amendments to paragraph 93(2)(b) is to provide clarity that any objection to alter the class rights may be made by a shareholder from that class who has been appointed in writing by at least 10% shareholders of that class.

Subsection 93(2) should be read together with subsection 93(1) of the CA 2016.

“...may be made on behalf of the shareholders **representing at least ten per centum of the total voting rights in the class** by any shareholder appointed in writing by all the shareholders in that class..”.

AMENDMENTS TO COMPANIES ACT 2016

- vi. Amendment to subsection 247(3) is to provide that directors may apply in writing to the Registrar **not less than thirty (30) days before the circulation of the financial statement** of the **holding company** for an order to authorize any subsidiary of the holding company to not coincide its financial year with the holding company. The rationales for the time period are -
- to provide sufficient time to the Registrar to consider the application; and
 - in the event the application is rejected, to provide sufficient time for the company to comply with the provisions of the CA 2016.

AMENDMENTS TO COMPANIES ACT 2016

vii. Amendment to section 304 to require a company to issue a written resolution proposed by the members, provided that sufficient expenditure has been deposited to the company.

“Section 304 - Unless the company resolves otherwise—

(a) the expenses of the company in complying with section 303 shall be paid by the members who requested the circulation of the **resolution**;

(b) “before the **company becomes subject to the requirement under section 302 to circulate the resolution**,..”

AMENDMENTS TO COMPANIES ACT 2016

viii. Amendments to paragraph 340(1)(c) to provide that the appointment and the fixing of the remuneration of auditors shall be transacted at the annual general meeting.

This is in line with the policy and practice under the Companies Act 1965 [Repealed] - (Section 172).

AMENDMENTS TO COMPANIES ACT 2016

- ix. Amendments to section 386 to provide that a receiver or receiver and manager appointed may continue to exercise all the powers provided to them after the winding up of a company.

“(b) a receiver and manager may continue to act as a receiver as referred to in paragraph (a); and”; and

“(c) a receiver and manager may continue to exercise all the powers of a receiver and manager for the purpose of carrying on the business of the company provided that the receiver and manager obtains consent from the liquidator or if the liquidator withholds his consent, the consent of the Court.”

AMENDMENTS TO COMPANIES ACT 2016

- x. Amendments to section 433, among others, to introduce new subsections:
 - (a) New subsection 433(4A) to empower the Minister to impose any limitations or conditions upon giving an approval for the appointment of a liquidator.
 - (b) New subsection 433(4B) to provide that the period for every approval of a liquidator is two years.

AMENDMENTS TO COMPANIES ACT 2016

- (c) The new subsection 433(4C) to empower the Minister responsible for finance to delegate all or any of his powers to any person or body of persons.

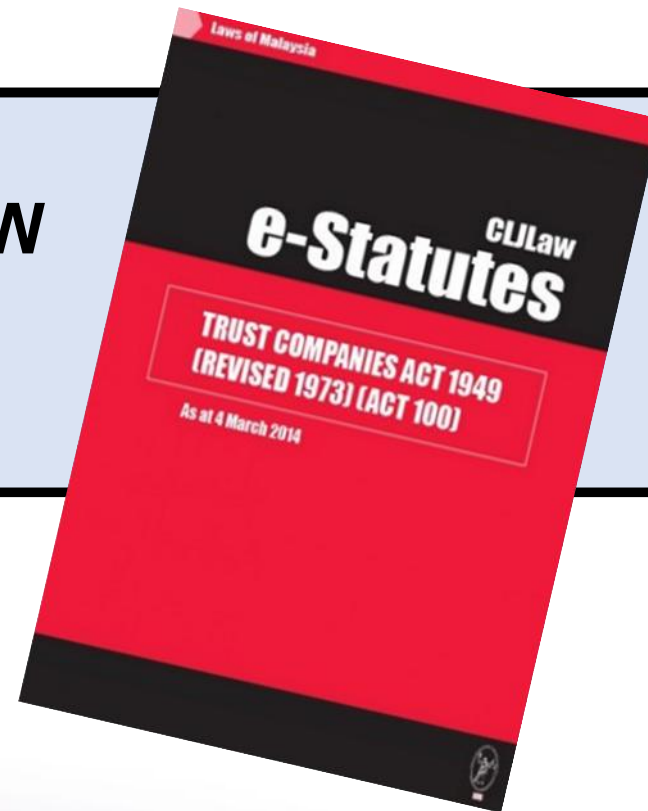
These new subsections are inserted in line with the decoupling of liquidator's licensing from auditors licensing requirements as provided for under the CA 2016 compared to the Companies Act 1965 [Repealed].

AMENDMENTS TO COMPANIES ACT 2016

- xi. Amendment to section 580A to introduce a new section to require company acting as plaintiff in any proceedings to give a sufficient security for costs.

This is similar with section 351 of the Companies Act 1965 [Repealed] and it is at the discretion of the court

PROPOSED CHANGES TO NEW TRUST COMPANIES ACT.



Trust Companies Act 1949 (TCA) provides for registration and regulation of trust companies in Malaysia.

The TCA has never been reviewed (in principal) since 1949.

The review recommends that the TCA be updated either by way of amendment or repeal of the Act.

To provide clarity,
certainty & to avoid
overlapping in law

To provide powers for
efficient management

To modernize the law
for an effective trust
administration

To promote trust
business in Malaysia
(competitiveness &
attractiveness)

To harmonize the law
with international
standard

To abolish outdated &
complicated rules for
registration process &
reporting procedure

PROPOSED CHANGES

Definition of Trust Business

- No specific definition is provided under TCA 1949.
- Providing a definition will provide clarity and will avoid potential jurisdictional overlapping.

PROPOSED CHANGES

Registration regime

- The TCA 1949 allows registration as trust companies if a public company carries on any one of the objects specified.
- The review recommends that registration is mandatory if a company intends to carry out trust business.
- Retains the policy that only public companies are allowed to carry out trust business.
- Exemption from registration is proposed to provide clarity e.g. professionals regulated under any written law.

PROPOSED CHANGES

Registration regime

- Simplified registration procedures – harmonization with CA 2016 particularly with regards to outdated concepts such as authorized capital, nominal value etc.
- Proposed that trust companies be required to have adequate professional indemnity insurance.
- Transparency of ownership and control -
 - BO information (of the trust company as well as of its legal arrangements).

PROPOSED CHANGES

Management of Trust Companies

- Enhancement of corporate governance practices
 - Specific duties and responsibilities as trustees.
 - Registrar is empowered to impose terms and conditions with regards to qualifications of directors of trust companies.
- Remuneration & fees of trust companies.

PROPOSED CHANGES

Cessation as trust companies

In addition to winding up procedures, it is proposed that a trust companies may “voluntarily” ceases its trust business by following the procedures as follows:

- Distribute the assets under its trust to the rightful beneficiaries.
- Find a new trustee for the assets.

**REVIEW ON REGISTRATION OF
BUSINESSES ACT 1956 (ROBA)**

THE REVIEW

The review was carried out to modernize the framework for registration of businesses in tandem with current business practices and models.

A business –

- Must be registered under section 5 ROBA 1956.
- Details need be disclosed on the website/web application as follows:
 - ✓ Name of the business;
 - ✓ Email address of the business;
 - ✓ Physical address of the place where the certificate of registration of business is kept;
 - ✓ Contact number(s) of the authorized person(s);
 - ✓ Business registration number;
 - ✓ Such other information as the Registrar may requires.

- Where a person does not have a physical place of business, the place of residence shall normally be regarded as his place of business.
- To facilitate the inspection of the certificate of registration of an online business not having a physical place of business.
- The certificate shall be kept at the ordinary place of residence which is deemed to be its place of business.

- An online business can be registered by using a personal name or trade name.
- Online business name and registration number must be displayed on a website, web application or in the online market platform.
- A business must display a business name and registration number outside the place of business and in the case of an online business, on its website.

- Renewal of registration must be made within thirty days before the date of expiry of the registration.
- Period of the renewal for the registration shall not exceed five years.

- ❑ SSM must be notified of any changes to the online business particulars such as:
 - change of digital business address.
 - change of place of business address.
 - change of phone number.
 - change of type of business.
 - change of particulars of sole proprietor or partner(s).
- ❑ Changes must be notified to SSM within 30 days.

- ❑ An online business may be terminated due to the following reasons:
 - ✓ ceased business;
 - ✓ bankrupt;
 - ✓ death;
 - ✓ Court order; or
 - ✓ by Registrar

- The Registrar must be notified within thirty days from the termination of the business.
- If case of the death of an associate, the person responsible shall within 4 month from the date of such death notify the Registrar.

Penalty for specific offences under section 12(1) of the Registration of Businesses Act 1956 [Act 197]:

- Liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 2 years or both. (Doing business without valid license)

Penalty for offence under section 12(2) of Act 197 (fail to display of registration certificate):

- Liable to a fine RM 2,000 or to imprisonment for a term not exceeding 2 years or both

General penalty under section 12(A) of Act 197:

- Liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding 1 year or both.



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23 & 24 JULY 2019
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IN THE DIGITAL AGE



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