



**Consultative Document**  
**on the Proposed Conditions to be Imposed on**  
**Companies Limited by Guarantees under**  
**Subsection 45(5) of the Companies Act 2016**

**13 May 2022**

Companies Commission of Malaysia (SSM) invites comments on the questions as set out in this Consultative Document on the Proposed Conditions to be Imposed on Companies Limited by Guarantees under Subsection 45(5) of the Companies Act 2016.

Please provide your name and the organisation you represent (where applicable) together with your comments.

We welcome comments to be submitted by email by 15 June 2022 to **lrpia@ssm.com.my** or any enquiries on this consultation to 03-22994734.

**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.

## TABLE OF CONTENTS

			Page
<b>OBJECTIVE</b>			4
			4
<b>BACKGROUND</b>			
<b>PART I</b>	<b>1.1</b>	<b>Present Law and Guidelines on Company Limited By Guarantee (CLBG)</b>	<u>4-7</u>
	<b>1.2</b>	<b>Comparison With Other Jurisdictions</b>	<u>7-8</u>
<b>PART II</b>	<b>2.</b>	<b>Proposed Policies and the Conditions for Licences Issued under Subsection 45(5) of the Act</b>	<u>8-11</u>

# **CONSULTATION DOCUMENT ON THE PROPOSED CONDITIONS TO BE IMPOSED ON COMPANY LIMITED BY GUARANTEES UNDER SUBSECTION 45(5) OF THE COMPANIES ACT 2016**

## **OBJECTIVE**

The objective of this Consultative Document is to obtain feedback from the public on the proposed conditions to be imposed by the Minister when granting a licence pursuant to subsection 45(5) of the Companies Act 2016 ("the Act").

2. This Consultative Document sets out the policies and recommendations in relation to the conditions to be complied with by a company limited by guarantee ("CLBG") when granted with licences under subsections 45(3) or (4) of the Act.

## **BACKGROUND**

### **PART I**

#### **1.1 PRESENT LAW AND GUIDELINES ON CLBG**

3. The Companies Act 2016 has strengthened the policies affecting CLBGs in cognisance of the vulnerability faced by this sector such as the risks associated with money laundering or terrorism financing. One of the fundamental policies under the Act is the clarification that the setting up of CLBGs is only for non-profit purposes as set out under section 45 of the Act. Such clarification sets the parameters in which a different set of a more stringent requirements are imposed on CLBGs.

4. Amongst others, the mandatory requirement for CLBGs to have constitution is retained to preserve the underlying principle as non-profit

organisations as compared to other companies. Similarly, the policy requiring CLBGs to obtain licence from the Minister in order to omit the word "Berhad" or for the purpose of holding land has been retained to ensure that a high degree of transparency and accountability is maintained.

5. To ensure the new policies are adequately understood and complied with, SSM issued the Guidelines for Company Limited by Guarantee ("Guidelines") on 8 January 2019 which has since been revised on 27 September 2021. The Guidelines details out and streamlines the process and procedures which are applicable to all CLBGs including for the purpose of licence application under subsection 45(3) or (4) of the Act respectively.

6. Despite the general guidance provided in the Guidelines, SSM is of the view that specific regulations are still necessary to address any uncertainties that may be faced by CLBGs.

7. Subsection 45(5) of the Act provides that the Minister may prescribe regulations or impose any conditions as he thinks fit for the purposes of approving the following licences:

- (a) for the omission of the word "Berhad" or the abbreviation "Bhd" from the name of a CLBG; and
- (b) for the holding of land by a CLBG.

8. Currently, all applications of the licences are dealt individually, and conditions are imposed based on the circumstances and merit of the application. As such, over the years, the conditions imposed in these licences vary from one CLBG to another. In addition, new conditions were also introduced to reflect the change of business environment and prevailing policies. As a result, different sets of conditions are imposed to different CLBGs although the application relates to the same licence. In

some instances, particularly to the earlier incorporated CLBGs, the approval of such licences was made without any conditions.

9. Collectively, there are a maximum of nine (9) conditions that are imposed in such licenses as follows:

- (i) the company is prohibited from making any changes or amendments to its Constitution without first obtaining permission from the Minister;
  - (ii) the company is prohibited from appointing new directors without obtaining the prior approval of the Minister;
  - (iii) the company shall ensure that no member or director uses the company or its financial resources to carry out any political or political or illegal activity;
  - (iv) the company shall use its profits and other income for the purposes specified in the object of the company;
  - (v) the company shall not apply for any contribution or donation or make any collection of money from the public without obtaining the prior approval of the Registrar;
  - (vi) the company shall not be allowed to establish a subsidiary/subsidiary and shall not be allowed to hold shares in other companies in excess of 49%;
  - (vii) the company is required to obtain all the sum of RM1 million pledged by prospective contributors within 6 months after it is incorporated;
  - (viii) the company cannot own and dispose land without prior approval from the Minister; and
- the company must comply at all times with all the provisions stated in the Constitution other than the conditions mentioned in the licence.

10. It is noted that some of these conditions<sup>1</sup> have already been adopted as part of the requirements to be complied with under the Guidelines regardless of whether a licence has been granted to the CLBGs in line with the overarching policy for more stringent regulatory parameters for CLBGs generally.

11. In view of the varying conditions imposed on CLBGs, SSM is of the view that specific regulations be introduced in line with the powers conferred on the Minister under subsection 45(5) of the Act. This will ultimately streamline the procedures and reduce the red tapes in processing the application for licensing towards a more efficient and effective service delivery.

## **1.2 COMPARISON WITH OTHER JURISDICTIONS**

### *Licence to omit the word "Limited" or "Ltd"*

12. In formulating the regulatory policies to determine the appropriate licence conditions for the regulations, SSM had conducted a comparative study on the legal framework of CLBG licences in other countries. It is concluded that in many jurisdictions such as Singapore, Brunei, Australia, Hong Kong and Saskatchewan, there are similar provisions on the application by CLBGs for a licence to exclude the word "Limited" or "Ltd" from its name and the licence is granted by the Registrar based on the substantive provisions embedded in their respective legislations.

13. In these jurisdictions, the legislation provides that the application for such licences may be permitted or approved by the Registrar if he is satisfied of the objects the CLBG or thinks fit of the conditions of the licence.

---

<sup>1</sup> These are conditions stated under paragraph 9(i),(ii), (iv),(v),(vi) and (viii).

14. Amongst the conditions on the licence are as follows:
- (a) that the objects of the company are restricted to those specified;
  - (b) that the company has some basis of national or general public interest;
  - (c) that the company is in a financial position to carry out the objects for which it was formed; and
  - (d) that by its constitution the company is required to apply its profits or other income in promoting its objects; and
  - (e) that the company is prohibited from paying any dividend to its members.

*Licence to hold land*

15. From the benchmarking studies in these jurisdictions, the matter relating to licence to hold land is not dealt with under their respective legislation.

**PART II**

**2. PROPOSED POLICIES AND THE CONDITIONS FOR LICENCES ISSUED UNDER SUBSECTION 45(5) OF THE ACT**

**Standardised the licence conditions for CLBGs**

**Recommendation 1**

16. SSM recommends that the regulations provides for a standard licence condition for CLBGs pursuant to subsection 45(5) of the Act.

17. This will eliminate the current practice where the issuance of licences are subjected to different sets of conditions. SSM is of the view that a uniform set of conditions would provide clarity and improve the overall



transparency. At the same time, it will reduce the administrative burden faced by CLBGs and expedite the approval licence.

**Question 1:** With the new framework, do you agree to have a standard set of conditions as proposed? Please provide clarifications to your response.

**Specific conditions for the licence to Omit the word “Berhad” or “Bhd”**

**Recommendation 2**

18. It is proposed that the requirement of the RM1 million contribution fund be retained for a CLBG applying for a licence to omit the word “Berhad” or “Bhd” from its name. One of the implications of omitting the word “Berhad” or “Bhd” is that such CLBGs may be seen as charitable entities that are not registered under the Act. To avoid the assumptions that CLBGs are charities that can freely solicit donations from the public, the RM1 million is necessary to ensure that such CLBGs are in a financial position to carry out its objectives and able to financially sustain its operations without the threat of being wound up.

19. As such, it is proposed that a CLBG that has been granted with licence to omit the word “Berhad” or “Bhd” is required to fulfil the following conditions:

- (a) to obtain RM1 million fund within six (6) months after the licence has been granted; and
- (b) the CLBG shall ensure that no member or its director uses the company or its financial resources to carry out any political or illegal activity.

**Question 2:** Do you agree that the amount of RM1 million as an initial fund is adequate for a CLBG to carry out its objectives? If you disagree with the amount, please provide your suggestion for the amount or other mechanism that could be used to achieve this policy. Please provide clarifications to your response.

**Question 3:** Do you agree that the Minister can reduce the amount or waive such condition? Please provide clarifications to your response.

### **Application for extension of time to fulfil RM1 million condition**

#### **Recommendation 3**

20. It is proposed that in the event the CLBG is unable to obtain the RM1million fund, the CLBG is allowed to apply for an extension of time for a further period of six (6) months.

**Question 4:** Do you agree that the six (6) months' timeframe is reasonable to obtain the full amount of the RM1million contribution? Please provide clarifications to your response.

**Question 5:** Do you agree that an extension period of a further six (6) months is sufficient? Please provide clarifications to your response.

### **Cooling off period for fresh application to omit the word "Berhad" after licence revoked**

#### **Recommendation 4**

21. SSM recommends that the regulations provides for a revocation clause in event the licensed CLBG does not comply with the conditions.

22. At the same time, SSM recommends that the regulations provides for an opportunity for a CLBG, which licence has been revoked due to non-compliance of the conditions, to make a fresh application under subsection 45(3) after a cooling off period of three (3) years from the date of the revocation of its previous licence. This is to ensure that the CLBG is genuine in executing its objects in good faith and abide with the rules set by SSM in issuing such licences.

**Question 6:** Do you agree that the Minister can revoke the licence of the CLBG due to the non-fulfilment of the RM1million contribution condition? Please provide clarifications to your response.

**Question 7:** Do you agree that in event the CLBG intends to omit the word "Berhad" or "Bhd" from its name, there should be a cooling off period of at least three (3) years from the date of revocation of its previous licence before the CLBG can make a fresh application? Please provide clarifications to your response.

### **Specific conditions for the licence to hold land**

#### **Recommendation 5**

23. It is proposed that a CLBG that has been granted with licence to hold land is required to fulfil the following condition:

- (a) the CLBG cannot own and dispose land without prior approval from the Minister.

**Question 8:** Do you agree with this condition? Do you have other specific issues of concern relating to this matter?