



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

1

# HIGHLIGHTS OF THE COMPANIES ACT 2016

**26 OCTOBER 2017**

# TABLING OF THE BILL



attention

Gazetted on 15 September 2016

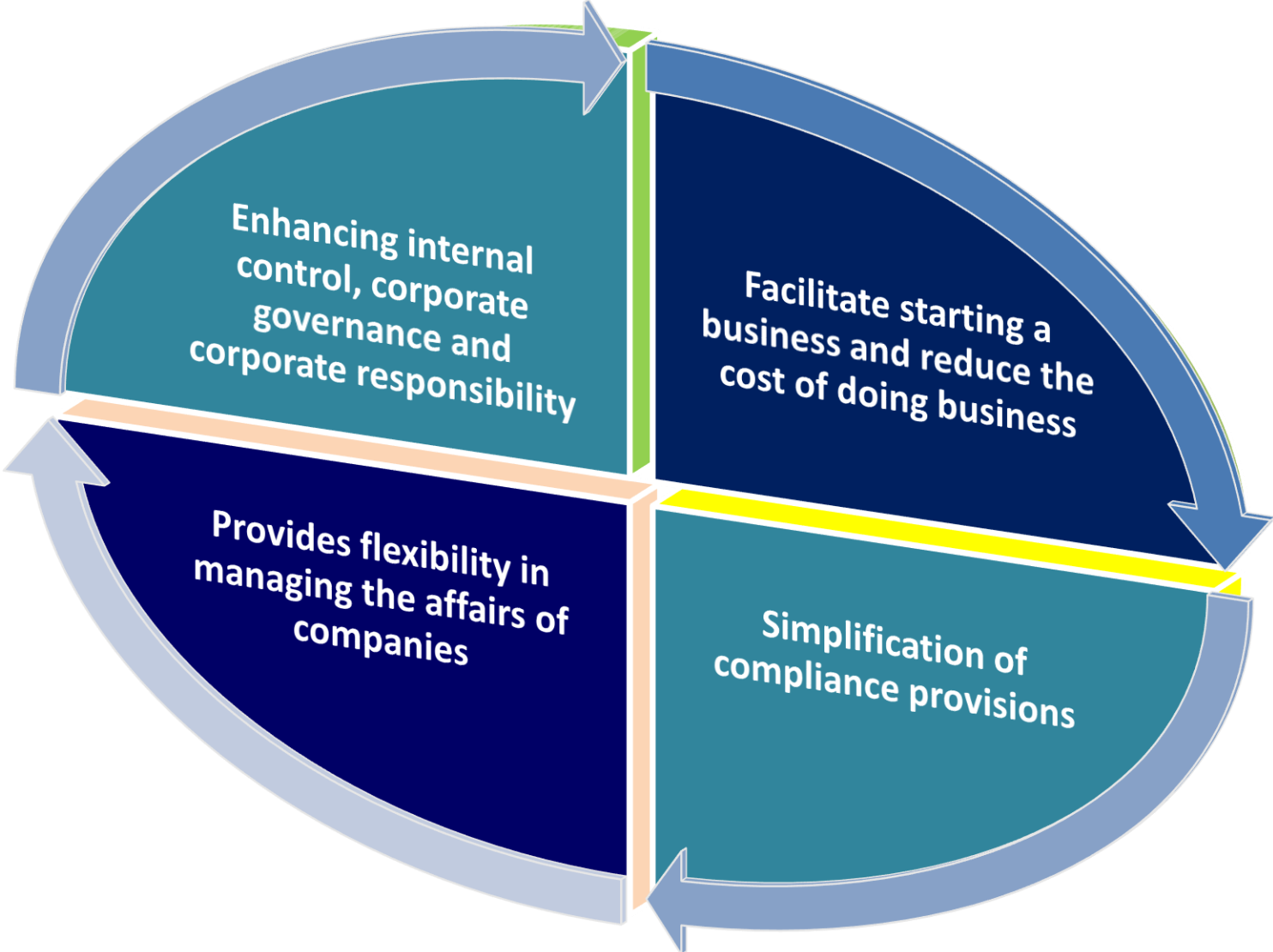
## Companies Act 2016 [Act 777]

Enforced on 31 January 2017

Passed at Dewan Rakyat  
on 4 April 2016

Passed at Dewan Negara  
on 28 April 2016

# IMPACTS OF THE NEW COMPANIES ACT 2016



# MODERNISING ENTRANCE INTO CORPORATE SECTOR

## SECTIONS:

- 196 (1) (a) & (b) – Minimum number of directors for public & private companies

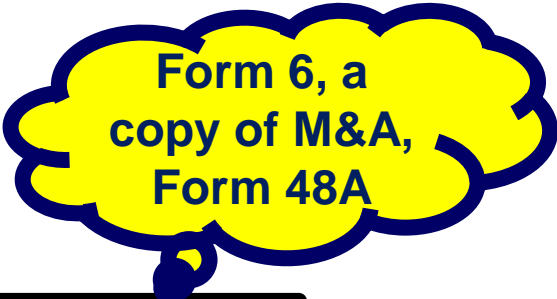
A company can be incorporated by a **single member** and that single member can also be the sole director

Public company must have at least two directors

**SINGLE MEMBER  
COMPANY**

# MODERNISING ENTRANCE INTO CORPORATE SECTOR

- Incorporation process through a superform by **promoter(s)/shareholder(s)**
- M&A and appointment of secretary at point incorporation is optional.



Form 6, a  
copy of M&A,  
Form 48A



**No more multiple forms for  
Incorporation process**

# MODERNISING ENTRANCE INTO CORPORATE SECTOR

## Sections:

- 31(2) and (3)
- 619(3): Transitional provision

- **Constitution (M&A and AA) is optional.**
- **A company may adopt constitution after incorporation.**

**However, company limited by guarantee (CLBG) is still required to have constitution at the point of incorporation.**

# MODERNISING ENTRANCE INTO CORPORATE SECTOR

- **Notice of registration is conclusive evidence. Section: 19**
- **Purchase of certificate is optional. Section: 17**

# MODERNISING ENTRANCE INTO CORPORATE SECTOR

**Entrenchment of separate legal entity and unlimited capacity concepts** which is not confined to object clause as currently used in other leading jurisdictions.

**Effect of incorporation – company is a body corporate with legal personality separate from its members and have the full capacity to undertake any business activities.**

- **Section: 21(1): unlimited capacity**
- **Section 14(2): A company shall not be formed for any unlawful purpose**



# MODERNISING ENTRANCE INTO CORPORATE SECTOR

**Ease of doing business – increase business efficiency.**

## **Common seals**

- **Optional- Section: 61**
- **If a company decides to have a common seal, the provisions of the law must be observed – Section 61(2)**

# MODERNISING ENTRANCE INTO CORPORATE SECTOR

## Execution of documents

- by affixing common seal as provided in the constitution – Section: 66(1)(a);  
or
- by at least 2 persons authorized by the Board - Sections: 66(2)(a)
- “Authorised officer”- 66(5)

**In cases of single director, by that director and must be witnessed –  
Clause: 66(2)(b)**

# MODERNISING ENTRANCE INTO CORPORATE SECTOR

**To simplify procedures and facilitate entry into business.**

## **Name of companies**

- **Names must be approved – Sections 27(1) & (2)**
- **Names cannot be identical – Section 26(1)(b)**
- **Reservation of names is optional – Section 27 (4)**
- **If proposed name is not available, Registrar has the power to assign specific expression for the company name – Section 25(2)(b)**

# FUNDAMENTALS OF A COMPANY

## Single member /single director company

Single member can also be the sole director

Public company must have at least two directors.

## Simplified incorporation process

Superform – No more multiple forms

M&A optional

Secretary at point incorporation is optional

Notice of registration is conclusive evidence

## Effect of incorporation

Company is a body corporate with legal personality separate from its members

Has full capacity to undertake any business activities.

# FUNDAMENTALS OF A COMPANY – POST INCORPORATION

## Evidence of membership

Entry of names of members in the register of members

Share certificate is optional

## Execution of documents

Company seal becomes optional

Document may be executed by authorised officers

## Other requirements

Appointment of secretary within 30 days after incorporation

# DEFINITION OF DIRECTORS

New

- “Board” in relation to a company, means—
  - a) directors of the company who number not less than the required quorum acting as a board of directors; or
  - a) if the company has only one director, that director;

# RESIGNATION, VACATION OR DEATH OF LAST REMAINING DIRECTOR

- In the event the office of a sole director or the last remaining director becomes vacant due to death, disqualification of being director or otherwise vacation of office in accordance with the constitution , the secretary is responsible to call a meeting of next of kin or personal representatives for the purposes of appointing a new director.
- If next of kin, personal representative or members fail to appoint a director within 6 months, the Registrar may direct to strike the company off the register.

# APPROVAL OF FEES

New

- The fees of directors of public companies or its subsidiaries must be approved at general meetings.
- For private companies, the Board may approve the fees but shareholders must be notified accordingly. Shareholders may object on the basis that the payment is not fair to the company.



# DIRECTORS' SERVICE CONTRACTS

New

- A director's "service contract" in relation to a public company means a contract under which—
  - a) a director of the company undertakes personally to perform services, as a director or otherwise for the public company or for a subsidiary of the public company; or
  - b) services that a director of the public company undertakes personally to perform as director or otherwise are made available by a third party to the public company, or to a subsidiary of the public company.

# DIRECTORS' SERVICE CONTRACTS

New

- Requirement to keep service contracts at registered office
- Contracts which must be made available for inspection
  - at least one year from the date of termination or expiry of the contract.
- Rights to inspect and request for a copy of service contracts
  - Members of public company may inspect director's service contract (5% of members holding paid up shares or 10% of members, in cases of CLBG.)

# CONTRACTS WITH SOLE MEMBER/DIRECTOR

New

- When a single member/director company enter into a contract with that director and the contract is not in the ordinary business of the company.
- If the contract is not in writing, the contract must be recorded in the minutes of the board meeting following the making of the contract.

# BUSINESS REVIEW REPORT

New

- Introduction of business review report (internal control and corporate responsibility report) to be part of directors report.
- The report will be on voluntary basis and will cover the following aspects:
  - i. Review of the company's business, principal risks and uncertainties faced by the company, analysis of performance of the company and key performance indicators
  - ii. Information on company's policies relating to environmental matters and its impact on the company's business; employees and social and community issues
  - iii. Information on persons whom the company has contractual or other arrangements which are essential to the business of the company unless the information is prejudicial to that person or contrary to public interest.

# MEMBERS' RIGHTS FOR MANAGEMENT REVIEW

New

- Members must be given reasonable opportunity at a meeting to question, discuss, comments or make recommendation on the management of a company.
- Directors are only obliged to carry out the recommendation if it is passed as special resolution and is in the best interest of the company.

# OTHER DUTIES

- The holding of AGM for public companies
- Recording the minutes of all meetings;
- Circulation of financial statements and directors' report;
- Making of annual return and lodgement with the Registrar of Companies.
- Maintaining a registered office;
- Publication of company name and company number;
- Appointment of qualified persons as secretaries;
- Making a declaration of solvency in the case of voluntary winding up by member;
- Ensuring that payment of dividend is from profits only; and
- Registration of charges.

# OVERVIEW OF PROVISIONS AFFECTING COMPANY SECRETARIES AND AUDITORS

New

## SECRETARY

- **Requirement to register with Registrar**

## AUDITOR

- **Effective date for resignation**
- **Rights of resigning auditors of public companies**
- **Attendance at meetings where financial statements are laid**

## NEW DUTY

### **Duty of secretary to enter issuance and transfer of shares in the register of members**

- Secretary shall cause the register of members to be properly kept and maintained regularly and all the particulars on issuance and transfer of shares are entered into the register.
- Penalty: Fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.



## NEW DUTY

### **Resignation, vacation or death of sole director or last remaining director**

- For the purpose of appointing a new director, in the event of the office of a sole director or the last remaining director of the company being vacated, the secretary shall, as soon as practicable, call a meeting of the next of kin, other personal representatives or a meeting of members, as the case may be.
- The secretary shall be entitled to be indemnified by the company in relation to any reasonable costs and expenses of the meeting so convened.

- **Requirement to register with Registrar**
- New Requirement for **ALL** Secretaries to register with Registrar:
- Any person who is qualified and desires to act as a secretary must register with the Registrar before he/she can act as a secretary.
- Once registered, a practicing certificate will be issued.
- Transitional period: Within 12 months from the commencement of the Act, existing secretaries are required to be registered.

- **Resignation of auditor**
  - By giving notice in writing and delivered to the registered office of the company
  - Resignation takes effect after twenty-one days or from the date as may be specified in the notice
- **Rights of resigning auditor of a public company**
  - Notice of resignation may be accompanied with a statement of circumstances connected with his resignation.
  - In giving notice of resignation, an auditor may also request the directors to immediately convene a general meeting to receive and consider the explanation of the circumstances connected with his resignation.
  - Such meeting must be convened within 28 days from the notice of requisition.

- **Attendance where financial statements are laid**
  - Auditor or his representative must attend the meeting where the financial statements of the company is being laid.
  - To respond to any question relevant to the audit of the financial statements
  - Mandatory for public companies
  - In cases of private companies, only becomes mandatory when requested by the company.

# NO PAR VALUE REGIME

New

- Shares to be issued without par value
- Shares will be issued at a price
- Share premium account, CRR and the concept of authorised capital will no longer be applicable.
- Transitional period of 24 months will be given for companies to utilise the amount standing in credit in the company's share premium accounts.

- **What does it mean that par value regime is misleading or irrelevant?**
  - ✓ Nominal or par value is only applicable at the point of issuance of shares. The actual value of a company will vary in accordance with the current situation faced by the company
  - ✓ The issued price of shares will be determined by the current value of the company, factors affecting the business of the company and the capital that the company is seeking to raise
  - ✓ The nominal value of the shares will not accord protection to the shareholders, instead the rights of shareholders are attached to the shares.
  - ✓ This includes the right to attend, speak and vote at meetings of shareholders and the right to dividends
  - ✓ The rights of shareholders depends on the number of shares held and not the value of shares when it was first purchased.

- During the transitional period, companies having credit in its share premium account could utilise them for specific purposes, to pay/provide for:
  - ✓ the premium payable on redemption of debentures or redeemable premium shares issued;
  - ✓ writing off the preliminary expenses incurred or any expenses, commissions, brokerage or allowances incurred by the company or to write off any duty, tax payable in connection with any issuance of shares of the company;
  - ✓ unissued shares as a fully paid up bonus shares;
  - ✓ in whole or in part the balance of any unpaid shares issued to its members; or
  - ✓ dividends to its shareholders.

# INTRODUCTION OF SOLVENCY STATEMENTS

New

Reduction of share  
capital

Redemption of  
preference shares

Provision of financial  
assistance

Share buyback



## Corporate Exercise

## TEST

Reduction Of Share Capital, Redemption Of Preference Shares, Financial Assistance

- (a) immediately after the transaction there will be no ground on which the company could be found to be unable to pay its debts;
- (b) either—
- (i) it is intended to commence the winding up of the company within twelve months after the date of the transaction, the company will be able to pay its debts in full within twelve months after the commencement of the winding up; or
  - (ii) in any other case, the company will be able to pay its debts as the debts become due during the period of twelve months immediately following the date of the transaction; and
- (c) the asset of the company is more than the liability of the company at the date of the transaction.

## Corporate exercise

## TEST

### Share buyback

- the share buyback would not result in the company being insolvent and its capital being impaired at the date of the solvency statement; and
- the company will remain solvent after each buyback during the period of six months after the date of the declaration made.

For the purposes of the above—

- a) a company shall be deemed to be solvent if it is able to continue to meet its debts as and when the debts become due without any substantial disposition of its assets outside the ordinary course of its business, restructuring its debts, externally forced revisions of its operations or other similar actions;
- b) the capital of a company shall be deemed to be impaired when the value of its net assets is less than the aggregate amount of all the shares of the company after the share buyback.

# REDUCTION OF SHARE CAPITAL

New

- Introduction of an alternative method for reduction of share capital without having to go through Court provided solvency statements are made by ALL directors
- Special resolution supported by solvency statement
- Send notice to DG of Inland Revenue Board and the Registrar
- Must send the solvency statement to members and made available the solvency statement at the registered office for a period of 6 weeks after the passing of the resolution.
- Creditors has the right to object by application to Court to cancel the resolution

# FINANCIAL ASSISTANCE NOT EXCEEDING 10% OF SHAREHOLDERS' FUNDS

New

The strict prohibition is lifted for companies (other than listed companies) to provide financial assistance provided that the amount does not exceed 10% of the shareholders' fund and must be supported by a solvency statements by directors.

# OVERVIEW

## 'Meeting'

Not defined in statute

Prima facie means a coming together of more than 1 person

Board

Members Meeting

Private v Public Companies

# MEETINGS AND DECISION MAKING

## Annual General Meetings – Public Companies

- **Every calendar year.**
  - Table audited financial accounts
  - Elect directors
  - Appoint & fix directors' fees
  - Any other resolution that may be passed in accordance with the Act or the constitution
- **Time:** Within 18 months from incorporation. Subsequently within 6 months of company's FYE and <15 months after the last AGM
- Apply to Registrar for **extension of time.**
- Any member may apply to **Court for order** to compel company to hold AGM.

## ANNUAL GENERAL MEETING

- **Public companies** are required to hold AGM every calendar year.
- **Private companies**: None.
  - Meetings of private companies are known as **meeting of members**.
  - The main method for private companies to make decisions will be by way of **written resolution**.

## WRITTEN RESOLUTIONS

- Provisions relating to written resolutions are only applicable to private companies.
- The required percentage to pass a resolution will be similar as though the resolution would be passed at a meeting of members.



## MEMBERS' POWER TO REQUIRE CIRCULATION OF WRITTEN RESOLUTION

- Members having a total of 2.5% voting rights or 50 members who have right to vote and for companies not having a share capital, members having a total of 2.5% voting rights, to be allowed to a statement to demand, alter or add items into the AGM's Agenda.
- However, the company has the option not to circulate the statements if they are frivolous, vexatious or defamatory and if such statement is not in the best interest of the company.

## MEETINGS AT MULTIPLE VENUES

- A company may hold meeting at more than one venues
- Using any technology or method that enables members of the company an opportunity to participate and exercise their right to speak and vote at the meeting.
- Main meeting venue shall be in Malaysia where the chairperson is present.

## APPOINTMENT OF PROXY

- Dispensation of qualification of proxy
- May appoint **another person** as proxy.

## MEMBERS' RIGHTS FOR MANAGEMENT REVIEW

- Reasonable opportunity at meetings to question, discuss, comments or make recommendation on the management of a company.
- Directors are only obliged to carry out the recommendation if:
  - it is passed as **special resolution** and
  - is **in the best interest** of the company.

## Annual Return

### De-coupling of the requirement to lodge audited financial statements

- Must be lodged within 30 days of the anniversary of the company's incorporation date.
- Company may submit a “no-change” annual return when there is no changes since the last annual return was filed.
- Failure to lodge more than 3 consecutive years is a ground for striking off

## Duty to lodge financial statements and reports with the Registrar

- In the case of private company, financial statements are to be lodged within 30 days from the time the financial statements were circulated to members.
- In the case of public company, within 30 days from its AGM.

## Rectification of register

- The Registrar on his own accord may take steps to rectify the register on matters which is contrary to laws, false or misleading, etc.
- The Registrar may refuse to rectify errors arising not due to his duties.
- Any person may appeal against decision of Registrar for his refusal to rectify error to Court.

## Methods of communications between company and members

Communication between a company and its members shall be either in hard copy form, electronic forms or other methods agreed between the company and its members which must be stated in the constitution.



## Reliance on Practice Notes, Circulars and Guidelines

- Power to issue Practice Notes, Circulars or Guidelines on any provisions in the Companies Act.
- Administrative penalties may also be provided under the Practice Notes, Circulars or Guidelines

(Provided for under the Companies Commission of Malaysia (Amendment) Act 2014)

# SSM COMPASS ON “COMPANIES ACT 2016 & INTEREST SCHEMES ACT 2016”



*Thank you*