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Snippets from the new Companies Act 2016

Angelina Cheah
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Rakyat on
Apr 4, 2016

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Dewan
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Apr 28, 2106

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Jan 31, 2017

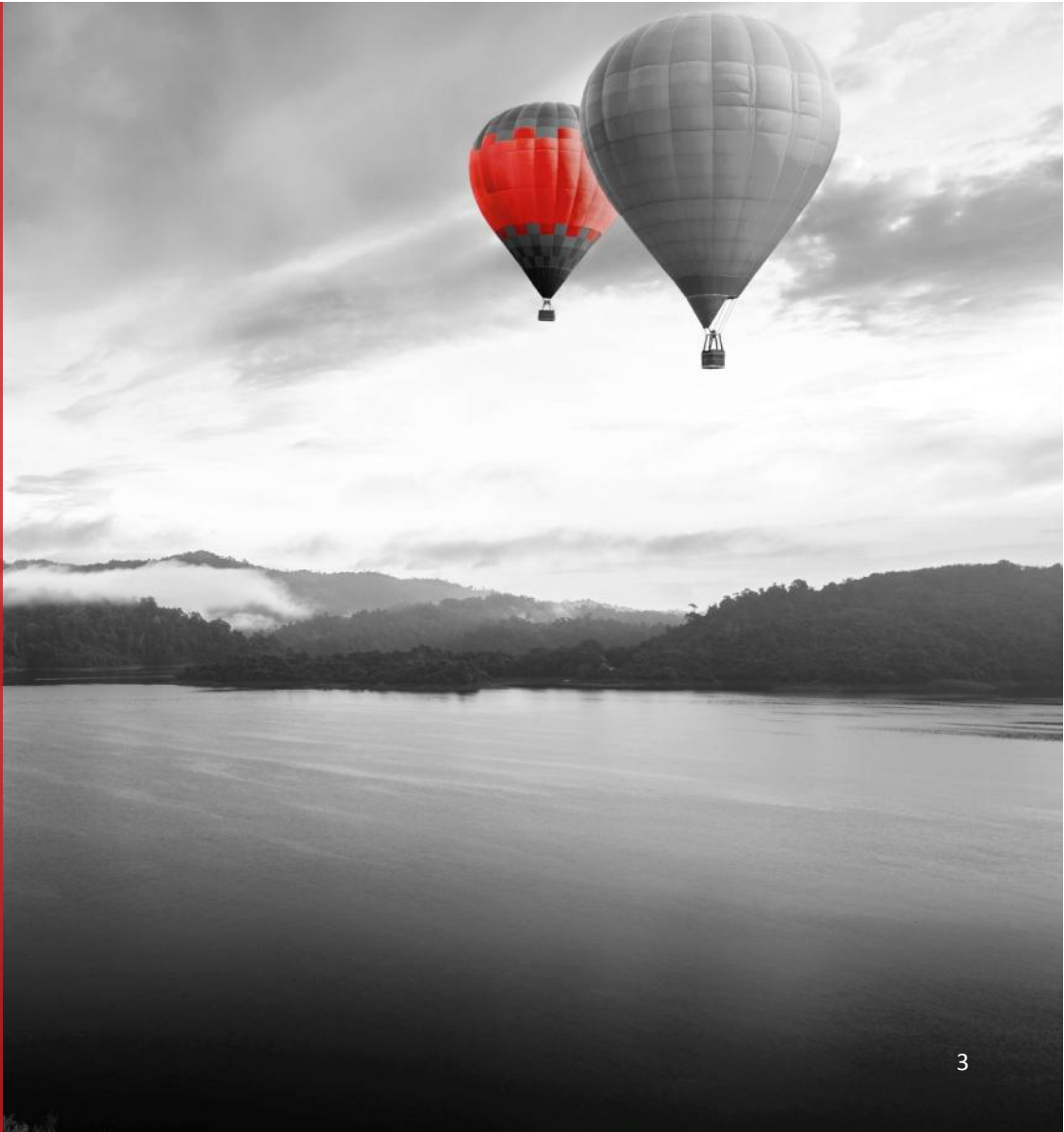
- COMPANIES ACT 2016 [ACT 777] &
- INTEREST SCHEMES ACT 2016 [Act 778]



CONTENT



- ① Modernizing Entrance into Corporate Sector
- ② Directors, Officers & Shareholders
- ③ Shares & Capital
- ④ Managing Annual Filing Deadlines



Modernizing Entrance into Corporate Sector

SECTION 196(1)(A) & (B)

- **MINIMUM NUMBER OF DIRECTOR(S) FOR PRIVATE & PUBLIC 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 2 directors

- Incorporation by way of a superform – Constitution & appointment of Company Secretary not compulsory at the point of incorporation

EFFECTS OF INCORPORATION

- **NO** more certificate of incorporation – notice of registration is conclusive evidence
- A company is a body corporate with legal personality separate from its member(s) and have the full capacity to undertake any business activities (Section 21(1))
- Section 14(2) – a company shall not be formed for any unlawful purposes
- Common Seal becomes optional (Section 61)
- Execution of documents either under common seal as provided by constitution OR any two persons authorized by the Board OR any authorized person OR if sole director, then must be witnessed
- **NO** more share certificates unless upon application – Register of Members becomes prima facie evidence of title of shares

Directors, Officers & Shareholders

RESPONSIBILITIES FOR DIRECTORS

Definition of director:

occupying a position of a director or by whatever name called, a person who controls the board (shadow director), an alternate or substitute director

- Duty to act in the best interest of the Company
- Business Judgement Rule
- Prohibition of tax free payments to directors
- Resignation, vacation or death of sole director or last remaining director
- Approval of fees of directors – and for public companies including subsidiaries, benefits as well
- Director Service Contracts to be made available for inspection – for public company
- Business review report – internal control & corporate responsibility – voluntary basis
- Management Review
- Perform solvency test before declaration of dividend, share buy-back, reduction of capital, provision of financial assistance

Highest Penalty:

< RM 3million and / or imprisonment < 5 years and a further daily fine if the offence continues after conviction

GENERAL MEETING OF MEMBERS

- Annual General Meeting is only applicable to public company
- Members having a total of 2.5% voting rights or 50 members who have a right to vote to be allowed to a statement of demand, alter or add item into AGM agenda
- However, a company has the option not to circulate the statement if they are frivolous, vexatious or defamatory and if such statement is not in the best interest of the company
- Meeting can be at multiple venues
- Main venue in Malaysia where chairman is using any technology and method so long as members can exercise their rights to vote & speak
- Dispensation of qualification of proxy



MEMBERS' RESOLUTION

- Private company not required to hold Annual General Meeting. Members can have meeting of members or make decisions / resolutions by way of circular resolutions
- The required percentage to pass a circular resolution will be similar as though the resolution would be passed at a meeting of members



ADDITIONAL REQUIREMENTS RELATING TO REGISTER OF MEMBERS

- Any changes relating to a shareholder must be notified to the Registrar **within 14 days** after the information has been updated in the Registrar of Members
- Power to require disclosure of beneficial interest in its voting shares is extended to all companies for directors/shareholders. Registrar/Bursa Securities/Securities Commission may invoke its power to request company to disclose information on beneficial ownership.

Penalty: < RM500k and/or imprisonment < 10 years and a further fine of RM1k daily if the offence continues after conviction

Shares & Capital

NO PAR VALUE REGIME

- Shares to be issued without par value
- Shares will be issued at a price which 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
- Share premium account, CRR and the concept of authorized capital will no longer be applicable
- Transitional period of 24 months will be given for companies to utilize the amount standing in credit in the company's share premium accounts – redemption of debentures, bonus shares, dividends to shareholders or writing off the preliminary expenses in connection with issuance of shares of the company
- The rights of shareholders depends on the number of shares held and not the value of shares when it was first purchased

SOLVENCY STATEMENT – SUBDIVISION 3

Corporate Exercises	Reduction of Share Capital / Redemption of Preference Shares	Share buy-back / Provision of Financial Assistance
Who	All Directors	Majority of Directors
Requirement	(a) Inquire into the company's state of affairs ie. no grounds that the company is unable to pay its debts - solvent; (b) Assets is more than the liabilities	Same
Additional Requirement For Share Buy - Back	-	(a) Necessary for the company to buy back its shares; and (b) The share buy-back is made in good faith and in the best interest of the company
Time Frame	12 months from the date of transaction	6 months from the date of declaration / 12 months from the date of transaction

Penalty: < RM500k and /or imprisonment < 5 years

REDUCTION OF SHARE CAPITAL – SUBDIVISION 4

- Alternative method for capital reduction without having to go through Court provided solvency statements are made by ALL directors
- Special Resolution required supported by solvency statement
- Send notice to DG of Inland Revenue Board and the Registrar
- Solvency statement must be sent to all members and made available at the registered office for a period of 6 weeks after the passing of the resolution
- Creditors have the right to object by application to Court to cancel the resolution



FINANCIAL ASSISTANCE NOT EXCEEDING 10% OF SHAREHOLDERS' FUNDS

- Except for listed companies and subject to the provisions of the Companies Act 2016, the strict prohibition is lifted for private limited companies to provide financial assistance provided that the amount does not exceed 10% of the shareholders' fund and must be supported by a solvency statement made by a majority of directors

Penalty: < RM3 million and/or imprisonment < 5 years



DISTRIBUTION OF DIVIDENDS – SUBDIVISION 6

- Dividends may only be distributed out of profits
- Distribution can only be made when the company is solvent
- i.e. the company is able to pay debts as and when they fall due within 12 months immediately after the distribution is made
- If after authorization but before distribution is made, the company ceases to be solvent, the directors must take necessary steps to prevent the distribution
- Company may recover distribution paid from shareholder, director and manager who has authorized the payment

Penalty: < RM3 million and/or imprisonment < 5 years

Managing Annual Filing Deadlines

DECOUPLING OF REQUIREMENT TO LODGE AUDITED FINANCIAL STATEMENTS (AFS) WITH ANNUAL RETURN (AR)

- AR must be lodged within 30 days from the anniversary of its incorporation date
- If there are no changes to the AR from the last return, a company is allowed to file a 'No Change' return
- Failure to lodge a AR for three consecutive years will give the Registrar grounds to strike off the company

Penalty: < RM50,000 and a further fine of not exceeding RM1,000 daily if offence continues upon conviction

DECOUPLING OF REQUIREMENT TO LODGE AUDITED FINANCIAL STATEMENTS (AFS) WITH ANNUAL RETURN (AR)

AUDITED FINANCIAL STATEMENTS

- AFS must be circulated to members within 6 months from its financial year end for a private company whereas for a public company, it would be at least 21 days before the date of its Annual General Meeting

Penalty: < RM50,000 and a further fine of not exceeding RM500 daily if offence continues upon conviction

- For private company, the AFS must be lodged with the Registrar within 30 days from the date of its circulation to members
- For public company, the AFS must be lodged with the Registrar within 30 days from its Annual General Meeting

Penalty: < RM50,000 and a further fine of not exceeding RM1,000 daily if offence continues upon conviction

THANK YOU!

If you have any questions regarding this presentation, please email

to chee.kien.loke@tmf-group.com (017-9205288) or

angelina.cheah@tmf-group.com (012-7207118).



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