MALAYSIA - NEW COMPANIES ACT 2016 AND COMPANY REGULATIONS 2017

On 31 August 2016, the Companies Act 2016 ("CA 2016") had been gazetted to replace the Companies Act 1965 ("Old CA") to provide greater flexibility, certainty and ease for those operating or doing business using Malaysian companies.

The Companies Commission of Malaysia ("SSM" or "the Registrar") have notified that the CA 2016 and Company Regulations 2017 (CR 2017) will be implemented on a staggered basis with the first phase effective from 31 January 2017 ("Enforcement Date"). With the enforcement of the first phase of the CA 2016, the old CA is repealed.

Hence, the CA 2016 came into operation on the Enforcement Date except for the following provisions in the CA 2016:-
(a) Provision relating to the requirement for companies secretaries to register with the Registrar of Companies; and
(b) Provisions relating to corporate rescue mechanisms on corporate voluntary arrangement and judicial management.

The table below summarises the main changes to private companies limited by shares:

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<tr>
<th>Topic</th>
<th>CA 2016</th>
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<tr>
<td>1. Minimum director</td>
<td>One (1) natural person who is at least eighteen years of age and shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.</td>
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<td>2. Single director / member</td>
<td>A company may be incorporated by or have only one (1) member and that single member can also be the sole director of the company. “Member” may be individual or corporate, Malaysian or foreigner.</td>
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<td>3. Authorised share capital</td>
<td>The authorised capital concept has been abolished. Instead, a company is required to notify its issued share capital and paid-up capital.</td>
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<td>4. Par or Nominal value</td>
<td>All shares of a company shall have NO par or nominal value. Companies need not set any minimum value for shares and may issue shares at the price determined by the Board. The valuation method to determine the share price would vary between companies and the Board must consider all issues and act in the best interest of the company in determining the share price.</td>
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<td>5. Memorandum &amp; Articles of Association (M&amp;A)</td>
<td>Companies can have the option of adopting a Constitution or not. M&amp;A of existing companies will be deemed to be the Constitution from the Enforcement Date. The Constitution may or may not contain provisions relating to objects of the Company.</td>
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<td>6. Nature of business</td>
<td>A company must notify the Registrar of any change of the nature of its business within fourteen (14) days after such change.</td>
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| 7. Publication of name | A company shall display its registered name and company registration number at -  
(a) its registered office;  
(b) every place where its business is carried on; and  
(c) every place where its books are kept.  
A company shall disclose its registered name and company registration number on -  
(a) its business letters, notices and other official publications, including in electronic form (eg. email);  
(b) its websites;  
(c) its bills of exchange, promissory notes, endorsements and order forms;  
(d) cheques purporting to be signed by or on behalf of the company;  
(e) orders invoices and other demands for payment, receipts and letters of credit purporting to be issued or signed by or on behalf of the company; and  
(f) all other forms of its business correspondence and documentation. |
| 8. Common seal | A company may or may not have a common seal. |
| 9. Annual Return | CA 2016 de-couples the filing requirements of Annual Return and audited financial statements  
Annual Return is due on anniversary of a company’s incorporation date (“Due Date”) and is required to be lodged with the Registrar within 30 days of the Due Date. |
| 10. Annual General Meeting (AGM) | All private companies are no longer required to hold AGM in every calendar year. Decisions of private companies can be fully made through written circular resolutions except for the following matters:-  
- Resolution to remove a director before the expiration of his term of office; or  
- Resolution to remove an auditor before the expiration of his term of office. |
| 11. Member(s) Circular Resolution | A written resolution of private companies shall be passed when the required MAJORITY of eligible members have signified their agreement to the resolution within 28 days from the circulation date.  
  - If the written resolution is an ordinary resolution, a simple majority of members who are eligible to vote is sufficient to pass the resolution.  
  - For special resolution, it requires 75% or more of members who are eligible to vote to pass the resolution. |
| 12. Audited financial statements | With abolition of AGM for private companies, the Company shall circulate the audited financial statements and reports to every member of the Company within six (6) months from the end of its financial year end.  
The audited financial statements and reports shall be lodged with the Registrar within thirty (30) days from the date of circulation to its members. |
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| **13. Dividend** | Dividends may only be made out of profits of the company. Dividends may be approved by directors if they are satisfied that the company is solvent. The following must be considered by directors before authorising the distribution of dividends:-  
  - Directors must consider whether the company is able to pay its debts as and when they become due within twelve (12) months immediately after the distribution is made (“solvency test”).  
  - Prior to making payment of the authorised dividends, the directors must reconsider the solvency test and take all necessary steps to prevent the distribution of dividends from being made, if the directors cease to be satisfied on reasonable grounds that the company still meets the solvency test.  
  
  The company may recover from a shareholder any amount of distribution paid to the shareholder which exceeds the value of any distribution that could properly have been made, unless the shareholder:  
  - has received the distribution in good faith; and  
  - has no knowledge that the company did not satisfy the solvency test.  
  
  The company can also recover the difference of dividend recoverable from shareholder from every director or manager who wilfully pays or permits any dividend in contravention of the relevant provisions relating to dividend distribution and solvency; which he knows are not profits. |
| **14. Documents to be kept at registered office** | The company shall keep at its registered office -  
  a) notice of registration or incorporation;  
  b) constitution of the Company;  
  c) certificates given under the CA 2016 or corresponding previous written law, if any;  
  d) all registers, books, records and documents as required under the CA 2016;  
  e) minutes of all meetings of members and resolutions of members;  
  f) minutes of all meetings and resolutions of the Board and committees of the Board;  
  g) copies of all written communications to all members or all holders of the same class of shares;  
  h) copies of all financial statements and group financial statement;  
  i) the accounting records of the company required under section 245 of the CA 2016 (please refer to Appendix A) and under and “Financial Statements and Reports” of the constitution; and  
  j) copies of all instruments creating or evidencing charges as required under section 357 of the CA 2016; such other documents required to be kept by the Registrar.  
  
  Minutes of all meetings and resolutions of the Board and committees of the Board (item f) must be kept at the registered office of a company.  
  
  Apart from item (f), all documents mentioned above may be kept at a place other than then registered office of a company PROVIDED notice to that effect has been given to the Registrar. Any changes to the address of the place must be notified to the Registrar within fourteen (14) days from the date of change. |
### CA 2016

| Topic | Notification of changes of director, manager, secretary and registered office | The company shall notify the Registrar **within 14 days** from the date:
|       | | • of any change in the name, residential address and other particulars of any director, manager or secretary or the **service address** of any director;
|       | | • after the appointment of any director, manager or secretary;
|       | | • after a person ceases to be a director, manager or secretary;
|       | | • of any change of registered office.

| 16. | Increase in sanctions on directors | There is an overall increase in the sanctions that directors will face for breaches under the Act. The more serious offence can result in a 10-year imprisonment and RM3 million fine or both, if there is a criminal conviction.

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### Appendix A - Accounts to be kept (section 245 of the CA 2016)

245 (1) A company, the directors and managers of a company shall –

(a) cause to be kept the accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and

(b) cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited.

(2) A company, the directors and managers of a company shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which the entries relate.

(3) The company shall retain the records referred to in subsection (1) for seven years after the completion of the transactions or operations to which the entries relate.

(4) The records referred to in subsection (1) shall be kept at the **registered office** of the company or at such other place as the directors think fit, and shall at all times be open for inspection by the directors.

(5) Notwithstanding subsection (4), the accounting and other records of operations outside Malaysia may be kept by the company at a place outside Malaysia provided that such accounting and other records shall be sent to and kept at a place in Malaysia and be made available for inspection by the directors at all times.

(6) The accounting and other records referred to in subsection (5) shall include such statements and returns with respect to the business dealt with in the records so kept as to enable the preparation of true and fair financial statements and any documents required to be attached to the financial statements.

(7) If any accounting and other records are kept at a place outside Malaysia under subsection (4) or (5), the Registrar may require the company to produce those records at a place in Malaysia or determine the type and manner of the records to be kept in Malaysia.

(8) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(9) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.
For more information, please contact us at –

Lay Leng Ng
Executive Director, Kensington Corporate Services (Malaysia) Sdn. Bhd.
Phone +603 2202 0789 / 2201 9689
Email layleng.ng@kensington-trust.com

Dato’ Raymond W.B. Wong
Regional MD, Kensington Trust Group
Phone +603 2202 1929
Email raymond.wong@kensington-trust.com

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Malaysia

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