

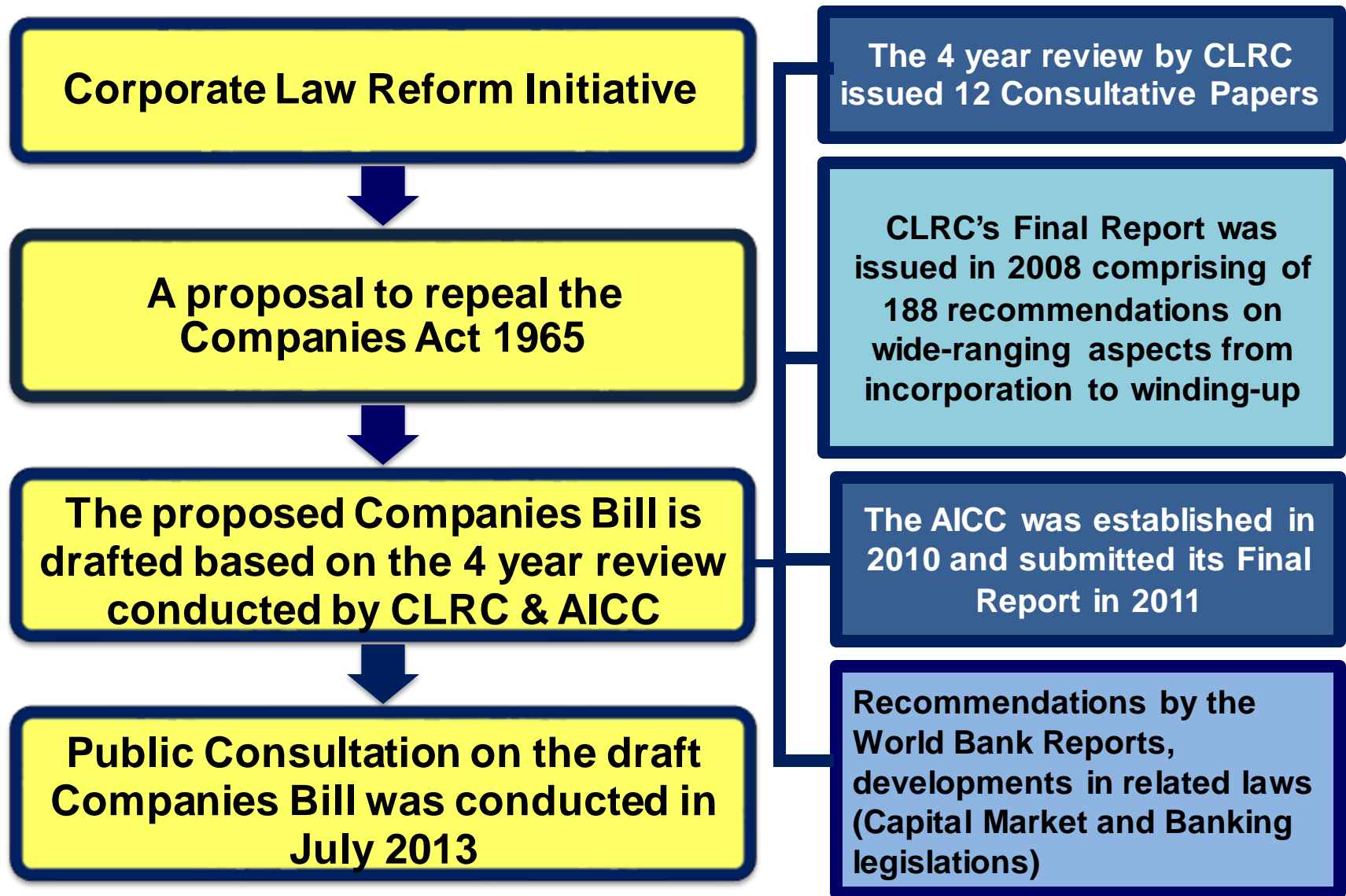


SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA
(Agensi di bawah KPDNKK)

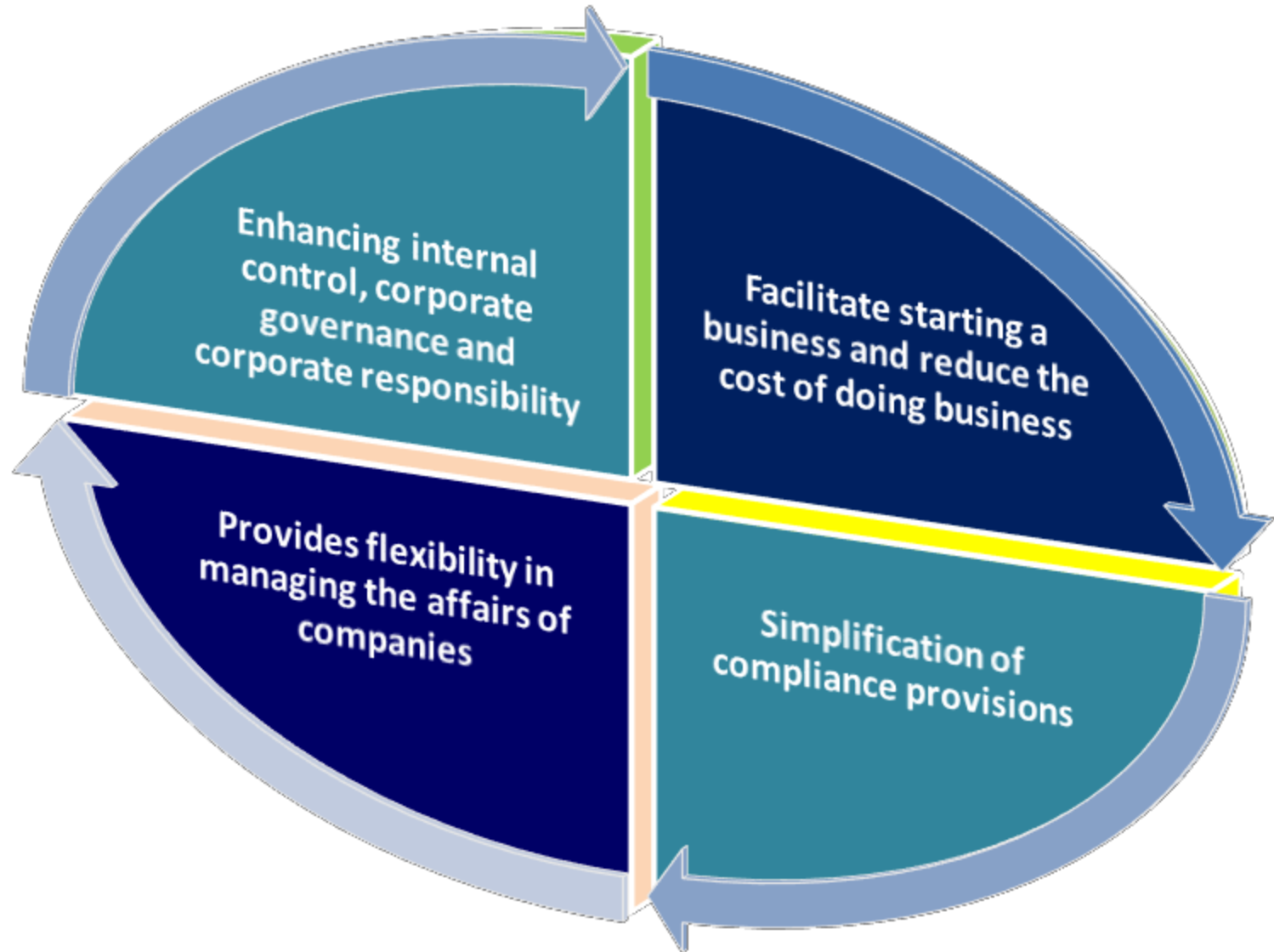
HIGHLIGHTS OF THE COMPANIES ACT 2016

By:
Nor Azimah Abdul Aziz
Deputy CEO (Regulatory & Enforcement)
Companies Commission of Malaysia

THE REFORM INITIATIVE



IMPACTS OF THE NEW COMPANIES ACT 2016



Companies will no longer be required to state its authorised share capital.

Simplify laws & procedures for companies, promoters may incorporate companies.

Introduction of Single Member/ Director Company

Company may adopt M&A & AA after incorporation

Removing the mandatory requirement for private companies to hold Annual General Meeting

Power of Members to Require Circulation of Statements

Migration towards No Par Value Regime

Introduction of Members' Right For Management Review

MODERNISING THE COMPANIES ACT

Introduction of corporate rescue mechanisms through JM & CVA to rehabilitate companies

Reforming the policies relating to **share buyback** and **financial assistance** via introduction of solvency test provided that a special resolution is passed by its shareholders

Introduction of Business Review Report

Dividends be distributed out of profits and is only allowed if it meets solvency test

Introducing alternative procedures for the **reduction of capital** through solvency statements

remuneration of directors of public companies to be sanctioned

abolishing the maximum age for directorship

Statutory Declaration by Promoters/ Directors to be replaced with statement of compliance

CONTENTS OF THE NEW COMPANIES ACT 2016

Parts	Divisions
PART I: PRELIMINARY	Preliminary
PART II: FORMATION AND ADMINISTRATION OF COMPANIES	1. Types of Companies
	2. Incorporation and its effects
	3. Restriction on subsidiary being member of its holding company
	4. Name of Company
	5. Constitution of Company
	6. Conversion of Company Status
	7. Provisions Applicable to Certain Types of Companies
	8. Registered Office and Registers
	9. Execution of Documents
	10. Annual Returns

CONTENTS OF THE NEW COMPANIES ACT 2016

Parts	Divisions
PART III: MANAGEMENT OF COMPANY	1. Share And Capital Maintenance
	2. Members, Directors And Officers of Companies
	3. Accounts And Audit
	4. Indemnity And Insurance For Officers And Auditors
	5. Meetings
	6. Charges, Arrangement And Reconstructions And Receivership
	7. Corporate Rescue Mechanism

CONTENTS OF THE NEW COMPANIES ACT 2016

Parts	Divisions
PART IV: CESSATION OF COMPANIES	1. Voluntary And Compulsory Winding Up
	2. Provisions Applicable to Every Winding up
	3. Winding Up of Unregistered Companies
	4. Striking Off And Management Of Assets Of Dissolved Companies
PART V: MISCELLANEOUS	1. Foreign Companies
	2. Enforcement And Sanctions
	3. General Provisions
	4. Saving and Transitional



Companies Act 2016 [Act 777]

Passed at Dewan Rakyat
on 4 April 2016

Passed at Dewan Negara
on 28 April 2016

Gazetted on 15 September 2016
Became operative on 31 January 2017



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**

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



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

**No more multiple forms for
Incorporation process.
Under new regime it is
transaction base.**

MODERNISING ENTRANCE INTO CORPORATE SECTOR

New

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.

Entrenchment of separate legal entity and unlimited capacity concepts which is not confined to object Sections 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**

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

**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)**

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 - Section: 66(2)(a)
- “Authorised officer”- 66(5)

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

Share certificate

- Share certificate will only be issued upon application
- Register of members becomes prima facie evidence as to the title of the shares.

Additional requirement relating to register of members:

- To notify Registrar of any changes of information relating to a shareholder within **14 days** after the information is recorded in the register of members.
- Power to require disclosure of beneficial interest in its voting shares is extended to all companies
- Registrar, stock exchange or Securities Commission may invoke its power to request company to disclose information on beneficial ownership.

To simplify procedures and facilitate entry into business.

Name of companies

- **Names must be approved – Section 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

New

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

New

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



COMPANY DIRECTORS

OVERVIEW OF PROVISIONS ON ROLES AND RESPONSIBILITIES OF DIRECTORS

New

- Power of Registrar to remove name of disqualified director
- Resignation, vacation or death of sole director or last remaining director
- Approvals for fees of directors
- Directors' service contracts
- Copy of contracts to be available for inspection
- Right of member to inspect and request copy
- Contract with sole member who is also a director
- Members' rights for management review
- Business review report

DEFINITION OF DIRECTORS

Retained
with
modification

- Any person occupying the position of director of a company by whatever name called;
- Any person in accordance with whose directions or instructions the **majority** of the directors of a company are accustomed to act (shadow director) and
- An alternate or substitute.

- “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

New

- 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.

- 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.

- 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.

- 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.



PROVISIONS AFFECTING AUDITORS

- **Requirement of an Auditor**
 - Every company is required to have at least one auditor
 - Auditors must be approved by MOF
- **Qualification for appointment as company auditor is similar to CA 1965 except:**
 - Indebtedness not exceeding RM25,000
- **Recognition of audit firms registered as LLP:**
 - The appointment of a firm in the name of LLP will take effect as appointment of partners and employees who are approved company auditor at the time the appointment or later as auditors of a company

APPOINTMENT AND TERMS OF OFFICE

- Appointment of auditors of a private company
 - The Registrar has the power to exempt certain categories of private companies from having to appoint auditor
 - Terms of office of auditors of a private company
 - An auditor ceases office thirty days from the circulation of the financial statements unless he is reappointed
- Appointment of auditor of a public company
 - From one AGM to the next AGM

- **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.



MEETINGS AND DECISION MAKINGS

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.



SHARE CAPITAL

- **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 FOR:

**Reduction of
share capital**

**Redemption
of preference
shares**

**Provision of
financial assistance**

Share buyback

Corporate Exercise	TEST
<ol style="list-style-type: none">1. Reduction of Share Capital2. Redemption of Preference Shares3. Financial Assistance	<p>(a) immediately after the transaction there will be no ground on which the company could be found to be unable to pay its debts;</p> <p>(b) either—</p> <ul style="list-style-type: none">(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 <p>(c) the asset of the company is more than the liability of the company at the date of the transaction.</p>

Corporate exercise	TEST
4. Share buyback	<ul style="list-style-type: none">• 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. <p>For the purposes of the above—</p> <ol style="list-style-type: none">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.

SOLVENCY STATEMENT

New

Corporate exercise		WHO	Requirement	Additional requirement
1	Reduction Of Share Capital	ALL Directors	(a) inquire into the company's state of affairs and prospects; and	
2	Redemption of Preference Shares;		(b) take into account all the liabilities of the company, including contingent liabilities	
3	Financial Assistance			
4	Share buyback	MAJORITY of Directors	As above	Declaration that – (a) it is necessary for the company to buyback its own shares; and (b) the share buyback is made in good faith and in the best interest of the company

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

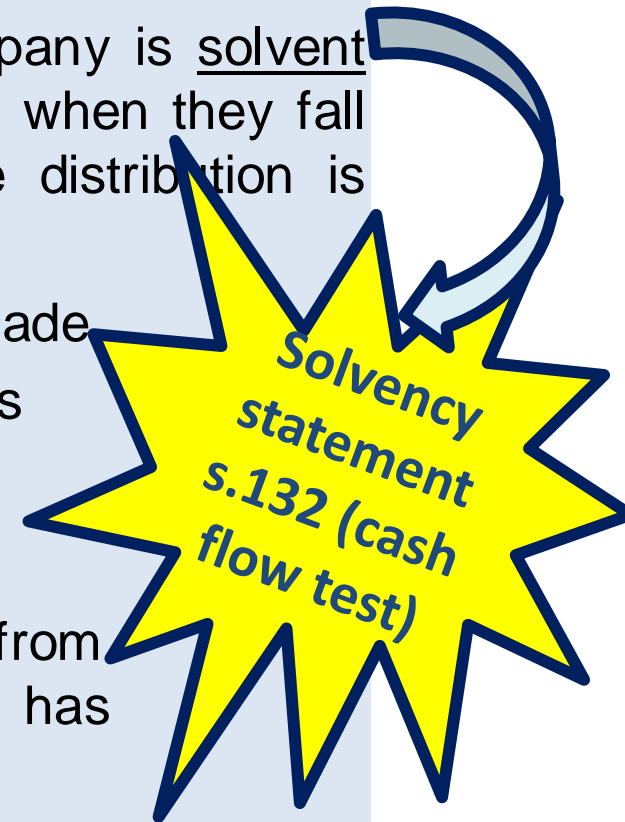
New

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.

DISTRIBUTION OF DIVIDENDS

Retained
with
modification

- 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 authorised the payment.



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CORPORATE RESCUE MECHANISMS

CORPORATE RESCUE MECHANISM

New

Modernization of the insolvency legal framework by the introduction of corporate rescue mechanism (CRM) in the forms of :

- ✓ Judicial Management (JM);
- ✓ Corporate Voluntary Arrangement (CVA)

Pending
announcement on
effective date

- To assist companies in financial trouble to be rehabilitated. This will provide framework for rehabilitation rather than taking the last resort of winding up the company.
- However a company which is a licensed institution or operator of a designated payment system regulated by the Central Bank or regulated by the Securities Commission are excluded from the application of provisions relating to corporate voluntary arrangement and judicial management



COMPLIANCE REQUIREMENTS

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.

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) 2015)



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Companies Act 2016 | Suru... x New Tab x +

www.ssm.com.my/en/companies_act_2016

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BAHASA MELAYU ENGLISH

SSM: SURUHANJAYA SYARIAH MALAYSIA COMPANIES COMMISSION OF MALAYSIA (Agensi di bawah KPDNKK)

Commission of Malaysia, an agency under the Ministry of Domestic Trade, Co-operatives and Co

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Companies Act 2016

Companies Act 2016

PRACTICE DIRECTIVE

No	Practice Directive	Format
1	Practice Directive 1/2017	PDF

GUIDELINES

No	Guidelines	Format
1	Guidelines on Names	PDF
2	Guidelines on CLBG, (Checklist for CLBG (1-7), sample of Constitution & examples (1-5)	PDF
3	Guidelines Asset Management (section 556 and 558)	PDF

LEGISLATIONS

No	Legislation	Format
1	Companies Act 2016	PDF
2	Companies Regulations 2017	PDF
3	Appointment of Date of Coming into Operation	PDF
4	Prescription of Amount of Indebtedness of Company	PDF

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- **Practice Directive 1/2017** – Documents under the Companies Act 2016, the lodgement requirements and related matters
- **Guidelines**
- **Legislations**
- **Companies Act 2016 – Frequently asked questions (Enforcement date of the Companies Act 2016 and transitional issues)**
- **FAQS on the Companies Act 2016 (Act 777) [Background to the review process and new Malaysian Companies Act]**
- **Documents to be lodged with the Registrar / for execution by directors, officers or members of a company under the Companies Act 2016**
- **Practice Note 1/2017** – Clarification on the utilization of credit standing in the share premium accounts and the capital redemption reserves under section 618



SURUHANJAYA SYARIKAT MALAYSIA
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Terima Kasih