

COMPANIES ACT 2016 FINANCIAL REPORTING AND DIVIDENDS

Companies Act 2016 #1 • January 2017



HIGHLIGHT

According to P.U.(B) 50 gazetted on 26 January 2017, the Companies Act 2016 (Act 777) will come into operation on 31 January 2017.

The entire new Act will become effective, except for section 241 (registration of company secretary) and Division 8 of Part III (corporate rescue mechanism).

The new Act will replace the Companies Act 1965 and is applicable to all companies incorporated under the old Act.

INTRODUCTION

The Companies Act 2016 (the “Act”) aims to establish a modernised corporate legal framework for businesses in Malaysia, while enhancing corporate governance that is in line with global practices.

The 620 provisions of the Act (the old Act has 374 provisions) include major new areas that ease the business community in Malaysia, such as no par value shares, single shareholder or single director company, non-mandatory AGM for private companies, new corporate rescue mechanism, etc.

Various enforcement measures are included in the Act, such as civil and administrative proceedings for specified breaches and penalty against officers as personal liability.

In this article, we shall discuss about provisions in the Act regarding financial statements, internal control, dividends and directors’ reports.

FINANCIAL STATEMENTS

Responsibility

Directors are responsible for preparation of financial statements in accordance with approved accounting standards, which shall give a true and fair view of the financial position and financial performance of a company.

For a holding company, consolidated financial statements shall be prepared to give a true and fair view of the financial position and financial performance of a company and all its subsidiaries.

Directors shall prepare financial statements within 18 months from the date of incorporation; and, subsequently, within 6 months of financial year end.

Audit

Financial statements shall be audited before sending to members (subject to any audit exemption).

Non-compliance

Failure to prepare financial statements in accordance with section 248 of the Act, a director may be liable to a fine not exceeding RM500 thousand or imprisonment not exceeding 1 year or both.

ACCOUNTING STANDARDS

Approved accounting standards

In Malaysia, financial reporting standards are approved or issued by the Malaysian Accounting Standards Board.

As of the date of this newsletter, approved accounting standards in Malaysia, include:

- Malaysian Financial Reporting Standards (MFRS).
- Financial Reporting Standards (FRS, applicable to Transitioning Entities).
- Malaysian Private Entities Reporting Standard (MPERS).

If a conflict or inconsistency arises between approved accounting standards and the Act, the approved accounting standards shall prevail.

International standards

MFRS are identical to International Financial Reporting Standards (IFRS) in all respects other than the nomenclature.

The accounting requirements of MPERS are word-for-word the International Financial Reporting Standards for Small and Medium-sized Entities, except for income tax and property development activities.

Listed companies

A listed company or a company supervised by Securities Commission Malaysia or Bank Negara Malaysia shall prepare its financial statements in accordance with approved accounting standards subject to any guidelines or regulations as may be issued by the authorities.

Financial statements disclosure

In addition to the presentation and disclosure requirements set out in the applicable approved accounting standards, the financial statements shall contain:

- Directors' remuneration;
- Directors' retirement benefits;
- Compensation to directors for loss of office;
- Loans, quasi-loans and other dealings in favour of directors; and
- Total amount paid to or receivable by the auditors as remuneration for their services as auditors.

RESERVES

Any credit balance in share premium account and capital redemption reserve as at 31 January 2017 shall become part of share capital.

Such credit balances may be utilised for purposes set out in transitional provisions of the Act, within 24 months from 31 January 2017.

INTERNAL CONTROL

Public companies

Directors of a public company or a subsidiary of a public company are responsible to establish and maintain a system of internal control that will provide a reasonable assurance that:

- Assets are safeguarded against loss from unauthorised use or disposition;
- Give a proper account of the assets;
- All transactions are properly authorised; and
- The transactions are properly recorded to enable the preparation of true and fair view of the financial statements.

Non-compliance

Failure to comply with section 246 of the Act, a director may be liable to imprisonment not exceeding 3 years or a fine not exceeding RM1 million or both.

DIVIDENDS

Requirements of the Act

A distribution to any shareholder shall be authorised by the directors, if:

- The distribution is made out of available profits of the company; and
- The directors are satisfied that the company will be solvent immediately after the distribution is made.

Solvency test

The Act introduces further accountability by the directors by requiring a solvency test.

A company is regarded as solvent, if the company is able to pay its debts as and when they become due within 12 months immediately after the distribution is made.

Solvency test can be carried out using various approaches, including cash flow forecast analysis.

Non-compliance

Under the Act, a director/officer may be liable to imprisonment not exceeding 5 years or fine not exceeding RM3 million or both, for any unlawful distribution made.

The company may recover from a shareholder (conditions applied) or a director/manager of any unlawful distribution made.

DIRECTORS' REPORT

Requirements of the Act

Directors shall prepare a directors' report, which shall be approved by the board of directors and shall be signed on the directors' behalf by at least 2 directors (or the sole director, if applicable).

Contents

A directors' report shall contain:

- Name of every person who was a director during the financial year; and up to the date of the report;
- Principal activities of the company (and its subsidiaries, if applicable); and
- Matters set out in the Fifth Schedule of the Act.

The directors' report may include a business review as set out in Part II of Fifth Schedule of the Act.

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