

COMPANIES ACT 2016 KEY FEATURES AT A GLANCE

Companies Act 2016 #2 • February 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 Act includes 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 key features of the Act that have impact on the organisational structure, governance and operation of companies incorporated before, on or after 31 January 2017.

FORMATION & ADMINISTRATION

Single member / single director

A company may be incorporated by or have only one member and that single member can also be the sole director of the company.

However, for public companies, the Act still retains the minimum requirement of 2 directors.

Memorandum & article of association

For a company which is incorporated under the Act on or after 31 January 2017, the company has the option whether to adopt a constitution or otherwise.

For a company which was incorporated before the Act came into effect, the existing constitution (i.e. memorandum & articles of association) will continue to be applicable to the company until the company resolve otherwise.

However, it is still mandatory for a company limited by guarantee to have a constitution.

Common seal no longer required

Effective from 31 January 2017, a company has the option to have a common seal. Execution of documents must comply with the procedures outlined under Division 9 of Part II including situations when a company decides to have a common seal.

Annual general meeting of private companies no longer required

Beginning from 31 January 2017, all private companies are no longer required to hold annual general meetings. Instead all decisions of private companies can be fully made through circular resolutions.

Decoupling of lodgement of annual return and financial statements

Under the Act, the requirement to lodge annual returns is based on the anniversary of the incorporation of a company; while the lodgement of financial statements shall be made no later than 7 months from the financial year end of the company.

Notice of registration

Effective from the enforcement of the Act, the Companies Commission of Malaysia will issue a notice of registration for the incorporation of a new company to confirm that provisions relating to the requirements for registration have been complied with in line with the requirement of the law.

SHARES

Abolition of authorised capital

Under the Act, a company is no longer required to state its authorised capital. Instead, a company is required to notify its issued share capital and paid up capital and the related changes through the return of allotments.

Abolition of par or nominal value of shares

All shares issued before or upon the commencement of the Act shall have no par or nominal value.

Issuance of shares

A company may issue shares at a price depending on the factors affecting the current circumstances and needs of the company.

In absence of evidence of contrary, the entry of the name of a person in the register of members as a shareholder is *prima facie* evidence that legal title to the share is vested in that person. Issuance of share certificate is optional.

Mazars is an international, integrated and independent organisation, specialising in audit, accountancy, tax, legal and advisory services.

The purpose of this newsletter is to keep readers informed of technical developments, and should not be acted upon without professional advice. This newsletter shall under no circumstances be associated, in whole or in part, with an opinion or professional advice of Mazars. Despite the meticulous care taken in preparing this newsletter, Mazars shall not be held liable for any errors or omissions it might contain.

© 2017 Mazars

CONTACTS

Mazars

Chong Fah Yow
Managing Partner
fah-yow.chong@mazars.my

Esther Yap
Partner
esther.yap@mazars.my

Francis Xavier Joseph
Partner
francis.joseph@mazars.my

Lee Soo Eng
Partner
soo-eng.lee@mazars.my

11th Floor, South Block
Wisma Selangor Dredging
142-A, Jalan Ampang
50450 Kuala Lumpur, Malaysia
Tel +60 (3) 2161 5222
Fax +60 (3) 2161 3909

Detailed information available on
www.mazars.my