



## The Companies Bill 2015

### Reforming Doing Business In Malaysia

#### INTRODUCTION

In April 2016, the Malaysian Parliament passed the Companies Bill 2015 which will eventually replace the Companies Act 1965. It is aimed at creating a legal and regulatory structure that facilitate business by reducing regulatory burden and compliance costs. It is also aimed at promoting accountability and protection of company directors and members, taking into account the interest of other stakeholders, in line with international standards.

In the words of the Corporate Law Review Committee which was commissioned by the Suruhanjaya Syarikat Malaysia (SSM) to undertake the review of the Companies Act 1965:

**“A sound corporate regulatory framework is necessary to promote enterprise, enhance competitiveness and stimulate investments.”**

The Companies Bill 2015 contains many areas of change, for examples, single member company, no par value regime for shares and judicial management. This article on “Single Member Company” is the first of a series of articles that we shall be writing to highlight these changes.

The Bill is expected to be gazetted before the end of 2016.



## The Concept of A Single Member Company

The incongruous idea that an individual can form a company

### **DEFINITION**

A single member company (SMC) can be defined as a private company with only one member, also referred to as the shareholder. A SMC is required to appoint at least one director.

### **THE LEGAL FRAMEWORK**

The Companies Bill 2015 provides the legal framework for the formation and management of such a company. Subject to certain modifications, all the provisions of the Companies Bill 2015, which apply to private companies, will also apply to a SMC.



## **FORMATION**

A sole natural person or a corporate, whether local or foreign, may register a SMC, being a private company with unlimited or limited liabilities, with the SSM.



## **CONVERSION**

An existing private company registered with two or more shareholders may alter its M&A and becomes a SMC as and when the number of members is reduced to one and all the shares in the company are registered in the name of a sole person or corporate.

## **SHARES – NO PAR VALUE**

Under the current Companies Act 1965, shares are issued with a nominal (or par) value. The Companies Bill 2015 introduces a no nominal/par value regime. All shares to be issued by a company in the future shall be with no nominal/par value. Existing companies are also required to convert to this regime within two years from the coming into force of the Companies Bill 2015.



## CONSTITUTION

A SMC may or may not adopt a constitution (now known as Memorandum & Articles of Association) at the time of registration. If it does not have one, all the provisions of the Companies Bill 2015, which apply to private companies, will apply to a SMC.

It may adopt one anytime post registration by way of a special resolution and notification to the SSM.

## DIRECTORS

A SMC must appoint at least one director who must be a natural person of at least 18 years old and consents to act as a director. If the SMC appoints only one director, he/she must be ordinarily residing in Malaysia.

The sole shareholder may, or may not be, appointed as a director of the company.

The sole shareholder who is appointed a director will be the owner and management figure of the company. The sole shareholder who is not a director will simply be an owner of the company who is not involved in its day-to-day management.



## **BOARD OF DIRECTORS**

In relation to a SMC having a sole director, that sole director constitutes the Board.



## **COMPANY SECRETARY**

A SMC must have at least one Company Secretary. Unless the Secretary is already named in the application for registration, the company shall appoint the first Secretary within 30 days from date of incorporation.

## **AUDITORS**

A SMC must appoint at least an auditor.

## **ANNUAL GENERAL MEETINGS**

The sole member of a SMC may decide to dispense with the holding of an AGM. The Report and Accounts that would normally be laid before the AGM of a company will still be required to be prepared and forwarded to the sole member. It is open to the auditor of the company to require the holding of an AGM in a particular year by notice to the company.



## **GENERAL MEETINGS**

All power exercisable by a company in general meetings shall be exercisable in the case of a SMC, by the sole shareholder without the need to hold a meeting.

Unless the decision is by written resolutions, a sole shareholder must provide details of his decisions to the company.

Meetings are still required for matters concerning the removal of an auditor.

## **QUORUM**

The quorum for any meetings of the director is the sole director and the quorum for any general meetings of members including an AGM is the sole shareholder.

## **RESOLUTIONS IN WRITING**

Proceedings of the Board and general meetings of members including AGM may be conducted by way of written resolutions signed by the sole director or the sole shareholder, in lieu of formal meetings.



## **EXECUTION OF DOCUMENTS**

A company may or may not have a common seal. In the case of a SMC that does not have a common seal, a document is validly executed if it is signed on its behalf by the sole Director in the presence of a witness who attests the signature.

## **UNWRITTEN CONTRACT WITH SOLE SHAREHOLDER/DIRECTOR**

If a SMC enters into an unwritten contract with the sole member who is also a director of the company, and the contract is not in the ordinary course of the company's business, the company must ensure that the terms of the contract are recorded in the minutes of the next director's meeting.

## **RESIGNATION, VACATION OR DEATH OF THE SOLE DIRECTOR**

If the sole director is also the sole shareholder, that director shall not resign office until that director has called a meeting of members to receive the notice of the resignation and to appoint one or more new directors.

If the office of the sole director is being vacated due to disqualification from being a director, unsound mind, death or otherwise in accordance with the constitution of the company, the secretary shall call a meeting of the director's next of kin, personal representatives or a meeting of members, as the case may be, to appoint a new director.

In addition, where a sole director who is also the sole shareholder of a company is unable to manage the affairs of the company by reason of his mental incapacity, the committee appointed under the Mental Health Act 2001 to manage his estate may appoint a person as a director.

Where the next of kin, personal representatives or members fail to appoint a director within six months of the death of the sole director, the Registrar may direct the company to be struck off. It is, however, silent on the situation where they fail to appoint a director to replace the sole director who has vacated his/her office other than by death.



## ADVANTAGES

A single member of a SMC has complete control over how the business is operated, makes all business decisions independently and receives the full share of distributed profits without the need to deal with shareholders or a board of directors as a company would be required to do.

A SMC is less formal than a corporation but enjoys the same advantages of a corporation such as separate legal entity and limited liability protection for its member.

Other advantages are discussed in the relevant sections above.

