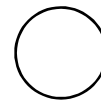


# COMPANIES ACT 2016

Klang Chinese Chamber of Commerce and Industry  
20 May 2017  
By Soh Eng Hooi



## 2 INTRODUCTION

Companies Act 2016  
By Soh Eng Hooi

by eng hooi soh

## HOW DID IT STARTED?

2003

- Corporate Law Reform Committee was formed

2008

- Final report with 188 recommendations submitted to repeal the Companies Act 1965

2010

- Accounting Issues Consultative Committee was established in 2010 and submitted its Final Report in 2011

2013

- Public consultation on draft Companies Bill

2016

- Companies Act 2016 was gazetted on 15.9.2016

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# Date of Enforcement

31 JANUARY 2017

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# OBJECTIVES OF THE REFORM

Provide a regulatory framework to facilitate starting a business

Accord protection to corporate directors and other stakeholders of a company

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# IMPACT EXPECTED FROM THE REFORM

Facilitate starting a business and reduce cost of doing business

Enhance internal control, corporate governance and corporate responsibility

Provides flexibility in managing affairs of companies

Simplification of compliance provisions

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# OVERVIEW OF THE COMPANIES ACT 2016

	<b>Companies Act 1965</b>	<b>Companies Act 2016</b>
Parts	12	5
Sections	374	620
Schedules	10	13

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7

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

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<b>Parts</b>	<b>Divisions</b>
<b>PART III: MANAGEMENT OF COMPANY</b>	<b>1. Share And Capital Maintenance</b>
	<b>2. Members, Directors And Officers of Companies</b>
	<b>3. Accounts And Audit</b>
	<b>4. Indemnity And Insurance For Officers And Auditors</b>
	<b>5. Meetings</b>
	<b>6. Charges, Arrangement And Reconstructions And Receivership</b>
	<b>7. Corporate Rescue Mechanism</b>
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<b>Parts</b>	<b>Divisions</b>
<b>PART IV: CESSATION OF COMPANIES</b>	<b>1. Voluntary And Compulsory Winding Up</b>
	<b>2. Provisions Applicable to Every Winding up</b>
	<b>3. Winding Up of Unregistered Companies</b>
	<b>4. Striking Off And Management Of Assets Of Dissolved Companies</b>
<b>PART V: MISCELLANEOUS</b>	<b>1. Foreign Companies</b>
	<b>2. Enforcement And Sanctions</b>
	<b>3. General Provisions</b>
	<b>4. Saving and Transitional</b>
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## PART 2 DIVISION 1 – TYPE OF COMPANIES

	<b>Private company</b>	<b>Public company</b>
Company limited by shares	✓	✓
Company limited by guarantee	n/a	✓
Unlimited company	✓	✓

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11

12

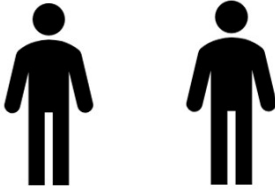
## KEY REFORMS - FORMATION & ADMIN OF COMPANIES

Companies Act 2016

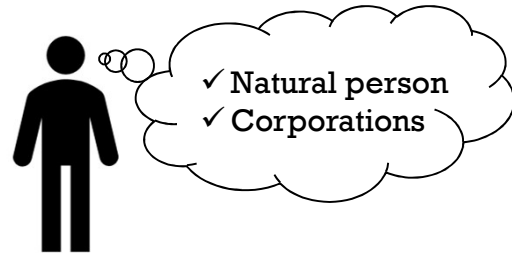
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# 1. SHAREHOLDERS

**Companies Act 1965**



**Companies Act 2016 – S9(b)**



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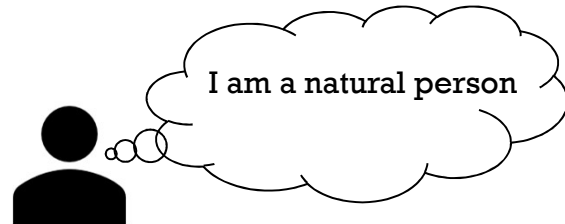
13

# 2. DIRECTORS

**Companies Act 1965**



**Companies Act 2016**



For public companies, still min 2 directors

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14

<p><b>01</b></p> <p>ONE shareholder</p>	<p><b>02</b></p> <p>ONE share</p>	<p><b>03</b></p> <p>ONE director</p>
---	-----------------------------------	--------------------------------------

**ONE MAN COMPANY**

**PRIVATE COMPANIES ONLY**

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15

## 3. SIMPLIFY INCORPORATION PROCESS

<p><b>Companies Act 1965</b></p> <ul style="list-style-type: none"> <li>▪ Engaged company secretary first</li> <li>▪ Reservation of names first</li> <li>▪ Multiple forms needed – Form 6, M&amp;A, Form 48A etc</li> </ul>	<p><b>Companies Act 2016</b></p> <ul style="list-style-type: none"> <li>▪ Incorporate process through a <b>SUPERFORM</b> by promoters/shareholders</li> <li>▪ No need company secretary</li> <li>▪ Reservation of names is optional</li> <li>▪ Names must be approved, if proposed name is not available, Registrar can assign name</li> </ul>
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16

# 4. CONSTITUTION

## Companies Act 1965



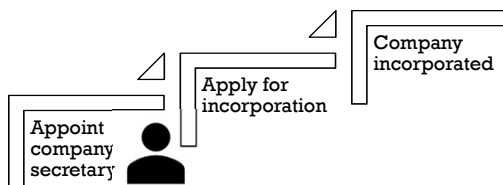
## Companies Act 2016 – S31

- no M&A required @ incorporation
- **CONSTITUTION** may be adopted after incorporation and its optional
- Tripartite agreement between the company, its members and the directors
- Change in constitution need to go through special resolution (>75%)
- Lodge the entire constitution to SSM within 30 days from the resolution

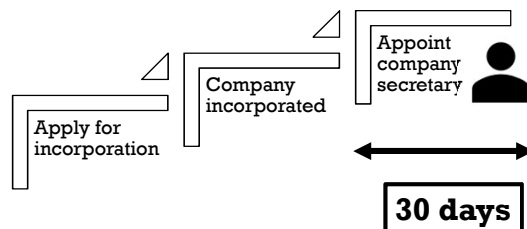
17

# 5. APPOINTMENT OF COMPANY SECRETARY

## Companies Act 1965



## Companies Act 2016 – S236



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18

## 6. NOTICE OF REGISTRATION

### Companies Act 1965



### Companies Act 2016

- **Notice of registration = conclusive evidence of incorporation (\$19)**
- **Certificate of incorporation (COI) will not be issued**
- **Purchase of COI is optional (\$17)**

19

## 7. NO PAR VALUE REGIME

### Companies Act 1965

- **Example,**
  - **Authorised capital**
    - 100,000 ordinary shares of RM1.00 each
  - **Paid up capital**
    - 50,000 ordinary shares of RM1.00 each

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### Companies Act 2016 – S74

- **✗ par value, shares will be issued at a price, can be at premium or at discount**
- **The concept of authorized share capital will no longer be applicable**
- **No share premium account, capital redemption reserves, all shall be part of share capital**

20

## 8. EVIDENCE OF MEMBERSHIP

### Companies Act 1965

- Share certificate
- Register of Members



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### Companies Act 2016

- **Register of Members** become Prima Facie evidence as to the title of the shares held (S50)
- Share certificate will only be issued upon application (S97)

21

## 8. EXECUTION OF DOCUMENTS

### Companies Act 1965

- Common Seal

### Companies Act 2016

- Common Seal is optional (S61)
- Documents may be executed by (S66)
  - Common seal; or
  - At least 2 person authorized by the Board

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22

23

# KEY REFORMS

## - MANAGEMENT OF COMPANIES

Companies Act 2016

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## 1. ANNUAL GENERAL MEETING (AGM)

### Companies Act 1965

- All companies need to have AGM within 18 months from incorporation. Subsequently, within 6 months from the company's financial year end.

### Companies Act 2016

- No requirement for private companies to hold AGM
  - only meeting of members
  - the main method to make decisions is by way of written resolution

- Public companies are required to hold AGM every calendar year
- Meeting at more venue, main venue in Malaysia when chairperson is present

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24

## 2. ANNUAL RETURN (AR)

### Companies Act 1965

- AR filed within 30 days from the company's AGM
- AR must be filed with the audited financial statements

### Companies Act 2016 – S68

- AR to be lodged with SSM within 30 days from the anniversary date of incorporation
- Decoupling of the AR with the audited financial statements
- If AR were not lodged for  $\geq 3$  years, Registrar may strike off the company

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25

## 3. AUDITED FINANCIAL STATEMENT (AFS)

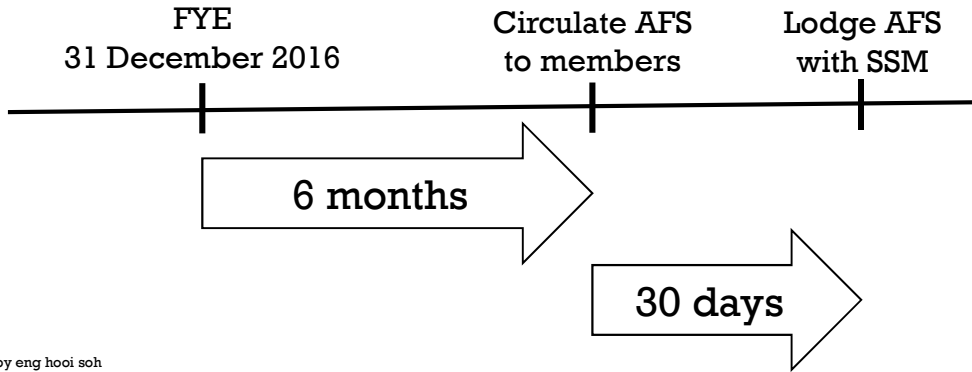
- Financial statements must be duly audited before they are sent to every member (S248)
- For private companies, mandatory audit rules for ALL types of companies is retained unless exempted by the Registrar (S267)
- For private companies, AFS must be circulated within 6 months of the financial year end and lodge with SSM within 30 days of circulation to members (S258)

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26

# 3. AUDITED FINANCIAL STATEMENT (AFS)

Example – existing private companies



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**SSM SURUHANJAYA SYARIKAT MALAYSIA**  
 (COMPANIES COMMISSION OF MALAYSIA)  
 NEKARA SSM @ SENTRAL,  
 NO. 7 JALAN ETIKA SENTRAL,  
 KUALA LUMPUR SENTRAL,  
 50623 KUALA LUMPUR

Operator : 03-2294 4888  
 Contact Centre : 03-7721 4888  
 Fax : 03-7721 4880  
 Email : mcp@ssm.com.my

NOTIS MAKLUMAT PEMATUHAN KEPADA AKTA SYARIKAT 2016 (AKTA 777)  
 BAKI TAHUN TAJUK 2017

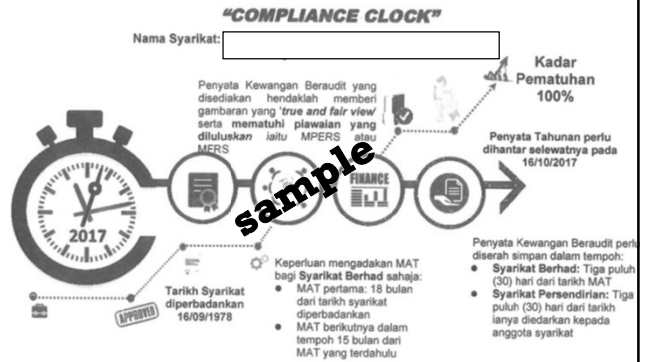
Tarikh: 25/02/2017  
 No. Rujukan: SSM/BA/1888-H2017  
 Nama Entiti: [Redacted]  
 Nombor Entiti: [Redacted]  
 Tuan/Puan: [Redacted]

Ditamatkan kerana Akta Syarikat 2016 (Akta 777) telah dilaksanakan pada 31 Januari 2017. Pelesenan Akta Syarikat 2016 turut melibatkan perubahan dari segi keperluan untuk mengedarkan Mesyuarat Agung Tahunan (MAT), serah simpan Penyata Tahunan dan juga Penyata Kewangan Beraudit.

2. Keterangan mengikut bekalat perubahan adalah seperti berikut:

Perkara	Sekyen/ Puntutan	Keterangan	Maksimum Penalti (RM)
Serah simpan Penyata Tahunan	66(1)	Syarikat berkewajipan menyerahkan Penyata Tahunan dalam tempoh tiga puluh (30) hari dari tarikh setiap syarikat diperbadankan	80,000
Penyediaan Penyata Kewangan Beraudit	248(1)	<ul style="list-style-type: none"> <li>Penyatat syarikat hendaklah menyediakan penyata kewangan beraudit dalam tempoh lapan bulan (18) bulan dari tarikh syarikat diperbadankan</li> <li>Penyatat syarikat hendaklah berikhtiya dalam tempoh enam (6) bulan dari tarikh syarikat diperbadankan</li> </ul>	500,000
Peringatan (penyediaan) Penyata Kewangan Beraudit	258	Deduktan kepada anggota syarikat dalam tempoh enam (6) bulan dari tarikh syarikat diperbadankan	50,000
Serah simpan Penyata Kewangan Beraudit	256(1)	Penyatat Kewangan Beraudit perlu menyerahkan penyata kewangan beraudit kepada anggota syarikat	80,000
Mesyuarat Agung Tahunan (MAT)	340(2)	<ul style="list-style-type: none"> <li>MAT pertama hendaklah diadakan dalam tempoh lapan belas (18) bulan dari tarikh syarikat diperbadankan</li> <li>MAT selanjutnya hendaklah diadakan dalam tempoh enam (6) bulan dari tarikh mesyuarat bersejarah (MAB) atau mesyuarat lima belas (15) bulan dari tarikh MAT yang terdahulu</li> </ul>	20,000

## NOTICE FROM SSM IN 2017



## 4. DIVIDENDS DISTRIBUTION – S131

- Dividends may only be distributed out of profits
- Distribution can only be made when the company is solvent

### SOLVENT

ability to pay debts as and when they fall due within  
12 months immediately after distribution is made

- if after authorization but before distribution is made, the company ceases to be solvent ⇒ prevent the distribution
- Company may recover distribution paid from shareholders, directors and manager who has authorized the payment

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29

# ROLES & RESPONSIBILITIES OF DIRECTORS

30

Companies Act 2016

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1. Duties to act in the best interest of the company (S213)
2. Business judgement rule (S214)
3. Functions of the Board (S211)
4. Disclosures (General disclosures, disclosures of interest in contract/proposed contract)(S221)
5. Approval of company required for disposal by directors of the company's undertaking or properties (S223)
6. Loans to directors/persons connected (S224)
7. Prohibition of tax free payments to directors (S226)

## PROVISIONS ON ROLES & RESPONSIBILITIES OF DIRECTORS

Retained without modification

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31

1. Definition (S2)
  - ✓ any person occupying the position of director, by *whatever name* called;
  - ✓ a person in accordance with whose directions or instructions the majority of the directors are accustomed to act (*shadow director*);
  - ✓ alternate or substitute
2. Qualifications
  - ✓ min age 18 year-old (S196), no max age
  - ✓ min director shall ordinarily reside in Malaysia

## PROVISIONS ON ROLES & RESPONSIBILITIES OF DIRECTORS

Retained modification

WITH



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### Who is Disqualified (S198 & S199)?

1. A bankrupt
2. Convicted, within or outside Malaysia, the following offences:
  - mismanagement of corporation
  - **Bribery**, fraud or dishonesty
  - Breach of fiduciary and statutory duties
3. Disqualified by Court due to:
  - His conduct has resulted in 2 companies went into liquidation in the last 5 years
  - His contravention of his duties under the Act
  - Habitual contravention of the Act
4. Power of Registrar to remove name of directors who have been disqualified from Register (**NEW S200**)

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### PROVISIONS ON ROLES & RESPONSIBILITIES OF DIRECTORS

Retained  
modification **WITH**

33

### 3. Appointment, resignation etc.

- ✓ **Appointment** (S202) – 1st appointment is made through the application for incorporation process
- ✓ Subsequently, through ordinary resolutions
- ✓ For private co, subject to terms of appointment
- ✓ Consent to act and declaration before appointment (S201)
- ✓ **Resignation** – deliver notice at registered office
- ✓ Date of resignation is when notice is delivered or based on date stated in the notice
- ✓ **Retirement** (S204) – for private co, by ordinary resolution to determine, or as term of appointment/service
- ✓ **Removal** (S206) – for private co, by ordinary resolution

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### PROVISIONS ON ROLES & RESPONSIBILITIES OF DIRECTORS

Retained  
modification **WITH**

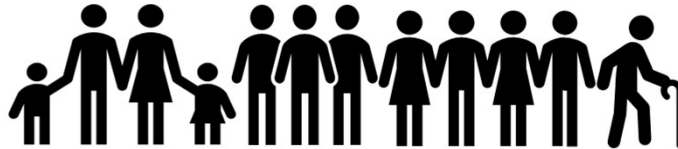
34

4. Persons connected with directors (S197)
  - ✓ Family – spouse, parent, child, including adopted child and stepchild, siblings and the spouses of his child and siblings
5. Transactions with directors, substantial shareholders or connected persons
6. Payment to directors for loss of office etc. (S227)
  - ✓ Must disclose to the members, resolution approved by members
7. Provisions indemnifying officers and auditors of the company

## PROVISIONS ON ROLES & RESPONSIBILITIES OF DIRECTORS

Retained  
modification

WITH



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35

## Related Party Transactions (S228)

Prohibition on directors/ substantial shareholders of the company/ holding company or connected persons from acquiring/ disposing non-cash assets



Transaction *prima facie* void unless prior approval has been given through a members' resolution or resolution of the holding company if the transaction is in favour of the director/ substantial shareholder of the holding company



Requirement for directors/ substantial shareholders/ persons connected to abstain from voting is ONLY applicable to a public company or its subsidiary

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36

1. Resignation, vacation or death of sole director or last remaining director (S209)
  - The cosec is responsible to call a meeting of next of kin or personal representatives for the purpose of appointing one director
  - If fail to appoint within 6 months, the Registrar may strike off the company
2. Approval for fees of directors (S230)
  - For private co, board to approve but members must be notified accordingly and can object
3. Directors' service contracts (for public co)
4. Contract with sole member who is also a director (one man co)
  - If the contract not in writing, must be recorded in the BOD meeting
5. Business review report (S253 & 5<sup>th</sup> Sch)

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## **PROVISIONS ON ROLES & RESPONSIBILITIES OF DIRECTORS**



37

## **INTRODUCTION OF SOLVENCY STATEMENTS**

Reduction of Capital

Redemption of  
preference shares

Provision of financial  
assistance

Share buyback

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38

## FINES & PENALTIES

- False and misleading statements or false reports
  - max 10 year or RM3 million or both
  
- Generally, penalties against directors
  - Max 5 years or RM 3 million or both;
  - Plus continuing daily fines of RM500 or RM1,000 post conviction

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39



- Right to question, comment, discuss or make recommendation on the management of the company but they are not binding unless passed by a special resolution
- Written resolution shall be passed by the same % required to pass at a meeting **EXCEPT FOR** removal of directors and auditors or at a meeting of members (S297(2))

## MEMBERS' RIGHTS

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40




yes  
 no  
 maybe

## 8 CRUCIAL THINGS TO PREPARE

1. Filing of annual return – track the anniversary of incorporation date
2. Upcoming AGM – for private co, consider any needs as AGM is optional now
3. Audited financial statements (AFS) – circulation of AFS within 6 months from the financial year end
4. Dividend declaration – aware of the new solvency requirement

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yes  
 no  
 maybe

## 8 CRUCIAL THINGS TO PREPARE

5. No par value comes into effect
6. Existing M&A deemed to be the Constitution
7. Shareholders resolutions – comply with new written resolutions procedures
8. Execution of Documents

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43



# THANK YOU

44