

# THE PERSPECTIVE OF COMPANIES ACT 2016

Author: [CHAI Meng Ka](#) | 27 April, 2017

At the beginning of 2017, the Malaysian business community was introduced with great changes in their corporate governance, the Companies Act, 2016 (New Act).

The New Act was passed by parliament in 2016 and gazetted on 15 September 2016. However, the New Act only become officially effective on 31 January 2017.

The New Act was introduced to replace the Companies Act 1965 (Old Act) which has been used for decades since its first introduction. The process of drafting the New Act was first initiated in 2003 by Companies Commission of Malaysia (SSM) by establishing the Corporate Law Reform Committee (CLRC). The main objectives are (i) to create a legal and regulatory structure that will facilitate business, and (ii) to promote accountability and protection of corporate directors and members, taking into account the interest of other stakeholders, in line with international standards.

This article will highlight some of the major changes brought by the New Act compared to the Old Act.

## Shareholder and Director

The minimum number of shareholder for private or public company required by the New Act is one compare to two under the Old Act. This has given the convenience for single person to incorporate a company for business purpose without the hassle to look for a sleeping or dummy partner.

Likewise, the minimum number of director for private company is one compared to the Old Act's requirement of two. However, the minimum number of director for public company still remain as two under the New Act.

## Authorised Capital

Under the New Act, a company will not have authorised capital. Authorised capital means the ceiling limit of a company's paid up capital. Under the Old Act, when a company wishes to increase its paid up capital to an amount which is more than the authorised capital, it needs to increase the authorised capital first before it can increase the paid up capital. Without the authorised capital requirement, a company can now increase its capital without restriction.

The rational to abrogate the authorised capital requirement is to avoid the wrong perception by general public that the authorised capital is the "actual capital" of the company.

## Par Value of Shares

Under the New Act, a company's share will not have par value. Par value of share means the minimum issue price of a share. Under the Old Act, a company is not permitted to issue shares at a price which is less than the par value even though the company is in negative assets position where the value of share is much lesser than the par value.

Nevertheless, a company is allowed to issue share at a price above the par value and the difference is termed as share premium. With the introduction of no par value regime, a company now can issue its shares at any price which is determined by the value of the company, market force or willing buyer-willing seller basis. All the proceeds from the issue of shares will be treated as share capital and there will be no share premium anymore.

The rational to abolish the par value is to prevent the misunderstanding that the par value is the value of the share of the company.

## **Annual General Meeting (AGM)**

Under the Old Act, all companies, private or public, are required to hold Annual General Meeting (AGM) once in every calendar year. With the operation of the New Act, a private company is no longer required to hold AGM. However, a public company is still required to hold AGM.

The meetings of private company's shareholders will be called members meeting and the private company can pass resolution by way of written resolution without holding actual meeting.

The abolishment of the AGM and the introduction of written resolution for private company is considered a timely measure because majority of the private company are "owner managed company" where the shareholders and directors are the same person. It is redundant to hold AGM or actual meeting of members where the business has been decided by the board of directors.

## **Others**

Some other changes introduced by the New Act are amendment on the requirement of Constitution (Equivalent to Memorandum and Articles of Association, i.e. M&A), Common Seal, and issuance of share certificate where these have become optional instead of mandatory under the Old Act.

## **Conclusion**

With the introduction of the New Act, a company is given more flexibility on how to conduct its business, and the cost to maintain a company will be lower particularly on (i) the abrogation of authorised capital where the stamp duty involved is quite hefty under the Old Act, and (ii) the abolishment of the requirement for AGM for private company.

However, shareholders and directors ought to take note that the penalty under the New Act has been increased tremendously to up to RM3 millions should the company or the directors contravene the provisions of the New Act.

**CHAI Meng Ka** FCCA, CA(M), ACTIM  
Founder  
IPM Group