

16.0 MALAYSIAN COMPANY & SECURITIES LAW (3 HOURS)

AIM: *To examine the candidate broad understands of the principles of Company Law, disclosure obligations of Securities Law through understanding of the regulations and by-laws of limited liability companies and the statute and case law which a Company Secretary must be conversant with.*

Learning Outcomes:

Upon completion of this subject, the students should be able to:

- *Apply the legal principles, concepts, procedures and requirements of the Company Law for the administration of the company;*
- *Describe and explain the roles, rights, powers, duties and responsibilities of the various stakeholders of a company including the members and officers of the company and the auditors, creditors, receiver/manager and the liquidators;*
- *Evaluate and apply the appropriate law to resolve or remedy the various legal issues affecting the company;*
- *Demonstrate understanding of the functions and powers of the Securities Commission, role and function of Bursa Malaysia and the Listing Requirements of the Main Market and ACE Market.*

SYLLABUS

16.1 Introduction of Malaysian Company Law and Securities Regulations in Malaysia

Forms of business structure in Malaysia - company, sole proprietorship, general partnership & limited liability partnership, sources of Malaysian Company Law; nature and types of companies formed under the Malaysian Companies Act; the concept of separate legal entity; effect of incorporation - limited liability of shareholders, perpetual succession, transferability of shares and control by shareholders; lifting the corporate veil and statutory lifting of the corporate veil; external regulatory bodies - Companies Commission of Malaysia, Securities Commission, Bursa Malaysia.

Overview of the Securities Industry in Malaysia - classification of financial markets: primary and secondary markets, money and capital markets, exchange markets and over-the-counter markets, foreign exchange and commodities markets, markets for derivative financial instruments; regulation of the Securities Industry - merit based securities regulation; disclosure based securities regulation; principal regulatory bodies; historical development; legal status of Bursa Malaysia, membership of the Bursa Malaysia and supervision by the Securities Commission.

16.2 Incorporation of a Company

Pre-incorporation contracts and position of promoters; formation procedure and post-incorporation; Default provisions of the Companies Act, 2016 regulating the constitution of a company; replaceable rules; adoption of constitution, alteration and amendment of constitution by company; effect of constitution; form and contents of a company's constitution; company limited by guarantee; provisions applicable to certain companies; private vs. public companies; Concept of Single Person Company; foreign companies. Registered office and registers and documents to be kept at registered office; Company seals; Annual returns.

16.3 Share and Loan Capital

Types of shares - ordinary shares & preference shares (redeemable, irredeemable, convertible), variation of class rights; No par value shares; issuance, transfers and transmission of shares and share certificates; abolition of authorised capital; methods and procedure of raising new capital by private and public issues as provided by Companies Act, 2016, Capital Market and Services Act 2007 and the Securities Commission; prospectus, statement in lieu of prospectus and abridged prospectus; compliance with the Listing Requirements of the Bursa Malaysia, guidelines of the Capital Issues Committee and the Economic Planning Unit; transfer and transmission of shares - pre-emption, directors' discretion, forged transfers; capital maintenance rule: share buyback, financial assistance and reduction of capital; dividends - definition, types, profits available for dividends and effects of contravention; company power to

borrow - loans, debentures and other convertible securities; offer & issues of debenture; company charges - fixed and floating charges, crystallization, priority of charges, registration and effect of non-registration; Solvency statement; System of internal control.

16.4 Control & Management

Division of powers between directors and members; types of directors, appointment, termination and removal; Structure, composition and functions of the Board as provided by the Companies Act, 2016, Malaysian Code of Corporate Governance 2017 and Bursa Malaysia Listing Requirements; Resignation, vacation or death of sole director or last remaining director; Qualification and disqualification of directors; duties and powers of directors; Approval of directors fees; Business judgement rule under section 214 of the Companies Act, 2016; prohibited transactions involving directors; fiduciary duties - duty to exercise powers in good faith in the best interests of the company, duty to act for proper purpose, duty to avoid conflict of interest and duty of skill, care and diligence, statutory duties and self-dealings by directors; loans to directors and persons connected, directors' disclosure of share dealings and disclosure of share interests of chief executive, insider trading law; provisions indemnifying directors and officers and insurance; contractual capacity of directors and protection of outsiders – *Turquand's Rule and Holding Out*; board meetings and significance of decision-making; Dividends and substantial shareholdings; Company secretary - appointment, qualification, remuneration, removal; roles, duties and limitation of administrative authority of the company secretary; statutory books, records, minutes, resolutions and returns; Register of Practising Secretaries; Company auditors: qualifications; appointment; powers and duties; fixing of auditors' remuneration; resignation; qualified privilege of auditors; definition of "outgoing auditor"; provisions relating to auditors of private companies and public companies.

16.5 Membership of Company

Distinction between a member and a shareholder of a company; duties, rights and limited powers of shareholders; meaning of substantial shareholders; disclosure obligations of substantial shareholders under the Companies Act, 2016; rights and protection of minority shareholders; modes of action against company; the Rule in *Foss v Harbottle* and the exception to this rule; statutory protection against oppression and form of relief including just and equitable winding-up under the Companies Act, 2016.

16.6 Shareholders' Meetings and Proceedings

Types of resolutions; Members written resolutions regime: written resolutions of private companies; passing resolutions at meetings of members; types of company meetings - Annual General Meeting for Public Companies, Extra-ordinary General Meetings, class meetings, requisitioned meeting; procedure for convening and requisitioning a meeting - notice and quorum; Procedure at meetings:- rights at meetings, proxies, voting procedures; type of resolutions and their significance; recording of proceedings - minutes of meetings, statutory requirements, minutes as evidence.

16.7 Arrangements, Reconstructions, Amalgamations and Take-overs

Difference between reconstruction and amalgamation; schemes of restructuring; scheme of arrangements; power of Courts to make restraining orders and protections against winding up under the Companies Act, 2016; effect of restraining order; mergers and acquisitions: Malaysian Code on Take-Overs and Mergers 2016, role of the Securities Commission, procedures for takeovers, prohibited market practices - short selling; market manipulation; false information; insider trading, share hawking.

16.8 Receivers and Receivers and Managers and Investigation

Factors leading to receivership; appointment of receivers - by court, out of court; qualification and remuneration of receivers; functions and roles of receiver or receiver and manager; powers, duties and liabilities of receivers and receiver & manager; effects of appointment of receivers; rational and order for investigation; application for an order and elements of investigation; powers of investigators, inspector's report, and cost of an investigation; obligations of company and directors to provide information to receiver or receiver ad manager.

16.9 Corporate Rescue Mechanism and Cessation of Companies

Corporate voluntary mechanism: proposal for voluntary arrangement; moratorium; Judicial Management: Power of Court to make judicial management order and to appoint insolvency practitioner to act as judicial manager; effect of judicial management order; committee of creditors; winding up of company under judicial management; Winding Up: Types, mechanics and modes of winding-up; voluntary winding-up - types, circumstances, grounds and consequences; creditors and members' voluntary winding-up; contributories; insolvency and compulsory winding-up - process, persons who may petition, winding-up petition; grounds for compulsory winding-up order; effects of winding-up; qualification, appointment of liquidators; functions, duties, powers and liabilities of liquidators in a winding-up; transactions, recovery and division of assets.

16.10 Other Relevant Laws to Companies in Malaysia

Powers of the Companies Commission of Malaysia (SSM) to prosecute under the Companies Commission of Malaysia (Amendment) Act 2015; In addition to fines and the compounding of fines, SSM has the power to institute civil and criminal liability against officers of a company; Requirements for protection of whistleblowers; types and scope of protection under the Whistleblower Protection Act, 2010; Limited Liability Partnership Act, 2012; Competition Law: Competition Act 2010 & Competition Commission Act 2010; Interest Schemes Act, 2016 and Interest Schemes Regulations 2017.

16.11 Functions and powers of Securities Commission

Outline of the role and function of Bursa Malaysia; procedure for obtaining listing or quotation; Listing Requirements of the Main Market and ACE Market; Bursa Malaysia Securities Berhad's regulations; post-listing and continuing listing obligations; function and powers of Securities Commission; various guidelines issued by the Securities Commission, announcements by Bursa Malaysia and listed companies.

RECOMMENDED READING TEXTS

- 1.0 Mohd Sulaiman, A.N. & Othman, E (2018), *Malaysian Company Law: Principles and Practices*, (2nd edition), Kuala Lumpur: CCH Asia.
- 2.0 Chan Wai Meng (2017), *Essential Company Law in Malaysia: Navigating the Companies Act, 2016*, Subang Jaya: Sweet & Maxwell.
- 3.0 Chan, B, Koh, P & Ling, P (2006), *Chan & Koh on Malaysian Company Law Principles and Practice*, Petaling Jaya: Sweet & Maxwell.
- 4.0 Chang Huey Wah, Alex (2003), *Companies Winding-Up Handbook*, Kuala Lumpur: Malayan Law Journal.
- 5.0 Foo Poh Kean, Kenneth & Lee Shih (2017), *Companies Act 2016: The New Dynamics of Company Law in Malaysia*, Kuala Lumpur: CLJ Publication.
- 6.0 Rachagan, S, Pascoe, J and Joshi, A (2005), *Concise Principles of Company Law in Malaysia*, Kuala Lumpur: Malayan Law Journal Sdn Bhd.
- 7.0 Loh, S.C (2018), *Corporate Powers: Accountability*, (3rd edition), Selangor: LexisNexis/ Malayan Law Journal.
- 8.0 Geoffrey, Shanti (2010), *Capital market laws of Malaysia*, Selangor, LexisNexis.
- 9.0 Low Cheek Keong (1997), *Securities Regulation in Malaysia*, Kuala Lumpur, Malayan Law Journal.
- 10.0 Solomon, Jill (2013), *Corporate Governance and Accountability*, 4th edition, Sussex: John Wiley and Sons.
- 11.0 Tan Cheng Han (2009), *Walter Woon on Company Law*, (Revised 3rd edition), Singapore: Sweet & Maxwell.

Statute Books

1. Companies Act, 2016
2. Companies Regulations 2017
3. Interest Schemes Act, 2017
4. Interest Schemes Regulations 2017

5. Bursa Malaysian Securities Bhd (BMSB) Listing Requirements of the Main Market (together with Practice Notes, regulations and amendments thereunder)
6. Capital Market Services Act, 2007 (and the regulations thereunder)
7. Securities Commission Guidelines (together with Practice Notes, Guidance Notes, and amendments thereunder)
8. Companies Commission of Malaysia (Amendment) Act, 2015
9. Companies (Winding-Up) Rules, 1972
10. Limited Liability Partnership Act, 2012
11. Competition Act, 2010
12. Malaysian Code on Corporate Governance 2017
13. Malaysian Code on Takeovers and Mergers 2016
14. Rules on Takeovers, Mergers and Compulsory Acquisitions, 2016
15. Personal Data Protection Act, 2010
16. Whistleblowers' Protection Act, 2010
17. Witness Protection, Act 2009
18. Insolvency Guidance Notes by Malaysian Institute of Accountants (MIA)

Informative Web-sites

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| 1. http://www.ssm.com.my | - Companies Commission of Malaysia |
| 2. http://www.sc.com.my | - Securities Commission, Malaysia |
| 3. http://www.bursamalaysia.com | - Bursa Malaysia |
| 4. http://www.macs.org.my | - Malaysian Association of Company Secretaries |
| 5. http://www.maicsa.org.my | - Malaysian Institute of Chartered Secretaries & Administrators |
| 6. http://www.micg.net | - Malaysian Institute of Corporate Governance |
| 7. http://www.mia.org.my | - Malaysian Institute of Accountants |
| 8. http://www.icsi.edu | - Institute of Company Secretaries of India |

Journals

1. *The Malaysian Corporate Secretary*, MACS, Malaysia
2. *The Voice*, MAICSA, Malaysia
3. *Accountants Today*, MIA, Malaysia.