

SECTION A – FORMS AND STRUCTURES OF AND SOURCES OF FINANCE FOR BUSINESS ORGANISATIONS

A1. Forms of business (enterprise) organisation

Classification and Structure

The main form of business organisation for medium and large scale enterprises in Malaysia is the limited liability company. Such companies may be either private limited (Sendirian Berhad or Sdn. Bhd.) or public limited (Berhad or Bhd.) companies.

Public listed companies are listed either on the Main Board or the Second Board of the Kuala Lumpur Stock Exchange (“KLSE”). The Second Board, which complements the Main Board, was established in 11th November 1988 to enable smaller companies with strong growth potential to seek a listing on the Exchange. Each Board is further classified by sectors reflecting the core business of these companies. Below is the total number of listed companies for the last five years.

YEAR	MAIN BOARD	SECOND BOARD	TOTAL
1998	449	285	734
1997	444	264	708
1996	413	208	621
1995	369	160	529
1994	347	131	478

System of Registration of Companies

There is a system of registration for private and public limited companies. The requirements for registration are contained in the Companies Act 1965. The rules are the same for both private and

public limited companies. An application must first be made to the Registrar of Companies inquiring whether the proposed name of the company is available. If so, a three months reservation of the name is given from the date of approval. There are prescribed forms and fees for each application. Within the three month reservation period, documents such as the Memorandum & Articles of Association, Statutory Declaration of Compliance and Statutory Declaration by a person before appointment as director or by a promoter before incorporation of companies, together with the relevant fees should be lodged with the Registrar of Companies. For registration of a company in Malaysia, the fee payable to the Registrar of Companies on its authorised share capital is as follows;

AUTHORISED SHARE CAPITAL (RM)	FEE PAYABLE
UP TO 100,000	1,000
100,001 - 500,000	3,000
500,001 - 1MILLION	5,000
1,000,001 - 5 MILLION	8,000
5,000,001 - 10 MILLION	10,000
10,000,001 - 25 MILLION	20,000
25,000,001 - 50 MILLION	40,000
50,000,001 - 100 MILLION	50,000
100,000,001 - AND ABOVE	70,000

Upon registration, a certificate of incorporation (Form 8 or 9) of the company will be issued by the Registrar of Companies. A company must have a registered office in Malaysia at which all books and accounts required under the Companies Act 1965 should be kept. The following registers have to be kept and changes thereto have to be filed with the Registrar of Companies:

- Register of Members
- Register of Directors, Managers and Secretaries

- Register of charges (if applicable)
- Register of interest holders (if applicable)

Minimum Capitalization Requirements

A public company seeking listing of and quotation for its securities on the Main Board of the stock exchange should have an issued and paid-up capital of not less than RM 20 million comprising ordinary shares of RM 1.00 each, and on the Second Board should have a minimum issued and paid-up capital of RM 5 million but less than RM 20 million comprising ordinary shares of RM 1.00 each. As for the minimal capitalisation requirement for a private limited company, as each company must have a minimum of 2 members, the minimum paid up capital would be 2 Ringgit.

Main Features of Malaysian Business Organizations

In Malaysia, a private limited company must by its Memorandum or Articles of Association restrict the right of members to transfer shares. It may not invite the public to subscribe for its shares and debentures nor to deposit money with the company. A public limited company on the other hand can offer shares and debentures to the public for subscription and the shares are freely transferable.

A public company cannot offer shares to the public unless a prospectus that complies with the requirements of the Companies Act 1965 has been registered with the Registrar of Companies. The proposal for the issue or offer of shares to the public should first be submitted to the Securities Commission for approval before a prospectus can be accepted for registration. Where a public listed company has issued and registered the prospectus, it is prohibited by the Companies Act 1965 to commence business if it fails to apply or obtain permission by the KLSE to have its shares quoted on the Exchange or comply with the requirements laid down by the KLSE.

The following are the main features of private and public limited companies by reference to ownership, accounting and auditing responsibilities, director and management responsibility and finally the role of regulatory authorities.

◆ ***Ownership***

A private company is limited in size to 50 members whilst there is no maximum limit for public limited company. The minimum number of members for both types of companies is two. Employees of a private company or its subsidiaries are not included in the 50 member limit.

◆ ***Accounting and auditing responsibilities***

The accounting and auditing responsibilities of private and public limited companies are the same.

▪ ***Accounting***

The directors of private and public limited companies are required, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year, to lay before the company at its annual general meeting, a profit and loss account, a balance sheet as at the date to which the profit and loss is made-up and a director's report.

The profit and loss accounts and balance sheet of the company must show a true and fair view of the profit and loss and state of affairs of the company for the period concerned. The term 'true and fair view' means that the said accounts must not be misleading. Further, the Ninth Schedule to the Companies Act 1965 contains the information which should be stated in the accounts. International accounting standards apply.

Further, the company through its directors and managers are also required to keep accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time. The entries in such records should be made within sixty days of the completion of the transactions to which they relate and the records are thereafter to be retained for a period of seven years from the latter date.

- *Auditing*

The auditor of a company has a duty to report to the members on the company accounts. The report must state whether the company accounts, ie, the balance sheet and the profit and loss accounts are in his opinion properly prepared in accordance to the Companies Act 1965, and whether in his opinion a true and fair view is given in the above mentioned accounts of the state of the company's affairs and profit and loss respectively.

It is also the auditor's duty to form an opinion and state in his reports, whether the company has kept proper accounting and other records (including registers) has been kept by the company required by the Companies Act 1965.

An auditor is obliged to exhibit a reasonable degree and skill in the performance of his duties. This duty may arise in contract or in tort. The standard of care required is that of a reasonable auditor – a breach will only occur if it can be shown that a reasonable auditor would not have made such a mistake.

- ◆ ***Director's and Management Responsibilities***

- (i) *Director's Responsibilities*

In addition to the statutory duties imposed on the directors by the Companies Act 1965, directors also owe a common law duty of care and a fiduciary duty to the company, the extent of the latter duties are determined by case law.

The following are some of the director's responsibilities under the Companies Act 1965. These responsibilities apply to both private and public limited companies unless stated otherwise.

- A director must act honestly at all times and use reasonable diligence in the discharge of the duties of his office.
- A director must not make improper use of any information acquired by him by virtue of his position in the company to gain an advantage for himself or cause any detriment to the company. In relation to this, directors must also not commit any insider trading offences.

(ii) *Management Responsibility*

Generally, responsibilities of those concerned in the management of companies depend on the constitution of each company. Responsibilities for compliance with the Companies Act 1965 and its subsidiary legislation may be delegated to external company secretarial practices or handled in-house by a licensed company secretary. The more significant duties of management are:

- to seek approval of the company in a general meeting before they dispose of or execute any transaction for the disposal of a substantial portion of the company's undertaking or property. Again, the Companies Act imposes a penalty for breaches of this section.
- Disclosure of interests in any contract or proposed contract made by the company.

- the preparation and filing of the statutory report giving details, inter alia, on the shares allotted, cash received in respect of the shares, which should be forwarded to the members of a public limited company before the holding of a statutory meeting soon after it commences business.
- to lay before the company at its annual general meeting, a profit and loss account, balance sheet and a director's report and circulate the same to the members of the company not less than fourteen days before the date of the meeting. These documents must be accompanied by a statement issued by the directors stating that in their opinion the profit and loss account and the balance sheet give a true and fair view of the profit and loss of the company and the state of the affairs of the company respectively.
- In the case of a public limited company, the directors of a company have the responsibility to ensure that a prospectus is issued and circulated to the public and its contents are in accordance with the requirements of the Companies Act. A director of the company is open to civil or criminal liability for untrue statements or willful non-disclosure of any material information in the prospectus.

Statutory Regulatory Framework

- *Companies Act 1965* – provides for the office of the Registrar of Companies established under the Companies Act 1965, who generally administers the Act.
- *Securities Industry Act 1983* (“

- Power of Minister to approve a stock exchange and to give recognition to a clearing house
 - Power of Commission to approve amendments to the rules of a stock exchange and clearing house
 - Power to issue licences to dealers, fund managers, investment advisers and their respective representatives.
- *Securities Commission Act 1993 (“SCA”)* - The SCA establishes the Securities Commission (“SC”), which is the body that regulates the securities industry as a whole. It sets out the powers and functions of the SC, a body corporate that is entrusted with regulating the securities industry. The Act also contains provisions for Take Over and Mergers. The SC has wide enforcement and investigation powers ensuring the smooth running of a fairly and orderly market.
 - *Securities Industry (Central Depositories) Act 1991 (“SICDA”)* - SICDA provides for the regulation of a central depository in respect of the **electronic** deposit, holding, withdrawal, and dealing in securities deposited and other matters related thereto. The Central Depository System operated by Malaysian Central Depository Sdn Bhd (“MCD”) was given a licence by the Minister under SICDA to establish and maintain a central depository.

Self Regulatory Organisations

- Kuala Lumpur Stock Exchange

The Kuala Lumpur Stock Exchange is a self-regulatory organisation that governs the conduct of its members and member companies in securities dealings; enforces the listing requirements which spell out the listing and disclosure standards to be maintained by public

listed companies; and is responsible for surveillance of the market place.

A2. Controls and Influences

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□ ***The National Economic Policy***

The main source of social, political and cultural control and influence would be the National Economic Policy (“NEP”). The NEP was formulated in 1970 to redress certain imbalances in the spread of ownership amongst the various races in Malaysia in the wake of the worst racial riots in the country’s history. The NEP was designed to improve the economic well being of the Malay and aboriginal communities (collectively known as the Bumiputera Community), whilst preserving the ability of the other communities to continue with new and existing businesses. This set of policies has been the mainstay of Malaysia’s economy ever since. The policy must be understood in context of the provisions in the Federal Constitution which acknowledge and preserve the special status of the bumiputeras.

This has led to policies that govern minimum bumiputera participation for new businesses in key areas of the economy, particularly the manufacturing sector, where certain percentage of the equity in projects are reserved for the Bumiputra community. Another example is in the raising of capital through new share issues, where a certain portion of new shares is reserved for the Bumiputera community.