

STREAMLINING FORMATION OF COMPANIES WITH INTERNATIONAL STANDARDS

The Present Position

The Companies Act 1965 (“1965 Act”) requires a private company to be incorporated by at least two (2) individuals and must have at least 2 directors who are permanently based in Malaysia.ⁱ

Furthermore, the 1965 Act also requires 2 or more persons to submit a Memorandum to register and form an incorporated company.ⁱⁱ

Ease of Incorporation, maintenance and cost

The proposed Companies Act 2016 (“2016 Act”) makes it easier and cheaper to incorporate and operate a company as it allows online registration of a company without the need to use the services of a company secretary. In addition, the requirement to maintain a Memorandum and Articles of Association is done away with as a ‘Constitution’ is provided for in the 2016 Act which can be adopted by all companies in the event they opt not to craft its own Memorandum and Articles of Association. Another interesting feature of the 2016 Act is the dispensation of the holding of an annual general meeting annually for private companies.

It is also a welcome transformation under the 2016 Act to allow a private company to be incorporated with only one (1) individual being the sole member and director of that companyⁱⁱⁱ and only requires one person to apply to the Registrar

for incorporation. There will no longer be a requirement for the proposed company to lodge its Memorandum with the Registrar.^{iv}

The categories of companies that can be incorporated under the 2016 Act are a company limited by shares, a company limited by guarantee and an unlimited company. The 2016 Act no longer allows companies limited by both shares and guarantee.^v

Registration and Formation of a Private Company

The Registrar, if satisfied with the application for the formation of a private company, will enter the particulars of the company into the register, assign a registration number and issue a notice of registration.^{vi} As the notice of registration is conclusive evidence that matters relating to the incorporation procedures have been complied with, a certificate of incorporation will no longer be issued unless applied by the company.

Increase of powers for Registrar to refuse

The Registrar’s powers have been enhanced where the Registrar can refuse registration of a proposed company if the registration requirements have not been complied with.^{vii} In comparison, the 1965 Act only permits refusal of registration where the company’s Memorandum contains less than two persons as its first directors.^{viii}

Who should take advantage of this?

In this regard, companies with nominee director and shareholder may wish to take advantage of this mode, to reduce director’s fee and dividend pay-out. Sole proprietors may consider converting their business model into private companies once the 2016 Act comes into force, as private companies can now be operated by sole individuals whilst enjoying the benefit of limited liability.

Conclusion

The 2016 Act attempts to simplify the incorporation process of companies and reduce maintenance and cost of doing business in Malaysia. This is expected to encourage entrepreneurs, local and foreign investments in Malaysia. This is also attractive to individuals who wish to have complete control of a company and yet hold separate legal entity and limited liability.

It is also clear that the 2016 Act seeks to make it simpler, straightforward and inexpensive to incorporate private companies for better governance and internal controls in business operations.

ⁱ Section 122 of the Companies Act 1965; ⁱⁱ Section 14 of the Companies Act 1965; ⁱⁱⁱ Section 196 of the Companies Act 2016; ^{iv} Section 9 of the Companies Act 2016; ^v Contrast this with section 14(2) of the Companies Act 1965; ^{vi} Section 15 of the Companies Act 2016; ^{vii} Section 16 of the Companies Act 2016; ^{viii} Section 16(7) of the Companies Act 1965