



**Malaysia Company Law:
Principles and Practices**
2nd Edition

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CHAPTER 1

REGISTRATION AND PROMOTION OF COMPANIES

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- **Transferability of shares:** the shares that a member owns can be transferred to another person.
- **Two organs or decision-making bodies:** one is the board of directors and the other is the general meeting of its members. There is centralised management by the board of directors.
- **Perpetual succession:** a company will continue to exist as a legal person until it ceases to exist through a process known as winding up and its subsequent deregistration or removal from the Register. The company continues to exist even if there is a change in membership or even if all its members cease to exist.

1.051 A company may also be incorporated as a **company limited by guarantee**. Such companies are set up for charity, education, religious purposes, research, art and scientific purposes. These companies are not set up for profit-making purposes.

As at December 2016, there were 1,198,592 registered local companies and 4,727 foreign companies in Malaysia. In 2016, 47,831 new companies were registered. The total number of companies limited by guarantee as at 31 December 2015 was 2,150.

1.052 A company is a popular business vehicle because of its separate legal personality and the limited liability of its members. Separate legal personality enables the company to continue its business without having to be closed down when there are changes in its membership. It is quite common to find businessmen establishing companies to be used for the purpose of limiting their personal liability for obligations or liabilities incurred in the future by the company in carrying on that business. This is possible because of the separate legal personality of the company. The transferability of shares also enables a person who has invested in the company (ie a member) and who has been given shares to represent his investment in a company, to easily sell the shares. This makes investment in companies more attractive than a partnership.

The governance structure is made up of the general meeting of members and the board of directors. Both have powers to make decisions for the company. The powers exercisable by these two organs are stipulated under the *Companies Act 2016* (CA 2016). Generally, the power to manage the company's business is conferred on the board of directors. Centralised management means that investors do not have to be involved in managing the business, thus enabling a wider group of people who may not have the skill and business experience to use a company as an attractive investment vehicle. In most large companies, the power of management is often delegated to employees of the company.

1.053 There are also disadvantages to carrying on business using a company. There are more rules and regulations governing companies than other types of business forms. Hence, the cost of compliance in terms of finance, time and resources will be higher compared to other forms of business vehicles. For example, a company has reporting obligations regarding its financial records and status and there is also an obligation to have its financial statements audited. A company is more exposed to public scrutiny as there are documents that must

Malaysia Company Law: Principles and Practices

2nd Edition

Malaysia Company Law: Principles and Practices provides a detailed and in-depth discussion of core company law principles, including explanations and examples of their practice. It considers an extensive number of reported cases with extracts of significant dicta and relevant statutory provisions, combining the discussion of the *Companies Act 2016*. This approach enables the reader to engage in a critical examination of the law as it is and as it ought to be. The thoughtful use of tables, diagrams and flowcharts simplifies complicated concepts and the factual background of judicial decisions. This book is an invaluable teaching and learning tool that provides practical insights into understanding company law. It is ideal for students as well as legal practitioners and professionals in management and finance related matters.

The commentaries have been rearranged and updated in this Second Edition to include the latest case law and company practice. Also new in this edition are useful commentaries on judicial management and corporate voluntary arrangement, the two further alternative corporate rescue mechanisms introduced in *Companies Act 2016*.

Authors:

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