

# THE APPROVED COMPANY SECRETARIES



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ISSUE 1/2022

## SSM BUSINESS REVIEW REPORT IN A DIRECTORS' REPORT – PART I

### UNRAVELING THE TRUE MEANING OF “THE INTERESTS OF THE COMPANY” (PART 1)

### GRACE PERIOD FROM 1 JANUARY 2022 TO 31 MARCH 2022 FOR EXECUTING THE 2% TAX DEDUCTION ON PAYMENT TO AGENTS, DEALERS OR DISTRIBUTORS



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# FROM THE EDITOR'S DESK

Dr. Adissayam Xavier Suseimanikam, FIACS



First and foremost, on behalf of IACS Council and staff, I wish all our members a very 'Happy New Year 2022'. Welcome to the 1<sup>st</sup> issue of IACS newsletter for 2022. I hope all are doing well and keeping safe during this pandemic time.

I am pleased to inform that IACS had successfully held its 25<sup>th</sup> Annual General Meeting (AGM) on 27<sup>th</sup> November 2021 at World Trade Centre Kuala Lumpur. A special thanks to all our members who attended and supported our AGM despite the Covid-19 pandemic. At the AGM, we received unanimous approval from our members to amend the Constitution of IACS for the purpose of enhancing the administrative efficiency. All the required documents have been submitted to SSM for its deliberation and for the final approval by the Minister.

After the conclusion of our AGM, the following Council Members were elected as Office Bearers for the term 2021-2022:-

President	: Dr. Adissayam Xavier Suseimanikam
Vice-President	: Mr. See Poh Lam
Secretary	: Puan. Hajjah Nolida binti Md Hashim
Treasurer	: Ms. Ng Seok Kim
Assistant Secretary	: Puan Aminah Binti Hussin
Assistant Treasurer	: Ms. Amy Chin Tet Fung
Council Members	: Mr. Santiran s/o Sankaran Mr. V. M. Thiagarajan

I am truly honoured to be re-elected as President for the term 2021-2022. As I take the helm of the Presidency, I am indeed grateful and thankful to all the Council Members for their trust and confidence placed in me and will do my utmost best to elevate the status of the Institute. I am confident that with the support of the Council, members and staff of IACS, we can forge ahead and ensure IACS to be the sole representative and platform for all licensed company secretaries in Malaysia.

I welcome and congratulate all the new office bearers, members of the Council and Chairpersons of the various committees/boards on their respective elections or appointments. I also wish to thank all the outgoing committee/board members for their support, insights and contributions to enhance the workings of the committees/boards.

I am pleased to inform that IACS had successfully organised and conducted a total of thirty three (33) training programmes (twenty eight (28) webinars and five (5) physical seminars) throughout the country in the year 2021 despite the total lockdown from June to September 2021. I wish to express my sincerest thanks to all our members who have supported and participated in our webinars/seminars. The Council would also like to record our appreciation to all the seminar Organising Chairpersons and staff for having done an excellent job.

Apart from the above, I wish to inform our members that IACS had recently formed an Audit Committee. The primary purpose of the Audit Committee is to provide oversight and inputs on the financial accounting and the reporting process, the audit process, the Institute's system of internal controls, and compliance with laws and regulations. With this initiative, IACS aims to have a better internal control system, transparent and good corporate governance.

We truly value your continued support and I look forward to meeting you at one of our events in the very near future. In the meantime, members are invited to write to us on any technical or other operational issues and enquiries with SSM or other agencies on the company law and other corporate secretarial matters so that we can provide a reply or address them at the appropriate forums/meetings. Take care, stay safe and follow SOP at all times more so with the emergence of the Omicron wave in Malaysia.

Thank you.



#### INSTITUTE OF APPROVED COMPANY SECRETARIES (387525-X)

Institute of Approved Company Secretaries (IACS) is a company limited by guarantee and not having a share capital. IACS was incorporated on 16 May 1996 with the Registrar of Companies (ROC).

#### IACS Council for 2021/2022:-

President : Dr. Adissayam Xavier Suseimanikam  
Vice President : Mr. See Poh Lam  
Secretary : Pn. Hajjah Nolidia Binti Md Hashim  
Treasurer : Ms. Ng Seok Kim  
Assistant Secretary: Pn. Aminah Binti Hussin  
Assistant Treasurer: Ms. Amy Chin Tet Fung  
Council Members : Mr. Santiran s/o Sankaran  
Mr. V. M. Thiagarajan

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#### Contributions of Article

The Council would like to invite members to contribute articles and news, which may be of interest to company secretaries for publication. However, the Council reserves the right to edit articles for clarity purposes or it shall at its absolute discretion not publish any or all articles or news received from contributors. A fee will be paid for contributions approved by the Board.

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# SSM BUSINESS REVIEW REPORT IN A DIRECTORS' REPORT – PART I

By  
Dr. Cheah Foo Seong FCIS, FIPA, MBA, LLM, LLD

## Introduction

The Business Review Report is in a narrative form that allows companies to report essential information on the company's direction plans and its performance. Compliance to this voluntary narrative reporting will allow management to report on the issues that impact the overall performance of the business, additional to the financial statements that will provide a detailed financial information of the company. Although under the law, submission of the Business Review Report to the Registrar is voluntary in nature, the SSM is encouraging companies to comply with this new generation of corporate reporting. SSM has published the Best Business Practice Circular (BBPC) 6/2017 on Business Review Report: Guidance to Disclosure and Reporting, and the following are an extract of the said BBPC.

The Companies Act 2016 has introduced under section 253(3) on the contents of Directors' Report to include the Business Review Report in an attempt to broadening up non-financial reporting in annual financial statements. Section 253(3) of the Companies Act 2016 stipulates that the business review report will form part of the directors' report and that, its contents include matters as set out in Part II of 5th Schedule of the Act.

## Business Review pursuant to the Companies Act 2016

The Best Business Practice Circular (BBPC) 6/2017, highlighted, amongst others the following sectors of business to be reported.

- Why the need for a business review report?

The crucial part of a business review to a company is identifying its stakeholders and producing information that is relevant and important to them. Apart from providing information to its existing members or shareholders, there is growing expectation that the board of directors have an obligation to communicate important matters to their other stakeholders. Further, a good business review report should attempt to provide comprehensive information on the company that is not covered under the financial statements and meant for its stakeholders (Table 1). Table 1:

Stakeholders	Information needs and expectations
Investors	<ul style="list-style-type: none"> <li>• Allows investors to be informed about what the company has done during the year in question, how well risks to the environment and society, and related risks to the business, are being managed, and the way forward for the company.</li> <li>• Information disclosed may be used for investment decision making process, risk assessment, investment returns and engagement with the company</li> </ul>
Employees	<ul style="list-style-type: none"> <li>• Allows the employees to understand the company's strategy and its process of decision making as it affects both the responsibilities and the rights and welfare of employees.</li> <li>• Enable to ascertain whether the company is a stable employer and upholds corporate responsibility</li> </ul>



<i>Customers</i>	<ul style="list-style-type: none"> <li>• <i>Customers to be informed about the credibility of the company, including how well it meets the environmental and social expectations.</i></li> <li>• <i>Most of the customers want to know if the products they purchase are environmentally friendly and produced with respect for people's human rights.</i></li> </ul>
<i>Suppliers</i>	<ul style="list-style-type: none"> <li>• <i>Suppliers needs to be informed about the credibility of the company.</i></li> <li>• <i>Assists suppliers to understand the risks and opportunities that may affect their business.</i></li> <li>• <i>Helps suppliers understand the demands that can be expected from the company as part of its supply chain.</i></li> <li>• <i>Helps supply chain workers understand the company's efforts to ensure its purchasing practices enable respect for human rights, including its labour rights.</i></li> </ul>
<i>Environment</i>	<ul style="list-style-type: none"> <li>• <i>Operation efficiency with conservation of resources.</i></li> <li>• <i>Sustainable business practices.</i></li> <li>• <i>Protecting environment prove to be good business strategies e.g. carbon emissions, environmental spillage</i></li> </ul>
<i>Community</i>	<ul style="list-style-type: none"> <li>• <i>Individuals or groups concerned on the environment and the impact of the company on environmental matters or society.</i></li> <li>• <i>Assists the community in evaluating on how well the company understands and makes efforts to avoid potential impacts on human rights and welfare.</i></li> <li>• <i>Provides a basis for communities to engage with the company as an information source on local trends, developments and company impacts.</i></li> <li>• <i>Enables communities also to see how the company is supporting local development, through employment opportunities, sourcing from local suppliers and supporting community projects.</i></li> </ul>
<i>Others</i>	<ul style="list-style-type: none"> <li>• <i>Basis for understanding companies' values, principles, attitudes, performance and goals.</i></li> <li>• <i>Matters pertaining to environmental performance, human rights including equal opportunities and customer related issues</i></li> </ul>

Therefore, a business review report not only reflects a fair review of the business of a company but it also encompasses the significant events that have occurred during the financial year as well as the likely future development of the business.

It should also be highlighted that the corporate responsibility report component in the business review report is not only limited to philanthropy activities but includes information on the company's commitment towards its stakeholders to conduct business operations in an economically, socially, environmentally sustainable, transparent and ethical manner.

- How to develop reporting & analysing risks and opportunities?

Relevant information needs to be reported to stakeholders. The following questions listed in Table 2 may assist in the preparation of your report:

**Table 2:** List of Useful Questions in Preparation of the Business Review Report

<i>Information To Be Reported</i>	<ul style="list-style-type: none"> <li>• <i>Apart from members/shareholders, who are your principal stakeholders for receiving information?</i></li> <li>• <i>What are your objectives in reporting performance to your stakeholders?</i></li> <li>• <i>What are your stakeholders' expectations of performance, accountability and transparency?</i></li> <li>• <i>Which are the arising issues or matters that are material to your organisation?</i></li> <li>• <i>What are the current relationships your organisation has with stakeholders and how do you want the reporting and transparency to contribute to such relationship?</i></li> </ul>
<i>Analyse Risks and Opportunities</i>	<ul style="list-style-type: none"> <li>• <i>What information should not be revealed to protect confidentiality of contractual agreements, competitive position and proprietary knowledge?</i></li> <li>• <i>Do you have systems and resources to collect information in order provide a quality and informative report?</i></li> <li>• <i>What are the environmental and social challenges faced in your operations?</i></li> <li>• <i>How can transparency improve your competitive position?</i></li> <li>• <i>What are the risks and the impact that has arisen or may arise with the stakeholders?</i></li> </ul>

- Who is responsible to report?

The board of directors is responsible for the financial report and directors' report that may include the business review report. To prepare the report, the directors need to determine the achievement of the company and its future direction which includes both successes and failures that are essential in discharging their duties in the best interest of the company.

The board of directors is responsible to the content and the manner of writing the business review report. Although there is no standard context as to the writing, the board of directors are to ensure the transparency in disclosing the events, trends, opportunities and risks that could affect the performance and impact to the company and stakeholders. Analysis of the past and the way forward of the company may be included as part of the business review report.

- Method of business review report

The business review report may be created in the form of:

- Narrative* ► Example: Our first manufacturing plant was opened in 2013 in Perak. The fourth plant opened in Vietnam is expected to increase its sales by 10% while the plant in Singapore will see an increase in sales of only 5%.
- Summary* ► Example: Sales of the manufacturing plants that are in operation
  - Perak 50,000,000
  - Vietnam 65,000,000
  - Singapore 56,000,000
  - Sarawak 45,000,000



(b) Charts with explanation and reference; or



(c) Any relevant format deemed fit. It will be ideal for the board of directors to discuss with the shareholders, management and their relevant stakeholders (if necessary) and come to a consensus on the following matters:

- Who will be responsible in preparing and coordinating the report?
- What information is to be included for the analysis of the past and way forward?
- How to distribute the annual report to the shareholders and essential stakeholders?
- The manner of reporting.
- Budget.
- Timeline to prepare the draft report and finalise

## MODEL TEMPLATE OF BUSINESS REVIEW REPORT

The set of questions in **Table 5** may assist a company when preparing a business review report. However, the information to be disclosed is not exhaustive and may be subject to the nature of business carried out by the company.

The questions as listed below act as guidance only and preparers must attempt to disclose information which is relevant to the stakeholders.

**Table 5:** Model Template for Business Review Report

Questions	Information To Be Disclosed
<b>REPORTING OF BUSINESS REVIEW PURSUANT TO SECTION 253 (3) OF THE COMPANIES ACT 2016</b>	
Company name	Name of company and registration no
For the Year	The year of the business review
<b>Mission statement &amp; Values</b> <ul style="list-style-type: none"> <li>• Objective of your company towards corporate responsibility.</li> <li>• Company values</li> </ul>	Relate the mission statement and company values.
<b>Business overview or objective</b> <ul style="list-style-type: none"> <li>• What do you provide/activities or your core business (identify your industry)?</li> <li>• What is the size of your company?</li> <li>• What is the structure and activities of the company?</li> <li>• What are your customers' needs (identify your customer)?</li> </ul>	Brief description of the company and what it does. Could include information like company vision and mission, philosophy, number of employees, location, years in business, any awards won, etc.

<b>CEO and/or chairman's opinion</b> <ul style="list-style-type: none"> <li>• <i>How did your company perform for the year?</i></li> <li>• <i>What are the main highlights in the business?</i></li> <li>• <i>What are achievements for the year?</i></li> <li>• <i>What are the challenges for the year?</i></li> <li>• <i>What is the future sustainability?</i></li> <li>• <i>What is way forward?</i></li> </ul>	<p><i>A general view of the company from overall perspective such as performance, finance, employee etc.</i></p>
<b>Stakeholders</b> <ul style="list-style-type: none"> <li>• <i>List the main stakeholders and that have impact on your business.</i></li> <li>• <i>Relationship with other association, organisation, governmental organisations etc.</i></li> <li>• <i>State the contractual agreements available with the suppliers, customers etc. and the impact to business.</i></li> </ul>	<p><i>Describe the impact of the stakeholders to the business.</i></p>
<b>Operational highlights</b> <ul style="list-style-type: none"> <li>• <i>What was the demand of your product or services?</i></li> <li>• <i>What are the products or services in development or existing?</i></li> <li>• <i>What was the operating costs and profit margin?</i></li> <li>• <i>Who are your suppliers (optional)?</i></li> <li>• <i>Who are your competitors (optional)?</i></li> <li>• <i>What patents, copyrights and trademarks owned and applied?</i></li> </ul>	<p><i>Narrate business operational activities such as business activities, human resources, corporate responsibility and ethical behaviour, information equipment, labour relations, important contracts, type of related information etc</i></p>
<b>Financial review on position and financial risks.</b> <i>Describe:</i> <ul style="list-style-type: none"> <li>• <i>Key revenue.</i></li> <li>• <i>Key financial results.</i></li> <li>• <i>Costs and expenses.</i></li> <li>• <i>Depreciation and amortization.</i></li> <li>• <i>Net finance costs.</i></li> <li>• <i>Net profit.</i></li> <li>• <i>Non-current assets.</i></li> <li>• <i>Current assets.</i></li> <li>• <i>Current liabilities.</i></li> <li>• <i>Non-current liabilities.</i></li> <li>• <i>Financial liquidity.</i></li> <li>• <i>Financial projections.</i></li> <li>• <i>Explain to stakeholders how the performance and financial position of the company have affected the development of business.</i></li> <li>• <i>Other relevant information on financial matters.</i></li> </ul>	<p><i>Narrate matters to organisation's finances such as including explanation of year end debt, capital structure, funding and repayment schedule, quantification of debt covenants, gearing and leverage, reconciliation of year end net debt position against prior year and etc</i></p>



<p><b>Risks and uncertainties facing the company</b></p> <ul style="list-style-type: none"> <li>• Review and highlight risks from all levels i.e. management, operation, financial matters/risks.</li> <li>• How the risks and uncertainties affected the business?</li> <li>• How was the risks and uncertainties mitigated/ managed?</li> </ul>	<p><i>Describe how the risks and uncertainties had affected the performance of the business and financial matters/ risks such as overall risks management objectives on financial statements, identify key financial risks, liquidity cash flow, credit, interests rate, quantitative information and etc. What are the strategies and policies been developed to mitigate such uncertainties and risks.</i></p>
<p><b>Business review (include each activity)</b></p> <ul style="list-style-type: none"> <li>• What are the successes or failures in achieving target?</li> <li>• What are the problems faced in business?</li> <li>• How are the problems resolved and managed?</li> </ul>	<p><i>Narrate business conduct and compliance, challenges in relations towards to business practice and stakeholders</i></p>
<p><b>Trends affecting the business development</b></p> <ul style="list-style-type: none"> <li>• What are the main trends and factors that are likely to affect the future development, performance and the position of the business?</li> <li>• Provide appropriate information on the market environment in which the company operates, strategic priorities, development and performance.</li> <li>• Provide relevant information of drivers shaping the future growth in which the company operates i.e. macro-economic, competitive or regulatory trends and factors shaping the business.</li> <li>• Identify the products or projects that are in pipeline and expected market response and future trends and factors that are supported by quantitative evidence.</li> <li>• How is the performance of the company in the wider market context?</li> <li>• Reveal how the performance of the divisions/ parts of business.</li> </ul>	<p><i>Ascertain the trends and factors that have been considered in business planning and strategies that are likely to affect the future development, performance and position of the business. The objective is to help the stakeholders to assess how the directors have performed their duty.</i></p>
<p><b>Environmental matters</b></p> <ul style="list-style-type: none"> <li>• What is the impact of business towards the environment?</li> <li>• What are the policies available in respect of environment and its effectiveness?</li> <li>• Disclose matters related to emission, wastage, energy efficiency etc. and the actions taken to address such matter supported by quantifiable evidence, targets, strategy etc.</li> </ul>	<p><i>Describe the impact of business towards the environment i.e. living and non-living natural system such as land, air, water, emissions, effluents and waste. How effective were the available policies (if any) on environmental matters or if none will the company propose to have related policies</i></p>

<p><b>Employees</b></p> <ul style="list-style-type: none"> <li>• <i>What is the impact of business towards the employees?</i></li> <li>• <i>What are the policies available in respect of employees and its effectiveness?</i></li> <li>• <i>Disclose employees' policies on employment of disabled persons, health, safety, welfare of employees, recruitment, training, benefits, performance bonuses and etc. and how it contributed to the performance and development of the business.</i></li> <li>• <i>Quantitative analysis of employees' gender diversity and their designation in the company.</i></li> </ul>	<p><i>Describe the matters that have affected the employees and impact to the business. How effective were the available policies (if any) or if none will the company propose to have related policies.</i></p>
<p><b>Social and communities</b></p> <ul style="list-style-type: none"> <li>• <i>What is the impact of the business towards the society or community?</i></li> <li>• <i>What are the policies available in respect of society and community and also its effectiveness?</i></li> </ul>	<p><i>Describe how society and community have affected the company's strategies and performance of the business. How effective were the available policies (if any) or if none will the company propose to have related policies</i></p>
<p><b>Key performance indicators (KPIs)</b></p> <ul style="list-style-type: none"> <li>• <i>What are the key KPIs or focal KPIs?</i></li> <li>• <i>Which KPIs are common?</i></li> <li>• <i>Provide explanation why such KPI is included or considered focal KPIs.</i></li> <li>• <i>Numbers of KPIs.</i></li> <li>• <i>How effective were the KPIs?</i></li> <li>• <i>How often the KPIs were reviewed?</i></li> <li>• <i>How was the KPIs used with the business plan?</i></li> <li>• <i>Which measures relied on as indicators should be identified and clear company policies and strategic priorities should be in place?</i></li> <li>• <i>KPIs should include the basis of evaluation, quantified data, targets or milestones, qualitative, quantitative and any other relevant information.</i></li> <li>• <i>How KPIs relate to the employees' incentive plans?</i></li> </ul>	<p><i>Key performance indicators (KPIs), both financial and non-financial, needed to explain a company's progress towards its stated goals, for all of these types of narrative reporting such as sales, customers, employees' performance etc. KPIs are reference to the development, performance of the company's business that could be measured effectively.</i></p>
<p><b>Corporate governance</b></p> <ul style="list-style-type: none"> <li>• <i>Was the business conducted with integrity and fairness?</i></li> <li>• <i>Were all transactions made with the necessary disclosures and decisions, complying with all the laws?</i></li> <li>• <i>Was there clarity on how to fulfil its objectives?</i></li> <li>• <i>Was clear responsibility and accountability of the task assigned to the management?</i></li> <li>• <i>Was the board balance in size and was there independent directors?</i></li> <li>• <i>Did the board discharge its duties and responsibilities effectively?</i></li> <li>• <i>Were the shareholders objectives and needs considered and act to the common good of all shareholders?</i></li> </ul>	<p><i>Corporate governance is the process to establish relationships which determine corporate direction and performance based on integrity, transparency and disclosures with a certain amount of checks and balances. Corporate governance is the control of management in the best interests of the company with the accountability to the shareholders management, customers, suppliers, financiers, employees, government and the community.</i></p>



<p><b>Corporate responsibility</b></p> <ul style="list-style-type: none"> <li>• <i>What are the policies toward employees?</i></li> <li>• <i>What/How was the relationship with your stakeholders?</i></li> <li>• <i>How did you preserve/protect the environment?</i></li> <li>• <i>What has been the challenges in corporate social responsibility?</i></li> <li>• <i>What influenced your choice of corporate responsibility?</i></li> <li>• <i>Who and how many participate in corporate responsibility activities?</i></li> <li>• <i>How is CR going to innovate to meet the challenges in its supply chain and its own business?</i></li> <li>• <i>How is the business and emission growth?</i></li> <li>• <i>How will CR go beyond reducing negative impacts to make a positive impact?</i></li> <li>• <i>Charities, donations and other support in kind i.e. asset, resources etc.</i></li> </ul>	<p><i>Corporate responsibility is a process for companies to integrate social, environmental, and ethical and human rights concerns into their operations and core strategy with close collaboration with their stakeholders, shareholders, management, customers, suppliers, financiers, employees, government and the community</i></p>
<p><b>Values created</b></p> <ul style="list-style-type: none"> <li>• <i>What are the policies toward employees and customers?</i></li> <li>• <i>What/How was the relationship with your stakeholders?</i></li> <li>• <i>How did you preserve/protect the environment?</i></li> <li>• <i>How were business profits pursued in line with corporate responsibility objectives?</i></li> <li>• <i>How were stakeholders' true needs realised through corporate responsibility and company?</i></li> <li>• <i>Health and safety of the workplace.</i></li> </ul>	<p><i>The primary objective of any business entity is value creation. Value creation is the performance or actions that increase the worth of goods, services, stakeholders, shareholders, management, customers, suppliers, financiers, employees, government and the community.</i></p>
<p><b>Sustainability</b></p> <ul style="list-style-type: none"> <li>• <i>What are the costs and resources involved?</i></li> <li>• <i>What is our environment footprint?</i></li> <li>• <i>To what extent our products are green?</i></li> <li>• <i>Where are we in comparison to our competitors?</i></li> <li>• <i>How to become a greener company in future?</i></li> <li>• <i>How engaged and educated are our employee?</i></li> <li>• <i>Who are our stakeholders and what do they think of our performance?</i></li> <li>• <i>Which groups can we partner with?</i></li> <li>• <i>What are our key sustainability matrices?</i></li> <li>• <i>How do we improve our goals?</i></li> <li>• <i>How do we innovate our products and offer greener products and services?</i></li> <li>• <i>How wastage managed i.e. recycling etc.?</i></li> </ul>	<p><i>Sustainability relates to practices that contribute to the quality of life of both employees and communities that could be impacted by the company's operations such as working conditions. Environmental sustainability relates to practices that contribute to the quality of the environment on a long-term and etc.</i></p>

<p><b>Human rights associated with business</b></p> <ul style="list-style-type: none"> <li>• <i>How is respect for human rights publicly communicated by your company?</i></li> <li>• <i>How does your company demonstrate the importance it attaches to implementing and managing human rights?</i></li> <li>• <i>Have you identified your salient human rights? How and what are they?</i></li> <li>• <i>When and how are human rights issues escalated from operational to higher levels within the company?</i></li> <li>• <i>How is your approach towards respect for human rights made known to staff, and how are staff equipped to implement this?</i></li> <li>• <i>How do you communicate to your suppliers, and business partners to respect for human rights and its implementation?</i></li> <li>• <i>How do you engage with local stakeholders to understand how your business can impact people, positively or negatively?</i></li> <li>• <i>How is the management of human rights issues tracked within the company?</i></li> <li>• <i>What is the company's human rights policy and approach towards accountability?</i></li> <li>• <i>How does the company assess the actual and potential human rights impacts?</i></li> <li>• <i>What has the company found as a result of those assessments and what steps has it taken to ensure respect for them?</i></li> <li>• <i>How do you enable effective remedial methods, including but not limited to, implementing complaints management mechanism?</i></li> </ul>	<p><i>Human rights are defined as rights inherent to all human beings, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. They represent forced or compulsory labour, child labour, working conditions, wages &amp; benefits, non-discrimination, freedom of association, collective bargaining etc.</i></p>
<p><b>Accounts and auditors' view</b></p> <ul style="list-style-type: none"> <li>• <i>Describe fair view on accounts.</i></li> <li>• <i>Describe the finding by the auditor.</i></li> </ul>	<p><i>Auditors' review to assess business operations towards business objective, risk management etc.</i></p>
<p><b>Statistics OR Market findings</b></p> <ul style="list-style-type: none"> <li>• <i>Provide statistics for past years.</i></li> <li>• <i>What are current market findings?</i></li> </ul>	<p><i>Statistical analysis involves collecting and scrutinizing every data and summarize how the data relates to the subject matter. Statistical analysis is to identify trends to create a more positive objective to stakeholders. Market findings are an analysis of the industry and corporate responsibility analysis</i></p>

Prepared by:.....

Date:.....



## Conclusion

This article is the PART I of 2 articles unpacked from the detailed information that are expected to be reported in the Business Review Report to be included in the Directors' Report of a company's annual financial statements.

The Part 2 article will describe and explain the various factors that contribute to the writing up of the Business Review Report such as the following:-

- (i) *What is environmental reporting?*
- (ii) *How is the environment regulatory reporting in Malaysia?*
- (iii) *Guidance and steps in reporting the company's environmental impact.*
- (iv) *Environmental Management Systems (EMS)*
- (v) *The principles of respecting human rights in business.*
- (vi) *What are human rights?*
- (vii) *The United Nations guiding principles on business and human rights (UNGPS)*
- (viii) *Implementing human rights in business.*
- (ix) *The reporting of human rights in business.*
- (x) *Examples of how business might be involved with an impact on the rights.*

Please watch out for this Part 2 articles in the next IACS Newsletter.

## IACS TRAINING CALENDAR 2022

No	Date	Locations	Topic/s	Speaker	CPE Points
1	10/03/2022, Thursday	Zoom Webinar	Compliance Issues-Annual Return, AGM, Accounts And Audit	Jessica Liew	4
2	14/03/2022, Monday	Trove Johor Bahru, Johor	Corporate Secretarial Practice Competency (Module 1) - Understanding Business & Corporate Entities In Malaysia	Kenneth Foo	8
3	24/03/2022, Thursday	Kuching, Sarawak	Corporate Secretarial Practice Competency (Module 1) - Understanding Business & Corporate Entities In Malaysia	Kenneth Foo	8
4	08/04/2022, Friday	Miri, Sarawak	Corporate Secretarial Practice Competency (Module 1) - Understanding Business & Corporate Entities In Malaysia	Kenneth Foo	8
5	14/04/2022, Thursday	Zoom Webinar	TBA	Kenneth Foo	4
6	21/04/2022, Thursday	Zoom Webinar	TBA	Kenneth Foo	4
7	12/05/2022, Thursday	Zoom Webinar	Offences Committed By Directors/Secretaries Under The Companies Act 2016 -Nip It!	Jessica Liew	4
8	19/05/2022, Thursday	Penang	Corporate Secretarial Practice Competency (Module 1) - Understanding Business & Corporate Entities In Malaysia	Kenneth Foo	8
9	25/05/2022, Wednesday	Melaka	In The Loop With The Practice And Impact Of The Companies Act 2016	Jessica Liew	8
10	23/06/2022, Thursday	Zoom Webinar	Fundamentals Of Board Governance	Prof. Dr. Zubaidah Zainal Abidin	4

The organiser reserves the right to change the date, topic, venue or to cancel the programme.

# UNRAVELING THE TRUE MEANING OF “THE INTERESTS OF THE COMPANY” (PART 1)

By Jason Cheong Kah Lok  
Senior Associate, Messrs. Thomas Philip

As lawyers, we often tell the board of directors that being directors, they must act in the best interest of the company.

This is in line with **Section 213(1) of the Companies Act 2016** which provides that a director of a company shall at all times exercise his powers in accordance with the Act, for a proper purpose and in good faith in the best interest of the company.

However, have you ever wondered what does it really mean by “interests of the company”?

Nourse LJ in the 1987 Court of Appeal case of **Brady v Brady [1987] NLJ Rep 898** said:

*The expression ‘the interests of the company’ is one which is often used but rarely defined. It seems quite likely that it is sometimes misunderstood and it is possible that it has slightly different meanings in different contexts.*

To add on that, Justice Rich in the High Court of **Australia case of Mills v Mills BC3890123** had aptly said that

*The phrase ‘bona fide for the benefit of the company as a whole’ no doubt tends to become a cant expression in these matters but is not yet a shibboleth.*

In Malaysia, the landmark Federal Court case of **Tengku Dato’ Ibrahim Petra Tengku Indra Petra v. Petra Perdana Bhd & Another Appeal [2018] 2 CLJ 641** held that a company’s interests may not have the same meaning in all cases. There can be situations where different interests exist and some may even overlap. Where different interests exist, each interest will generally be accorded a different degree of prioritization. **In the end, the “interests of the company” is still a question of fact.**

**Having said that, what then interests constitute “the interests of the company”?**

According to Ford’s Principles of Corporations Law 10th Edition, page 318

*“...Various entities could be considered to be part of “the company”, namely existing members, future members, creditors, beneficiaries under a trust administered by the (trustee) company and employees, customers, contractors and the community.” (Wow! So many interests!)*

Hence based on the above and for the purpose of this article, we will focus on the following interests one by one and more importantly on how do they qualify as being the “interests of the company”.

The company  
itself

The current  
members

The future  
members

The company’s  
employees

The company’s  
creditors

*Note: The interests of the company’s employees and the interests of the company’s creditors will be discussed in Part 2 of this article.*

## Interests of the company itself as a legal entity

We all know that upon incorporation, a company acquires a legal personality separate from that of its member a.k.a a separate legal entity (see **Section 20 of the Companies Act 2016**).

And such corporate personality allows a company to have full rights, powers and privileges to exercise all the functions of a body corporate such as having the full capacity to carry on or undertake any business or activity including, to sue and to be sued, to acquire, own, hold, develop or dispose of any property, and to do any act which it may do or to enter into transactions (as per **section 21 of the Companies Act 2016**).

In other words, a company is an artificial legal person in the eyes of the law. Hence, the company as a legal person is perfectly capable of having interests on its own independently.

In relation to the breach of the director's duty in endangering the interests of the company as an independent entity, the examples would be as follows:

- The director attempts to divert or expropriate business opportunities that were supposed to be enjoyed by the company to himself or other related parties;
- The director makes secret profits for himself;
- The director exposes the company to liabilities to secure his own personal interests; or
- The director prioritizes the advancement of interests of third parties (for example in cases of nominee director, the nominator) over that of the interests of the company.

### Interests of the current members

According to **LS Sealy on Cases and Materials in Company Law (3rd Edition, at page 271)**, the 'interests of the company' may not have the same meaning in all cases. It may refer to the interest of the corporate body as a separate entity or to those of the shareholders collectively, and in some cases, the interests of the company as such may not be directly involved at all. For example, in regard to the allocation of a surplus between different classes of shareholders.

This is because the interests of one group of shareholders may not be the same as the interests of another group of shareholders.

Where the acts of the director give rise to a competition of interests between the majority and the minority shareholders, it is common that the interests of the minority shareholders will be the endangered interests. And when such actions affecting the interests of the minority shareholders are not justified, they might amount to actions not in the best interests of the company as a whole.

### What about when the interests of the company compete with the interests between different groups of shareholders at the same time?

In these cases, there might be justification to put the interests of the minority as being subordinate to that of the company itself even if such acts are to the benefit of the majority.

In the Privy Council case of **Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 821**, Lord Wilberforce relied the judgement of Latham CJ in **Mills v Mills (1938) 60 CLR 150** which held that:

*"The question which arises is sometimes not a question of the interests of the company at all, but a question of what is fair as between different classes of shareholders. Where such a case arises some other test than that of the 'interests of the company' must be applied."*

### Based on the above proposition, does it mean that if there is a conflict between the company's interests with the shareholders' interests, the company's interests take precedence?

The answer can be derived from the judgment of **Arden J in Re BSB Holdings Ltd (No 2) [1996] 1 BCLC 155** whereby it was held that the primacy of the company's interest as an entity takes precedence but it does not absolve the directors from having to act fairly between the different classes or groups of shareholders with differing interests.

### Interests of future members

Case laws seem to suggest that the interests of future shareholders are also included in the consideration of shareholders' interests and as such those interests are also interests of the company.

Quoting Justice Megarry in the 1970 case of **Gaiman v National Association for Mental Health [1970] 2 All ER 362**:

*"The question, then, is whether that power of deprivation of membership has been exercised by the council in good faith for the purpose for which it was conferred. Such a power is, I think, plainly conferred in order that it may be exercised in the best interests of the association. The association is, of course, an artificial legal entity, and it is not very easy to determine what is in the best interests of the association"*



*without paying due regard to the members of the association. The interests of some particular section or sections of the association cannot be equated with those of the association, and I accept the interests of both present and future members of the association, as a whole, as being a helpful expression of a human equivalent."*

Here, the directors are required to balance the short-term interest of existing shareholders against the long-term interests of future members.

### Conclusion

It can be seen that the interests of the company itself as an entity and the interests of the shareholders are within the ambit of "the interests of the company".

Accordingly, since **section 213(1) of the Companies Act 2016** requires a director to act in the best interest of the company, in doing so, not only the director must serve the interests of the company itself as an entity, the director must also serve other interests, among others the interests of the shareholders of the company.

**Note: In the next part (Part 2), we will look into how the interests of the company's employees and the interests of the company's creditors are also considered as the interests of the company. Thereafter, we will also look into what should a director do if there is an overlapping of these interests.**

*This article was originally published on Thomas Philip website [www.thomasphilip.com.my](http://www.thomasphilip.com.my) on 17th December 2020 and reproduced with permission of the writer*

## GRACE PERIOD FROM 1 JANUARY 2022 TO 31 MARCH 2022 FOR EXECUTING THE 2% TAX DEDUCTION ON PAYMENT TO AGENTS, DEALERS OR DISTRIBUTORS

By Choong Hui Yan

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It is a common practice in Malaysia to appoint agents, dealers or distributors to act as sales force of a company, particularly in the industry of insurance, direct selling and automotive. This allows the appointing companies to achieve larger market share while focus in developing and improving own products.

For tax purpose, the Income Tax Act 1967 (the Act) requires every appointing company to furnish an annual statement to its agents, dealers and distributors containing particulars of payment made to them, either monetary or non-monetary. The statement is a prescribed form (CP58 form) from Inland Revenue Board of Malaysia (IRB). CP58 form must be provided to agents, dealers and distributors for each calendar year by 31 March of subsequent year. This is governed by section 83A of the Act.

The appointing companies must keep copies and details of each CP58 form and provide to IRB upon

request. They can provide in own system report format, or via IRB's system, e-SMUP. The agents, dealers and distributors then will prepare their accounts and submit tax filings based on the respective CP58 form.

### Introduction of Section 107D

The Malaysia government has through the National Budget 2022 introduced a brand-new regime for this business segment.

The section 107D requires appointing companies making payment to agents, dealers and distributors to withhold 2% from the monetary payment made, and remit to the IRB as tax payment of the agents, dealers and distributors. This applies to agents, dealers and distributors who are tax residents in Malaysia and in the immediate preceding year have received payment in monetary or otherwise exceeding RM100,000.

The 2% withheld must be remitted to IRB within 30 days from the earlier of paying or crediting such

payment to agents, dealers and distributors. This 2% is the tax payment of the agents, dealers and distributors, and would be available as tax credit when paying final tax to IRB.

### Non-compliance

Under the section 107D, the appointing companies are imposed with duties and responsibilities to withhold the 2% tax from the agents, dealers and distributors and then remit to the IRB, upon paying or crediting the incentive payment to them.

The incentive payment made to agents, dealers and distributors are in the production of gross income and should be allowable for income tax deduction. It is however, such payment would not be allowed for tax deduction if section 107D is not complied with accordingly [para 39(1)(s)].

Besides, failure to comply with section 107D would cause an additional assessment of 10% on the unpaid tax sum. This is liable to be paid by the appointing company, but the appointing company may recover from the agents, dealers and distributors.

### Impacts on accounts and documentation

The 2% tax payment has to be recorded in the accounts of agents, dealers and distributors upon receiving the net incentive payment from appointing companies. Appointing company on the other hand, must provide proof of 2% tax payment to the agents, dealers and distributors on every incentive payment.

Upon computing the final tax payable for each year of assessment, the 2% tax paid is available to be used as tax credit to reduce the total tax payable. Loss making

agents, dealers and distributors must be aware of tax refund.

For high earners of agents, dealers and distributors of company or Limited Liability Partnership (LLP) types, the tax instalment (CP204) for must be actively monitored to ensure compliance with section 107C(10) of the Act, else additional assessment of 10% would be imposed on the underestimated tax that is in excess of 30% of actual tax.

Next, the appointing companies must be careful when selecting agents, dealers and distributors that received exceeding RM100,000 in immediate preceding year to execute the section 107D. Mistake in selection would attract the 10% additional assessment.

### Effective date

This new regime was initially legislated to take effect on the 1 January 2022. It is however, due to the time constraint, the IRB has through its media release (HASiL/2022/01/12 – 04) dated 12 January 2022 to inform on grace period from 1 January 2022 to 31 March 2022. All appointing companies must be ready for executing the above with effect 1 April 2022.

Companies practising sales through agents, dealers and distributors must be aware of section 107D requirement as the 10% additional assessment would be a heavy outflow and the agents, dealers and distributors may not agree to bear such the cost of such mistake. And it is highly recommended to have this section 107D tax system to be automated and emerged into accounting system or Enterprise Resource Planning (ERP) system to reduce manual administrative work and unnecessary human errors, meanwhile to improve business efficiency.

## BOOKS FOR SALE

Title of Book		List Price (RM)  Self-collect (KL Office)	IACS Members Price (RM)		
			Self-collect (KL Office)	With Shipping (West Malaysia)	With Shipping (East Malaysia)
1.	Tax Appeals in Malaysia : Law and Procedure (Delivered in DUO)	300.00	240.00	250.00	260.00
2.	Essential Company Law in Malaysia: Navigating the Companies Act 2016  (Delivered in DUO)	220.00	175.00	185.00	195.00

If interested to purchase, kindly call IACS office at 03-4812 3787/016-202 9305 to get a copy of the order form.



INSTITUTE OF APPROVED COMPANY SECRETARIES

[199601015175 (387525-X)]

**MEMBERS INFORMATION UPDATE FORM 2022**

**PERSONAL INFORMATION**

1. Full Name (as per NRIC): \_\_\_\_\_

2. IACS No.: \_\_\_\_\_ 3. LS No.: \_\_\_\_\_ 4. Practicing Certificate No.: \_\_\_\_\_

5. Residential Address: \_\_\_\_\_  
\_\_\_\_\_

6. Correspondence Address: \_\_\_\_\_  
\_\_\_\_\_

7. Tel. No.: \_\_\_\_\_ 8. H/P No: \_\_\_\_\_ 9. E-mail: \_\_\_\_\_

**CURRENT EMPLOYMENT INFORMATION**

1. Company's Name: \_\_\_\_\_

2. Nature of Business: \_\_\_\_\_ 3. Position Held: \_\_\_\_\_

4. Office Address: \_\_\_\_\_  
\_\_\_\_\_

5. Tel. No. (O): \_\_\_\_\_ 6. Fax No.: \_\_\_\_\_ 7. E-mail: \_\_\_\_\_

*\*Please ensure that a copy of your renewed Company Secretary License and Practicing Certificate are forwarded to us for updating our Membership Tracking System.*

\_\_\_\_\_  
Member's signature

Date:

Kindly reply by mail/ fax/ e-mail to:

**Institute of Approved Company Secretaries**

Suite C19, 1<sup>st</sup> Floor, Plaza Pekeliling,

No. 2, Jalan Tun Razak,

50400 Kuala Lumpur.

Fax: 03-4812 3786

E-mail: iacsc19@yahoo.com



# EVENT HIGHLIGHTS

## IACS 25<sup>th</sup> Annual General Meeting in World Trade Centre Kuala Lumpur on 27<sup>th</sup> November 2021



## IACS CPD Seminar in Kuala Lumpur on 2<sup>nd</sup> December 2021

The seminar was held at Seri Pacific Hotel Kuala Lumpur. The speaker was Mr. Kenneth Foo and the topic of the seminar was *"Significant Secretarial Issues and Challenges 2 – Case Studies and Shares"*.





# How to become a member of Institute of Approved Company Secretaries?



## 1) IACS

INSTITUTE OF APPROVED COMPANY SECRETARIES (IACS) was incorporated on 16 May, 1996 with the Registry of Companies [now known as the Companies Commission of Malaysia] under the Companies Act, 1965. IACS is a company limited by guarantee and not having a share capital.

## 2) OBJECTIVES OF IACS

The objects for which IACS is established are:-

- To co-ordinate and co-operate with all the regulating authorities in enhancing the professionalism of company secretaries.
- To provide an avenue for company secretaries to get together to improve and advance their interest and professional status and to provide a vehicle for regulating the conduct and professional ethics of company secretaries.
- To conduct seminars, conferences and meetings for the presentation of papers and delivery of lectures, and for the acquisition and dissemination by other means of information connected with the profession of company secretaryship and other related corporate practice.
- To form a library for the use of members and to collect, collate and publish information of service and/or interest to members of the profession and to establish and maintain libraries and collection of documents, papers, research materials and other effects.
- To submit either independently or jointly with other representations, etc; to the relevant authorities pertaining to any legislation either enacted or otherwise for the purpose of promoting the position of members or the professional conduct of company secretaries.
- To afford opportunities for social contact amongst members.
- To print and publish newsletters, periodicals, books or otherwise that are desirable for the benefits of members and the public with the approval of the authority concerned.

## 3) MANAGEMENT OF IACS

The Management of IACS is vested in the Council (the Board of Directors). The powers of the Council are governed by the provisions of the Constitution of IACS and the Companies Act 2016.

## 4) CATEGORIES OF MEMBERSHIP AND THEIR DISTINGUISHING LETTERS

The composition of membership of the Institute shall be classified as follows:-

- Fellow Member – FIACS
- Ordinary Member – MIACS
- Honorary Member – HIACS
- Associate Member – AIACS
- Graduate Member – GIACS
- Student Member

## 5) GUIDELINES FOR MEMBERSHIP APPLICATION

- Membership of IACS is by application on the prescribed form.
- The subscribers to the Constitution and such other persons as shall be admitted to membership in accordance with the provisions hereinafter contained shall, subject as provided by these present, be Members of the Institute.
- All applications shall be accompanied by the following:-
  - Certified copy of valid Company Secretary Licence issued by CCM under section 20G of the Companies Commission of Malaysia Act 2001 by any other Company Secretary (applicable to Ordinary & Fellow members).
  - Copies of other certificates of qualifications or membership in relevant associations / bodies (if available)
  - Two driving licence-size photographs.
  - The registration fee and annual subscription shall be such sums as the Council may from time to time prescribe.
- The respective registration fee and annual subscription for the time being are as follows:

CATEGORY OF MEMBERSHIP	REGISTRATION FEE	ANNUAL SUBSCRIPTION
FELLOW	RM 150.00	RM 250.00
ORDINARY	RM 150.00	RM 200.00
ASSOCIATE	RM 100.00	RM 150.00
GRADUATE	RM 100.00	RM 150.00
STUDENT	RM 50.00	RM 50.00

*\* Members applying for upgrading to Fellow/Ordinary Members are required to pay a sum of RM170.00 being registration fee (RM150.00) and nominal upgrading fee (RM20.00).*

## 6) PRIVILEGES AND RULES OF MEMBERSHIP

- A Member is entitled to use the distinguishing letters as indicated in para 4 after his/her name.
- Members shall be entitled to:-
  - Receive notices and circulars of IACS pertaining to latest news relating to Secretarial Practices from CCM and other regulatory bodies.
  - Attend IACS' general meetings.
  - Vote at IACS' general meetings (applicable to Ordinary & Fellow Members)
  - Receive a Certificate and I.D. of Membership.
  - Participate in seminars, schemes and privileged to enjoy reduced fee and other benefits.
- All Members shall adhere to the provisions of the Constitution, the Code of Ethics and regulations in force and any amendments or changes thereof by the Institute.