



SURUHANJAYA SYARIKAT MALAYSIA  
COMPANIES COMMISSION OF MALAYSIA

**DIALOG TAHUNAN SSM  
2023  
MAKLUM BALAS ISU-ISU  
BERTULIS (1)**

## DIALOG TAHUNAN 2023 MAKLUM BALAS ISU-ISU BERTULIS

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<p>SSM menerima beberapa isu berkaitan sistem perkhidmatan dan portal SSM, antaranya adalah:</p> <ul style="list-style-type: none"> <li>(a) Kemudahan Portal perkhidmatan yang perlu dinaik taraf;</li> <li>(b) Masalah sistem perkhidmatan dalam talian terutamanya SSM4U walaupun sudah dinaik taraf;</li> <li>(c) Untuk memanfaatkan platform SSM4U, platform e-mel dan e-kuiiri untuk menghantar kuiiri kepada setiausaha syarikat berbanding menggunakan pos biasa yang mengambil masa lebih lama untuk sampai kepada setiausaha syarikat;</li> <li>(d) Pemanjangan tempoh untuk memuat turun dokumen yang telah diluluskan oleh pihak SSM;</li> <li>(e) Memudahkan untuk mengekstrak maklumat seperti sistem seperti ACRA Singapura yang mempunyai Open API.</li> </ul>	<ul style="list-style-type: none"> <li>(a) SSM kini dalam fasa untuk menambah baik portal-portal perkhidmatan SSM. Pada tahun 2024, SSM akan memperkenalkan beberapa portal baharu sebagai platform pembekalan maklumat korporat. SSM percaya portal-portal ini akan memberi perkhidmatan yang terbaik untuk semua pelanggan SSM;</li> <li>(b) Selain daripada menaik taraf sistem SSM4U, ICTD juga sedang dalam proses menaik taraf dan menguji komponen sistem seperti infrastruktur dan rangkaian untuk membolehkan akses dan ketersediaan sistem ditingkatkan. Semasa proses ini sedang dijalankan, terdapat beberapa gangguan kepada sistem, namun gangguan tersebut telah dapat diatasi. Isu rangkaian dan gangguan pada sistem <i>middleware</i> adalah isu yang perlu disiasat dengan segera oleh ICTD.</li> <li>(c) SSM4U sedang dalam proses menyediakan perkhidmatan yang akan berintegrasi dengan pelbagai sistem di SSM untuk memberi makluman kepada pelanggan melalui peti masuk dalam sistem SSM4U sebagai platform tambahan bagi mendapatkan status permohonan.  Di bawah sistem Pendaftaran Korporat (<i>Corporate Registry System</i>) baru yang akan "Go Live" pada suku keempat tahun 2024, semua kuiiri akan dihantar secara dalam talian melalui platform e-kuiiri.</li> <li>(d) Ketika ini terdapat 3 portal pembekalan maklumat korporat SSM iaitu: <ul style="list-style-type: none"> <li>(i) Portal SSM e-Info dan MYDATA SSM bagi mendapatkan maklumat syarikat dan perniagaan; dan</li> <li>(ii) Portal SSM XCESS bagi mendapatkan maklumat perniagaan liabiliti terhad (PLT) dan penglibatan peribadi individu dalam syarikat, perniagaan dan PLT.</li> </ul> <p>Bagi setiap pembelian maklumat korporat dari portal-portal ini, SSM memberikan tempoh selama tujuh (7) hari dari tarikh pembelian untuk pelanggan memuat turun dokumen yang telah dibeli melalui akaun pengguna masing-masing. Seperti peringatan yang dinyatakan dalam semua portal pembekalan maklumat korporat, pelanggan adalah dinasihatkan untuk menyimpan dokumen</p> </li> </ul>

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	<p>yang telah dimuat turun ini dalam <i>local folder</i> di komputer atau <i>laptop</i> masing-masing memandangkan dokumen yang dibeli akan hilang (<i>disappear</i>) selepas 7 hari.</p> <p>Polisi SSM dalam mengekalkan tempoh 7 hari tersebut adalah untuk memastikan maklumat syarikat yang dibeli tersebut adalah terkini dan betul kerana sekiranya tempoh yang lebih panjang diberikan, maklumat syarikat akan berubah akibat serah simpan dokumen-dokumen lain di bawah AS 2016.</p> <p>Nota tambahan: Bagi pembelian dokumen/imej yang telah diserahkan simpan melalui MyCoID atau secara OTC, maklumat tersebut akan dimuatnaik ke IDAMAN dan boleh dibeli melalui e-Info/MyData.</p> <p>(e) Untuk makluman, perkhidmatan seperti Open API atau API Mall sudah termasuk dalam senarai perkhidmatan yang akan diperkenalkan kepada pelanggan SSM. Perkhidmatan-perkhidmatan ini akan mula diperkenalkan pada tahun 2024 dan akan diumumkan selepas semua proses pembangunan selesai. Pihak SSM berterima kasih atas cadangan tersebut dan SSM sentiasa terbuka untuk menerima sebarang cadangan bagi memastikan bahawa semua pelanggan berpuas hati apabila berurusan dengan SSM.</p>
<p>Circulations of regulatory compliances notices are limited to selective named company secretaries, not all the named company secretaries and company secretaries of CLBG will receive the same.</p> <p>Suggestion: To include all the company secretaries of private and public companies as well as the CLBG in the mailing list for dissemination of SSM e-postcard, SSM CLBG survey and SSM query letters, so far, such correspondences have yet to reach the company secretaries. It is imperative that all company secretaries are being informed in a timely manner to enable them to discharge their duties effectively and efficiently.</p>	<p>Currently, we are sending notices to one company secretary. Taking cognisance of the responsibility of the named company secretary, SSM will ensure that such notices to be sent to all company secretaries. Therefore, company secretaries are advised to always update their email addresses to get the latest information from SSM.</p>

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<p><u>CLBG Borang Maklumat Kewangan (BMK)</u></p> <p>To consider an enhancement to the BMK survey by providing "save and print" function to enable printing option.</p> <p>The current option available for the company secretaries is to generate screenshot of the input made to the survey to obtain clearance from the CLBG directors before submission to SSM.</p>	<p>We take cognisance on the issue highlighted and SSM will provide a link and a form in the format of PDF through an email to the company secretary.</p>
<p>How does SSM monitor the expiry and renewal dates for PC holders?</p> <p>Is there a timeframe set by SSM to block the PC holders from accessing the MyCoID or MBRS should his/her license has expired and was not renewed?</p>	<p>When the Practising Certificate expired, the company secretary is automatically disqualified as a company secretary under subsection 238(1)(c) Companies Act 2016. Having access to MyCoID does not mean that you are qualified to act as company secretary.</p> <p>In the future when our new CRS system go live, access to the SSM system will be automatically blocked whenever the membership or PC status expired. Enforcement action will be taken to those company secretary who continues to act as a company secretary after the expiry of Practising Certificate.</p> <p>If a person continues to act as a company secretary of a company after the expiry of Practising Certificate, he or she shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or both.</p>
<p>SSM received various issues regarding the systems' challenges which can be summarised as follows :</p> <p>(a) System slowness/unstableness resulting in unsuccessful lodgement;</p> <p>(b) Unsuccessful lodgement will be redirected to lodgement over the counter;</p> <p>(c) Payment Gateway issues on confirmation of payment;</p> <p>(d) Mandatory lodgement of Financial Statements through MBRS.</p>	<p>In respect of (a), (b) and (d), the SSM MBRS is currently undergoing enhancement process towards providing a better service to its customers where the same will 'Go Live" latest by end of 2024.</p> <p>In respect of payment, SSM will be introducing a new Revenue Management System (RMS) where all online payment to SSM will be fully integrated to minimise payment over the counter and widening the mode of payment to provide customer with more options. Under the RMS, the technical team is also looking at all current issues which include shortening of payment transaction to avoid time-out scenario and working closely with the Payment Gateway team to provide a better customers' experience.</p>

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<p><u>Roadmap of Systems Enhancement</u></p> <p>Can SSM share the roadmap for all systems i.e. MBRS, MyCoID etc. to be 100% digitalised?</p> <p>Is there any plan for SSM to integrate all its digital platform into one core platform?</p>	<p>All online services (Core System Registry) which will be accessible through a single digital platform i.e. SSM4U is scheduled to "Go Live" by Quarter 4 in 2024.</p>
<p>It has been observed that SSM has not been sufficiently aggressive in imposing penalties on company directors who fail to submit their annual returns and financial statements under Companies Act 2016.</p> <p>Suggestion: SSM should enhance its legal enforcement measures in alignment with the existing legal framework in Malaysia. This will help ensure that these penalties are effectively enforced, and non-compliance with the Companies Act requirements is minimized.</p>	<p>SSM practices 'balance enforcement' and action will be taken according to the Companies Act 2016 based on the relevant sections involved. SSM consistently conducts physical inspections and data monitoring.</p> <p>SSM measures compliance level based on two indicators– percentage of submissions of annual return and financial statement. Any enforcement activities or initiative are targeted towards adhering high compliance rate.</p>
<p>Adakah inisiatif pengurangan kompaun akan diteruskan pada tahun seterusnya?</p>	<p>Inisiatif pengurangan kompaun adalah tertakluk kepada justifikasi dan <i>case to cases basis</i>.</p> <p>Bagi kesalahan lazim, penerima kompaun hendaklah mengambil inisiatif untuk membuat pembayaran segera ke atas kompaun berdasarkan kepada kadar tawaran kompaun yang ditetapkan di dalam notis tawaran kompaun.</p>
<p>Russia nationality option could not be found in MBRS dropdown. Only USSR available, where USSR was ceased to exist since 1991 and now called Russia.</p> <p>The other countries, which are Belize, Saint Kitts and Nevis, Marshall Islands etc. also could not be found in MBSR, as a result, the company has to file Annual Return over the counter year after year.</p>	<p>The issues highlighted is included as part of the current MBRS Enhancement.</p>

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<p><u>Auto-Approval for Extension of Time</u></p> <p>The application of extension of time (EOT) took place in June 2023 but it took more than one month to be approved. Can SSM consider granting auto-approval of EOT or within 14 days the latest?</p> <p>At times, the company only receive the EOT more than one month or closer to the deadline to lodge the audited financial statements.</p>	<p>Due to the increased in the number of lodgment of EOT applications through MBRS, there were cases where approvals were delayed. However SSM has taken proactive measures in clearing the backlogs and the EOT applications are now being processed within seven (7) to fourteen (14) days from the date of receipt.</p>
<p><u>Compound Imposed on Company Secretary</u></p> <p>A compound was imposed on a company secretary who failed to lodge annual return pursuant to Section 68 of the CA 2016 due to the fact that the company did not pay the required annual return's filing fee and service charges, despite the company secretary had followed up with the company directors including reminder letters.</p> <p>Suggestion: The compound to be imposed to the company directors accordingly, instead of imposing on the company secretary if the company secretary had exercised their duties by performing the relevant responsibilities / actions to follow up with the company directors in writing and advise the company directors on non-compliance with the CA 2016.</p>	<p>At the moment, SSM does not impose compound to company secretary. Please contact Corporate Compliance Division, should you have any enquiry on compound notices.</p>
<p>Mr A mempunyai kompaun tertunggak dalam Syarikat A Sdn Bhd. Adalah tidak adil apabila MyCoID tidak membenarkan Mr A menfailkan dokumen seksyen 58 bagio Syarikat lain yang mana Mr A juga adalah pengarah Syarikat tersebut.</p>	<p>Pematuhan terhadap peruntukan Akta Syarikat 1965/2016 adalah menjadi tanggungjawab setiap pengarah syarikat. Gagal mematuhi peruntukan Akta Syarikat akan mencerminkan sikap sambil lewa dan ketidakbertanggungjawaban pihak pengarah terhadap syarikat yang telah melantik mereka sebagai 'pengarah syarikat'.</p> <p>Ia juga bagi menilai tahap kelayakan seseorang individu untuk menjadi 'pengarah syarikat'.</p> <p>Apakah jaminan bagi pengarah syarikat untuk mematuhi kegagalan peruntukan di bawah Akta Syarikat 2016 /1965 yang telah dikenakan kompaun?</p> <p>Walau bagaimanapun, pelepasan sementara akan diberikan sekiranya pengarah berkaitan menjelaskan sebahagian dari jumlah kompaun yang tertunggak (jika amaun yang tertunggak terlalu besar/banyak).</p> <p>Tindakan ini juga adalah untuk mendidik pengarah berkenaan agar bertanggungjawab atas kegagalan mematuhi pematuhan di bawah Akta Syarikat.</p>

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<p><u>Section 51 Form</u></p> <p>(a) Will SSM consider an email to be sent to SSM officer to assist in updating the MyCoID should a company secretary encountered difficulty in lodging changes under section 51 Form due to MyCOID unable to facilitate lodgement of certain features of section 51 Form?</p> <p>(b) The information upon keying in the Section 51 Form is unalterable as opposed to Section 58 Form which is alterable. This requires the data to be re-key/re-do for the entire Section 51 Form even with 1 error was detected.</p> <p>Suggestion: To suggest facilitating edit function for all forms in MyCoID system, similar function to Section 58 Form.</p>	<p>(a) All emails may be sent to <a href="mailto:enquiry@ssm.com.my">enquiry@ssm.com.my</a> where SSM will assist to update information which is not provided in the MyCoID system especially in the ROM Module, where possible.</p> <p>(b) Not all information is capable to be rectified in Section 51 similar to Section 58 for example, particulars of NRIC, names. Should there be such errors, company is advised to lodge application for rectification. Kindly refer to "Practice Note No. 2/2018: Circumstances and Procedures for Rectification of Documents Lodged and Registered with the Companies Commission of Malaysia (superseded by Practice Note No.6/2019 (Revised))" which is available in SSM's website for the application procedure.</p>
<p>Not to auto-generate and state Residential Address of Secretary in the particulars of lodger of forms such as S58 form, S78 form, etc.</p> <p>Suggestion: Please state Business Address of Secretary instead of Residential Address.</p>	<p>Lodger information is taken from the user registration information as registered in the MyCoID system. Lodger is advised to provide business address instead of residential address in the lodger's user registration information.</p>
<p>MyCoID submission of section 78 pertaining to the allotment of different class of preference shares. If a company would like to issue Class A, B, C &amp; D preference shares, MYCOID does not provide an option for different class of preference shares. The available choices only preference shares, preference A and preference B. How do we select if we want to differentiate preference class C and class D? Please advise.</p>	<p>The different classes of preference share (A to D) will be made available in SSM's Core Registry System which is scheduled to "Go Live" in Quarter 4 2024.</p>
<p><u>Facilitate Online Lodgement of Sections 137, 138, 139 and 141</u></p> <p>Can SSM consider facilitating online lodgement for sections 137, 138, 139 and 141 notifications as this would be more efficient? Moreover, such information is already publicly available and could be verified from Bursa's announcements.</p>	<p>Currently, lodgements of Sections 137,138, 139 and 141 are only available via counter and no late lodgement of Section 141 is charged. The online services of all these Sections will be made available in SSM's Core Registry System which is scheduled to "Go Live" in Quarter 4 2024.</p>

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<p><u>Striking Off a Company due to Failure to Lodge Annual Return</u></p> <p>Striking off a company after failure to lodge annual return for three or more consecutive years is too long and open for manipulation.</p> <p>Suggestion:</p> <ul style="list-style-type: none"> <li>To strike off a company after three continuous warning letters once failure to lodge the Annual Return;</li> </ul> <p>To take appropriate action against the company directors who fail to comply with the requirements of the CA 2016 and if necessary, blacklist the company director from being appointed as company directors of other company.</p>	<p>The policy to strike off companies after failure to lodge annual return for three-consecutive years is fair and reasonable to give companies sufficient time to address their dormant status or non-compliance.</p> <p>In certain situations where a company may not have business operations due to various reasons such as economic down turn, the policy will provide an opportunity for such company to reactivate their business operations and to re-establish themselves without the burden of re-registering.</p> <p>Similarly, striking off a company without providing a reasonable time for creditors and other stakeholders to claim outstanding debts or seek resolution could also be unfair.</p> <p>For the purposes of discharging its regulatory function, SSM is of the opinion that the three-year period is sufficient to ensure an efficient regulatory process could be carried out and to reduce the administrative tasks related to handling premature dissolution of companies.</p>
<p><u>Application to Strike Off for a Company with Preference Shares</u></p> <p>Is a company having preference shares eligible to apply for striking off? Under what circumstances a company having unredeemed preference shares could apply for striking off?</p>	<p>A company that has outstanding redeemable preference shares which were not redeemed will not be eligible to apply for striking off. Under the applicable approved accounting standards, redeemable preference shares, being a financial instrument, are considered as financial liabilities (e.g., MFRS 132 Financial Instruments: Presentation).</p> <p>Further, the terms of issuance of the redeemable preference shares and the Constitution of the company may impose certain terms and conditions of which the company is obligated to fulfil as the issuer of such shares and this could give rise to financial liabilities.</p> <p>Therefore, a company with financial liabilities is not eligible for striking-off purposes until all its financial liabilities have been settled.</p>
<p><u>Revocation of CLBG Licence</u></p> <p>Is a CLBG required to apply for a revocation of license prior to proceeding with members' voluntary winding up?</p>	<p>There is no requirement under SSM's Guidelines/requirements of the Companies Act 2016 for CLBG to apply for revocation of license prior to the commencement of members' voluntary winding up. The requirements of the law on winding up under the Companies Act 2016 are applicable to all companies (include the CLBG).</p>



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<p>To provide a full guideline for closing down a CLBG.</p>	<p>CLBG may be dissolved through winding up or striking off processes under the Companies Act 2016.</p> <p>For striking off under Section 549 (a) of the Companies Act 2016, a CLBG may refer to the 'Garis Panduan Pembatalan Nama Syarikat di bawah seksyen 550 AS 2016' (Guidelines) and additionally to para 7 of the said Guidelines as follows:</p> <p><b>"ADDITIONAL REQUIREMENTS FOR AN APPLICATION BY COMPANY LIMITED BY GUARANTEE</b></p> <p><i>7. In the case of an application relating to a company limited by guarantee, in addition to the requirements set out in paragraph 5, the application must be accompanied with its latest audited financial statements."</i></p> <p>Part IV, Division 1 (<i>Winding Up</i>) and the said Guidelines are applicable to all companies include CLBGs.</p>
<p>Hanya <i>guidelines</i> yang disediakan dan tiada contoh untuk dokumen yang diperlukan. Contoh dokumen adalah untuk keseragaman dan memudahkan pegawai untuk menganalisa dan sahkan.</p> <p>Cadangan: Sediakan contoh dokumen yang seragam seperti <i>statutory declaration</i>, surat persetujuan terima <i>promoter</i> dan pengarah.</p>	<p>Garis Panduan Syarikat Berhad menurut Jaminan (SBMJ) menyediakan senarai semak (senarai semak 1-8) serta contoh perlembagaan (<i>Example</i> 1-5) untuk rujukan dan panduan berkaitan SBMJ.</p> <p>FAQ terkini 2022 dan video ringkas berkaitan SBMJ juga disediakan di laman sesawang SSM untuk panduan dan rujukan.</p>
<p><u>Storing Statutory Records in Cloud</u></p> <p>What is SSM's views on keeping secretarial files consisting of statutory documents as listed in section 47 including minutes and resolutions of board and members digitally?</p> <p>What are the rules and regulations governing the safekeeping of the above documents in cloud storage which is located outside Malaysia?</p>	<p>As a general rule, all statutory documents required under section 47 must be kept at registered office unless notification has been given to the Registrar that such documents are kept at another place. In addition, section 49 allows those documents and records to be kept in electronic form provided that the documents and information can be easily accessible and to be reproduced in written form at the designated place as notified to Registrar.</p> <p>The storing of such documents in cloud storage is entirely at the discretion of a company provided the requirements under section 49 are fulfilled, including measures against any falsification.</p>
<p><u>Cloud Storage Outside Malaysia</u></p> <p>Is a cloud storage for example, AWS cloud which is located in Singapore, in compliance with section 47?</p>	

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<p><u>Retention of Statutory Records</u></p> <p>Section 341 prescribed records of resolutions and meetings of members are required to be kept for 7 years, how many years should a company keep other statutory documents as stated in section 47 of the CA 2016?</p>	<p>Section 47 requires different books, registers, and records to be kept as the registered office. For certain documents such as notice of registration, registers of members, it is logical for such documents to be kept for as long as the company exists.</p> <p>For other documents, due to their volume if kept over the years, the law allows the documents to be kept at least 7 years. For example, the resolutions of meetings and account records.</p> <p>It is also prudent for companies to also observe the requirements in other written laws with regards of retention of records such as the Income Tax Act 1967.</p>
<p>MICPA members were informed by SSM's officer that a company in receivership and/or in liquidation is required to affix the company's common seal when it is specifically required by the forms under the CA 2016. However, some companies might lack the required resources and/or functional management to either locate or commission a new common seal.</p> <p>Suggestion: To explicitly include options for the Liquidators and Receivers and Managers to strike out or dispense with the requirement for common seal to be affixed on the forms under the CA 2016.</p>	<p>For company under receivership and under liquidation, the use of the common seal is in accordance with the powers of the Receiver and Manager under the 'Sixth Schedule (Sect. 383 CA2016 &amp; Para (q) of Sixth Schedule)' and the powers of Liquidator under the Eleventh &amp; Twelfth Schedule (Para (d) of Twelfth Schedule)</p> <p>Additional Comments :</p> <p>(a) For Discharge of Charge Form, the format requires to affix a common seal, but this is only applicable if required by constitution of company.</p> <p>(b) There is no requirement to affix common seals of companies on Forms related to winding up/liquidation as per Schedule B in SSM's website).</p>
<p>The appointment and discharge as Receivers/Liquidators/Interim Judicial Manager are not recorded in the official system of SSM on a timely manner. In addition, there are also delays in recording in the official system when queries are raised or when there are disputes.</p> <p>There is a tendency by some of these parties not to act on Receivers/Liquidators/Interim Judicial Manager instructions since the appointment is not in the official system. The instances include:</p> <p>a) A case where MICPA members were appointed as liquidators and the company secretary and directors have attached certain court orders, notwithstanding the directors and company secretary was terminated by the company. The dispute resulted in the Court confirming their appointment on the date of the resolution and only then did SSM record their appointment.</p>	<p>Basically any update on a company's records in SSM official system is done based on the lodgement of document/information by the company.</p> <p>The reason as to why details and particulars of liquidators or interim liquidator is not updated in the SSM's records timely is due to the failure of liquidator to lodge heir notice of appointment and or notice of resignation to SSM.</p> <p>Section 513 (1) - A liquidator or an interim liquidator shall lodge a notice of his appointment, the address of his office and any change of the address with the Registrar and the Official Receiver in the form and manner determined by the Registrar within fourteen days from the appointment or the change of address.</p> <p>Section 513(3) - A liquidator or an interim liquidator shall, within fourteen days from his resignation or removal from office, lodge with the Registrar and with the Official Receiver a notice of that fact <b>in the form and manner as may be determined by the Registrar.</b></p> <p>Instances that may cause SSM to issue a query which may delay the update of liquidator's appointment or resignation or removal, are as follows:</p>

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<p>b) A case where the termination of the liquidator is delayed as SSM required our members to confirm that they have obtained tax clearance.</p> <p>c) A case where the dissolution of a company is not yet recorded. A court order of the termination of the liquidator was furnished.</p> <p>Suggestion:</p> <ul style="list-style-type: none"> <li>To record the appointment and discharge appointment and discharge as Receivers/Liquidators/Interim Judicial Manager immediately;</li> </ul> <p>Where there are disputes, SSM should not delay in recording the appointment or discharge unless there is a specific court order restraining SSM from doing so.</p>	<p>(a) Notice of resignation submitted without the lodgement of notice of appointment – in this situation, SSM will issue a query and request for the lodgement of notice of appointment to ensure the resigned liquidator had been appointed as a liquidator for that particular company in the first place.</p> <p>(b) Liquidator’s accounts not submitted together with the notice of resignation.</p> <ul style="list-style-type: none"> <li>Please refer Section 490 (b) for an order that he be released, if he has resigned or been removed from his office.</li> </ul> <p><b>Appointment /Resignation of Interim Judicial Manager</b></p> <p>Due to constraints in the current system, the appointment and discharged of the Interim Judicial Manager are not recorded in the current official system of SSM. However, we hope to resolve this issue once our new core system is in place. In the meantime, company may apply a confirmation letter on the appointment and discharged of the Interim Judicial Manager from SSM with a fee of RM50.00.</p>
<p><u>Statement of affairs – extension of time</u></p> <p>Pursuant to Section 388 of the CA 2016, the Court is the party to allow for an extension to submit the Statement of Affairs to the Receiver and Manager.</p> <p>Section 609(2) of the CA 2016 empowers the Registrar to grant extension of time in respect of any lodgement of documents under the CA 2016.</p> <p>There are instance where directors of a company in receivership sought for an extension and named the company in receivership. Our members’ lawyers were of the view that SSM should be made a party to the suit to respond to any matter.</p> <p>Suggestion: To consider removing the need to obtain approval from the Court in view of Section 609(2) of the CA 2016.</p>	<p>Subsection 388 (1) specifically states that any extension of time must be given by the Court. As such, section 609 cannot be used to override such requirements.</p>
<p>Mandatory lodgement of Beneficial Ownership</p>	<p>There is no requirement to submit beneficial ownership information during the transitional period. During the transitional period, companies must ensure the beneficial ownership information is obtained, verified, record and the information must be kept updated at the registered office.</p> <p>Companies will have the duty to obtain, verify, record, keep and maintain the beneficial ownership information at the registered office. After the enforcement of the relevant provisions under the Companies (Amendment) Bill 2023, companies will be given a certain period of time to lodge the beneficial ownership information to the Registrar through e-BOS to be advised in due course.</p>

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<p>Mengendali versi BO dari luar Malaysia hanya 1 muka surat tapi versi Seksyen (56(1) CA 2016 begitu pelbagai format, maklumat dan mukasurat yang lebih dari 3/4 dari beberapa Setiausaha Syarikat. Adakah satu format akan dikeluarkan oleh SSM dibawah PN?</p>	<p>The beneficial ownership templates are allowed to be more than 1 page.</p> <p>Beneficial ownership templates provided in the Guideline serve as a guidance to companies to obtain beneficial ownership information. The contents may vary from one scenario to another.</p>
<p><u>Increase Cost of Compliance Due to Different Threshold</u></p> <p>Can SSM consider standardising the BO threshold from 20% to 25% to be aligned with BO threshold imposed by BNM for ease of compliance and cost efficiency in compliance?</p> <p>Note: It would be costly and increase cost of compliance for conducting BO verification and customer due diligence to produce 2 different thresholds in view of each search with different threshold would subject to payment of fee respectively</p>	<p>The 20% threshold is in line with the current policy under subsection 8(4) of the Companies Act 2016 which signifies controlling interest in company. Whereas the 25% threshold is a requirement under the policy document Guidance on Beneficial Ownership (AML/CFT and TFS for FIs, DNFBPs and NBFIs) reflecting the best practices of FATF standards.</p> <p>The 20% threshold is part of the beneficial ownership information reporting framework under the Companies Act 2016.</p> <p>The 25% threshold is a part of the requirement for reporting institutions to conduct the CDD and KYC for onboarding process against its clients.</p> <p>Based on the above explanations, the process will be conducted at different stages for different purpose. Therefore, companies will still have to conduct the KYC/CDD process as required by BNM or obtain the beneficial ownership information as required under the Companies Act 2016. The respective threshold must be observed at every required stages.</p> <p>Please refer to the Joint Guidance Note issued by SSM and BNM available on SSM's website for more information on the similarities and differences of beneficial ownership reporting framework issued by the respective regulator.</p>
<p><u>Disclosure of BO to Other Stakeholder</u></p> <p>Banks are requesting for BO information whenever companies are taking loans from them. Are companies obliged to disclose BO information as a condition precedent for application of loans?</p>	<p>The company secretary is obliged to release the beneficial ownership information for application of loan as requested by Banks, apart from KYC and CDD.</p> <p>Under the Companies (Amendment) Bill 2023, certain classes of persons will have access to the beneficial ownership information lodged with the Registrar and the register of beneficial owners kept at the registered office.</p> <p>Please be informed that financial institutions prescribed by the Minister will be given access to the beneficial ownership information lodged with the Registrar as they are reporting institutions under the AMLATFAPUA 2001.</p> <p>A gazette order on those who have access to the information will be issued after the Bill is enforced.</p>

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<p><u>Key Management Deemed BO</u></p> <p>In the case of exempted entities, can SSM consider to recognise / auto-populate the details of senior management, e.g. the Managing Directors which was lodged under Section 58 or annual return for the purpose of BO disclosure?</p>	<p>The exemption provided in the Guideline is given to companies which have similar reporting BO obligations with other regulators based on their written laws. Thus, SSM exempts those companies to avoid duplicity in reporting. However, those exempted entities will still have the obligation to declare its exempted status with the Registrar for verification purposes and to provide information of its senior management.</p> <p>In the case of Government/State Owned Companies, the declaration of “the office of the Minister of Finance”, “the office of the Chief Minister” or “the office of the Secretary of State” is sufficient as the ultimate owners for both are the Government or the State Government.</p> <p>This MUST be differentiated with other companies where senior management must be named in place of beneficial owners in the following circumstances:</p> <ul style="list-style-type: none"> <li>(i) Where the company has no BO;</li> <li>(ii) Where BO cannot be identified; or</li> <li>(iii) Where the company is in the process of obtaining BO information.</li> </ul> <p>Please note that the declaration of senior management must be made by the company itself under the beneficial ownership reporting framework and must not be self-assumed by the Registrar through other requirements, such as declaration of senior management under section 58.</p>
<p><u>Enforcement of New Bill</u></p> <p>Is the company secretary exempted from penalty if he/she is able to prove that sufficient follow-up had been done but failed to receive response from the member when conducting the BO identification and verification?</p> <p>In respect of the above, whom will be penalised for failure to lodge the BO information upon enforcement of the new Bill?</p>	<p>The company secretary must discharge their responsibility under the Companies Act 2016 and the guidelines for beneficial ownership reporting framework.</p> <p>Under subsection 60C(8), any person who contravenes any notice under this section commits an offence unless the person proves that the information in question was already in the possession of the company or that the requirement to give the information was for any other reason that is frivolous or vexatious.</p> <p>It is an offence for failure to lodge beneficial ownership information with the Registrar as provided under subsection 60B(6) of the Bill. The company and every officer who contravene section 60B shall on conviction be liable to a fine not exceeding RM20,000 and in the case of continuing offence to a further fine not exceeding RM500 for each day during which the offence continues after conviction.</p>
<p><u>e-BOS Efficiency</u></p> <p>Can SSM consider providing a reasonable transition period for the uploading of BO information into the upcoming e-BOS platform during the system implementation to ensure stability and to cope with high volume of submissions made by stakeholders?</p> <p>Apart from systems readiness, a reasonable transition period for uploading of BO information will avoid penalty being imposed for not uploading the BO on time.</p>	<p>Taking into consideration the importance of the upcoming mutual evaluation exercise of FATF, a certain period will be given from the date of the BO provisions of the Companies (Amendments) Bills 2023 are enforced.</p>

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<p><u>Implementation of New Company Number</u></p> <p>What is the transition period to drop using the old company number?</p>	<p>The implementation of new company number format will be announced once the MBRS Enhancement and Core Registry System are in operation. SSM will issue early notification to enable companies to prepare themselves.</p>
<p>Please clarify for a private company that wishes to issue bonus shares, whether it can be done by way of capitalisation of its revaluation reserves? If yes, is there any limitation of amount imposed?</p>	<p>There are no specific provisions in the CA 2016 relating to the capitalisation of the revaluation reserve (RR) for the issuance of bonus shares. As the RR amount arises due to the revaluation of the company's assets and is a notional amount where it has not been realised yet, any utilisation of the RR amount must be in accordance with the applicable approved accounting standards.</p>
<p><u>Digital Registered Office</u></p> <p>(a) Can the display of a list of companies under the heading of "Pejabat Yang Didaftarkan" via digital means ie. TV screen/monitor?</p> <p>(b) What are the rules governing display of names and company numbers at "Pejabat Yang Didaftarkan" digitally or electronically?</p> <p>Note: The display of names and company numbers may not be stagnant/permanence in nature. For example, will the device be required to be switched on 24 hours or can be displayed during office hours?</p>	<p>Digital display of registered name and company registration number is acceptable as long as it complies with subsection 30(1). As a minimum, the digital display shall be available/switched on during office hours.</p>
<p>Clarification whether Form section 76 is mandatory for companies that wish to allot new ordinary shares to existing shareholders. Some others said MCR is sufficient.</p>	<p>The lodgement of Section 76 Form is mandatory if the allotment is via an approval made by way of resolution of the company under subsection 75(1) of the CA 2016.</p> <p>Under subsection 76(2), an approval shall be lodged with the Registrar within 14 days from the date of the approval.</p>
<p><u>Determination and Monitoring of Resident Director</u></p> <p>How does SSM monitor the residency of directors in Malaysia? As there are a lot of foreigners setting up businesses in Malaysia, is providing tenancy agreement sufficient for company secretary to verify their "principal place of residence in Malaysia" according to section 196 of the CA2016 before on boarding them?</p>	<p>The principal place of residence of directors in Malaysia is accepted on a disclosure-based basis. The company secretary must have appropriate procedures for verification purposes before submitting such information to the Registrar. Such procedures include requiring the directors to provide relevant supporting documents, for example a tenancy agreement or documents/evidence to show that they stay in Malaysia, where necessary.</p>

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<p>How to determine "permanent place of residence in Malaysia"? Is the determination following the tax resident basis as per income tax guidelines?</p>	<p>In determining the principal place of residence of a foreign director in Malaysia for the purposes of the Companies Act 2016, it is not necessary to follow the policy relating to tax resident (i.e. must be physically in Malaysia for at least 182 days) as the foreign director may need to travel out of Malaysia on frequent basis.</p>
<p><u>Section 66</u>            Must a company adopt a Constitution in order to comply with section 66(1)(a) of CA2016 which states that "a document can be executed by a company by affixing its common seal, subject to conditions / limitations in the Constitution"?</p>	<p>A company wishing to use a common seal need not necessarily adopt a constitution. Subsection 66(1)(a) states that if a company has a common seal and there are already conditions or limitations in the constitution, then in affixing its common seal, the company must comply with such conditions or limitations.</p>
<p><u>Definition of Branch</u>            Please define "branch". Is a branch determined by where the accounting records are kept?</p>	<p>A branch office is a location, other than the main office (headquarter), where a business is conducted. Generally, branch offices consist of smaller divisions of different aspects of the company such as human resources, marketing, and accounting.</p> <p>The place where the accounting records are kept may not necessarily a branch office as often company outsource the services of professional accounting firm to manage the accounts of the company.</p>
<p>Responsibility of minority shareholders who is also the company director that bear similar responsibility as major shareholder as director that control the company.</p>	<p>The Companies Act 2016 does not make a distinction between minority and major shareholders in terms of their directorial duties. Directors, regardless of the size of their shareholding, have a fiduciary duty to act in the best interests of the company and its shareholders as a whole.</p>