

A woman with short dark hair, wearing a light pink blazer, is smiling and looking towards the camera. She is sitting at a desk outdoors, with her hands on a laptop. The background is a blurred green landscape with trees and rocks. A blue rectangular box is overlaid on the right side of the image, containing the main title. A red rectangular box is overlaid on the right side, below the blue box, containing the text 'Flexible Online Training'.

Mastering CLBG Company Limited by Guarantee

Ms Mah Li Chen
MAICSA Chartered Secretary

Flexible Online Training

**COMPANY LIMITED
BY GUARANTEE
UNDER THE
COMPANIES ACT
2016**





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("CLBG")

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A close-up photograph of a person's hand holding a dark pen, poised to write on an open, lined notebook. The person is wearing a teal-colored sweater. The notebook is open to two pages, both of which are lined. The background is a soft, out-of-focus green, suggesting an indoor setting with plants.

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COMMON SEAL

Formation of Company Limited By Guarantee (“CLBG”)

A CLBG must have its own Constitution (s31)

Prohibited from having a share capital (s12)

Incorporation fee payable to SSM - RM3,000 (New!)



A CLBG is a public company (s11(2))

Minister's approval is required

GUIDELINE AND SAMPLE CONSTITUTION FROM SSM



ESS

Issue 764
Monday, Jan 14, 2019
Chrysalysmen

Economy of the European Union

Marketing is defined as the process of creating and making a certain name or design for a product. Having a good strategy allows you to have a major advantage in getting a large amount of your market. Consider what your customers want and what they can have or expect from the products and services you offer.

Are you innovative or are you the experimental type? Do you offer a high-cost, high-quality product, or a low-cost, high-value product? It's important to be thinking what your customers need you to be that logo is the main foundation of your brand. All promotional materials should be connected with your logo to

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US rate rise chances recede as jobs growth slows

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	2018	2019	2020	2021
US rate rise chances	10%	15%	20%	25%
Jobs growth	2.5%	2.0%	1.5%	1.0%
Market share	12%	10%	8%	6%
Customer satisfaction	85%	80%	75%	70%

Guideline on Company Limited by Guarantee



Sample of Constitution of a CLBG

THE LAW ON CONSTITUTION



A company limited by guarantee shall have a constitution

s38 (1)



Notwithstanding section 31, a company limited by guarantee shall have a constitution.

s38 (2)

The constitution of a company limited by guarantee shall be signed by the persons intending to incorporate the company limited by guarantee and lodged with the Registrar at the time the company is incorporated.



s38(3) The constitution shall state—

(a) that the company is a company limited by guarantee;



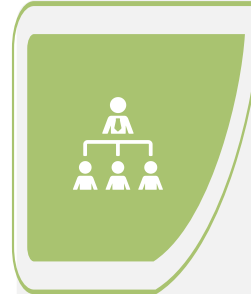
(b) the objects of the company;



(c) the capacity, rights, powers and privileges of the company;



(d) the number of members with which the company proposed to be incorporated;



(e) matters contemplated by this Act to be included in the constitution; and



(f) any other matters as the company wishes to include in its constitution.



s38 (4)

Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital and shall be void.



s38 (5)

Any provision in the constitution of a company limited by guarantee purporting to give any person a right to participate in the divisible profits of the company shall be void.



s38(6)

A constitution lodged with the Registrar under this section shall be binding on the company and its members to the same extent as if it was signed by each member and contained covenants on each member to observe all provisions in the constitution.



THE LAW ON CLBG S.45



**MINISTER'S
APPROVAL
REQUIRED**



1. Before appointment of a Director subject to the Constitution of the CLBG or terms and conditions by the Minister upon incorporation of the CLBG

2. Shall not hold land without a licence from the Minister (s45(4))



DIRECTORS



Number of Directors -
Minimum number
remains at 2 - must be
Resident Directors

Retirement age
(Abolished!)



Appointment,
Resignation,
Retirement, Removal

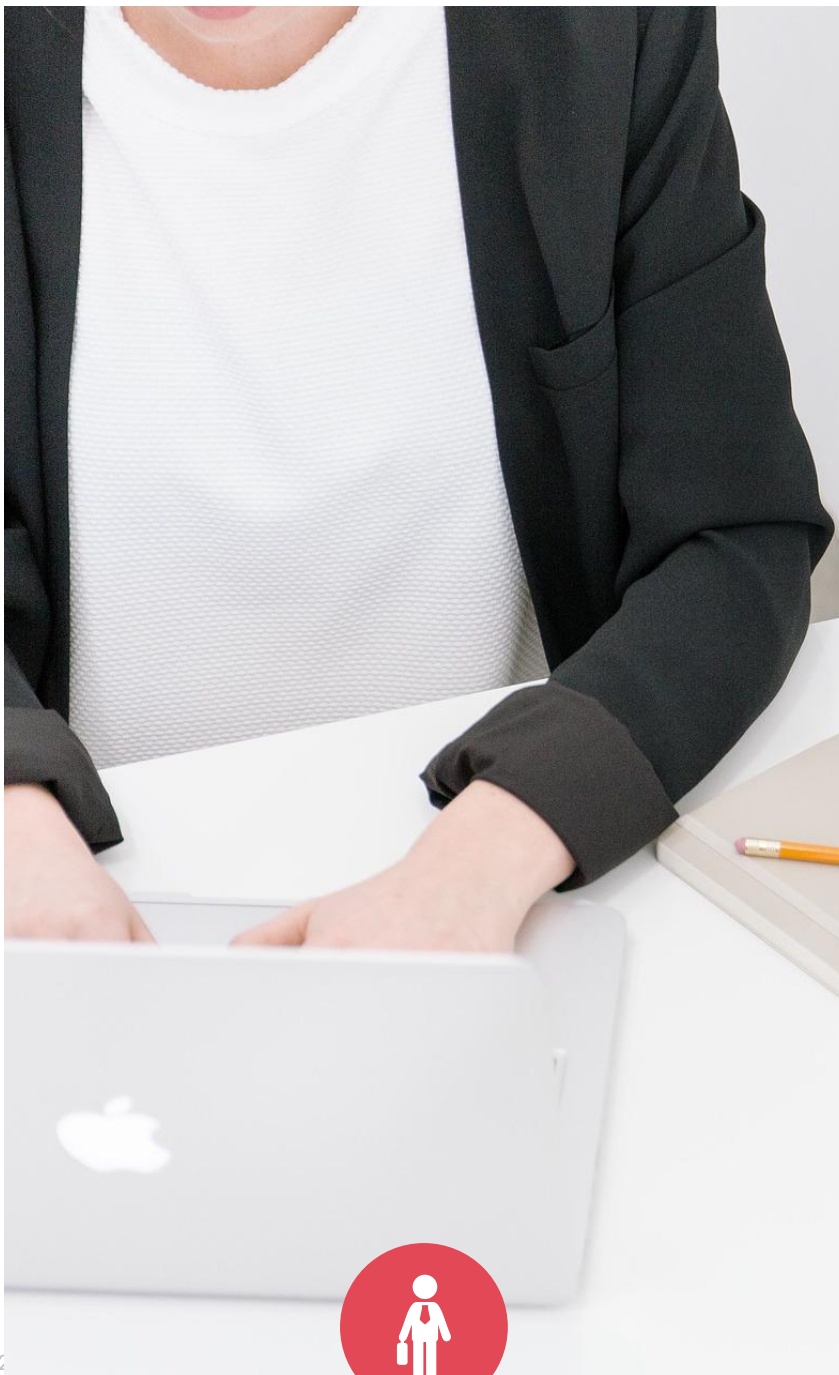
Disqualification
New!



s196(2): a director must have a minimum age of 18 years.

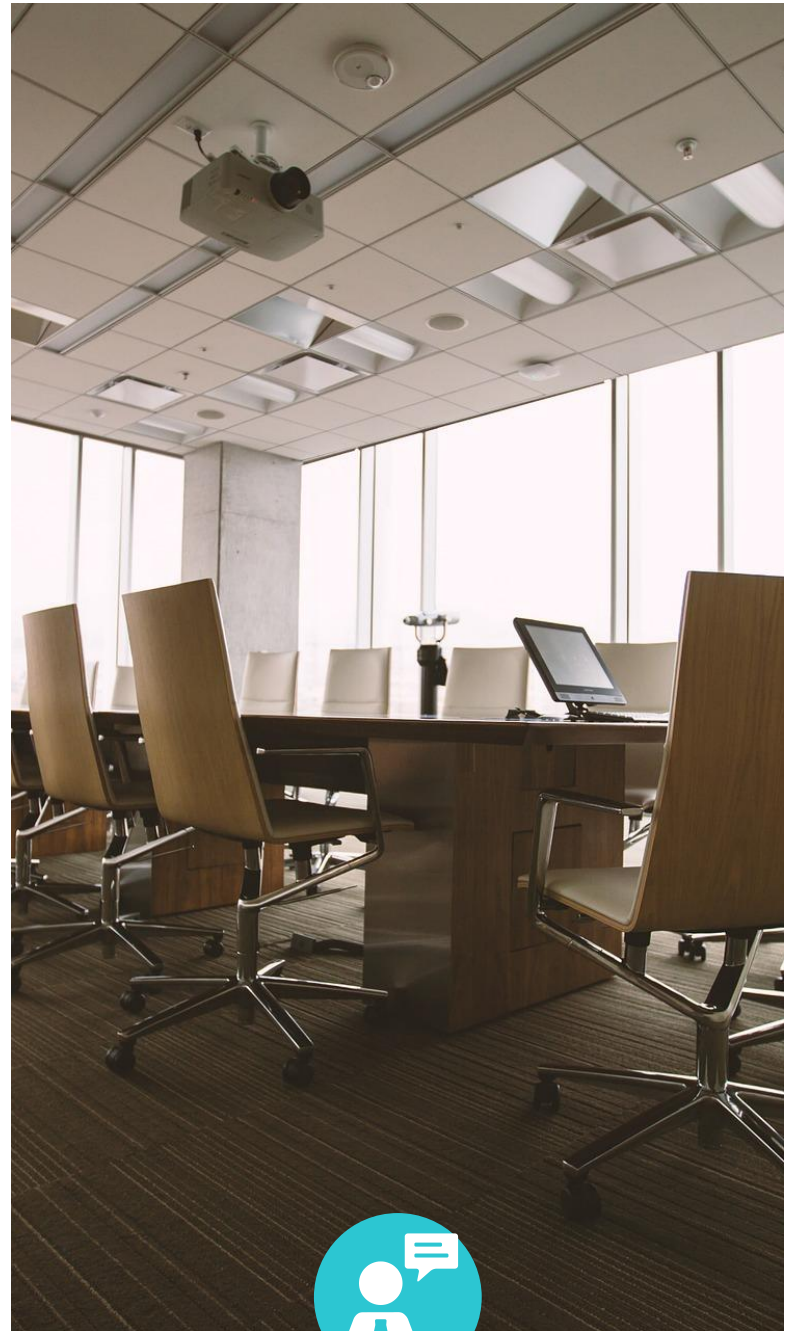


Not subject to re-appointment at age 70.
(New!)



New definition of director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions *the majority of* directors of a corporation are accustomed to act and an alternate or substitute director. (s2) **(Changed!)** - to define shadow director

**Definition of “Board”
when acting in concert -
No.of director \geq quorum
or sole director, that
director. (s2)**



RESIDENCY REQUIREMENT





A director shall **ordinarily reside** in Malaysia by having a **principal place of residence** in Malaysia. (s196(4)(a)) **(Changed!)**



5 factors to determine residency

In Hoh Kiang Ngan & Ors v Hoh Han Keyet, the Court of Appeal spelt out the following considerations to determine the residency of a director:-

**Length of time
spent at one
place;**

**Frequency of
residence;**

**Some degree
of permanency
in the
occupation of
such
residence.**



**Connection the
person has
with that place;**

**Element of regular
occupation (whether
past, present or
intended for the
future, even if
intermittent); and**

**DIRECTOR'S
DUTIES,
RESPONSIBILITIES
AND
LIABILITIES**





Functions of Board



Fiduciary duties of directors
(duty to act in the best interest
of company)



Duty to act with care, skill and
diligence



Business judgement rule



Reliance on information
provided by others



Duty of nominee director

Prohibition against improper use of company's property, position, corporate opportunity or competing with the company

Responsibility for actions of delegatee



Duty to disclose interests in contracts, property, offices

Prohibition on interested directors from voting on the contract

Member's Rights

Members' Rights - circulate statement

Substantial transactions involving directors (s223) - 25% total assets



Related Party Transactions (s228)

Broaden scope

Members' Rights - circulate statement

Public Company Only

≥ 2.5% (instead of 5%) paid up capital (N/A for CLBG) or ≥ 50 (instead of 100 CA1965) members with right to vote to demand, alter or add items into general meeting Agenda by way of notice of resolution or circulate statement (≤ 1,000 words) to members (s323) **(Changed!)**

Directors **NEED NOT** circulate if -

- ❖ rights abused by members for needless publicity;
- ❖ matter is defamatory, frivolous or vexatious; or
- ❖ not in the best interest of the company. (s325(1))

Thresholds under s228

	Thresholds	Approval of members at a MoM
Minimum in RM	< RM50,000	No
Net Assets	RM50k to RM250k > 10% Net Assets	Yes
Net Assets	RM50k to RM250k < 10% Net Assets	No
Maximum in RM	> RM250,000	Yes

Passing of Members' Resolutions

At meeting of
the members
only (s290(2))

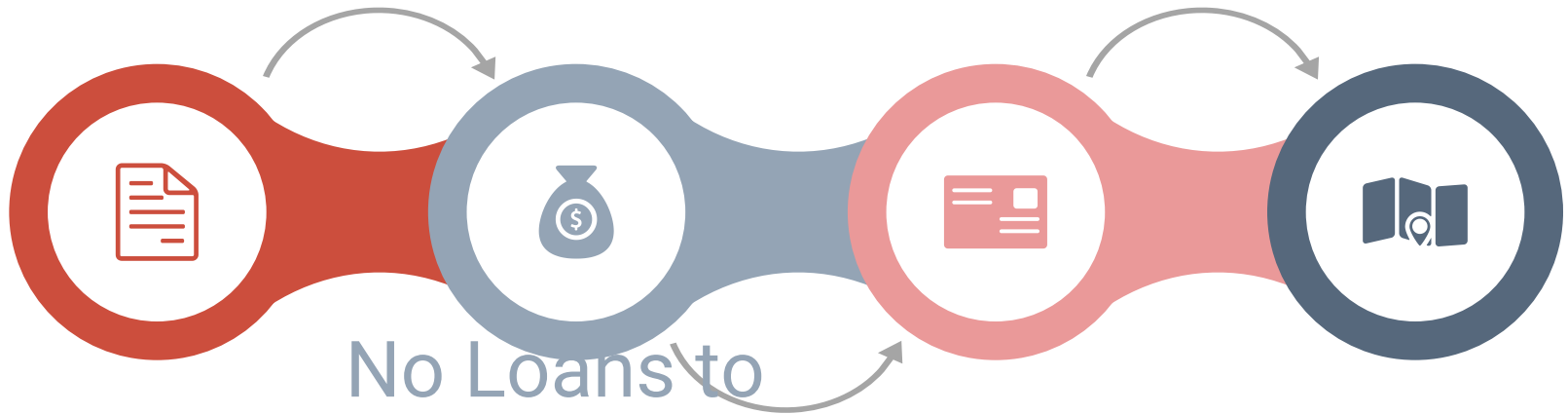
New!



No
resolution in
writing is
allowed.

Service
Contract **New!**

Indemnity and
insurance for
directors (ss288
and 289)



No Loans to
Directors or
persons
connected
(ss224 & 225)

Service
Address **New!**

FEES AND BENEFITS



Public Company or PLC and subsidiaries - Directors' fees, benefits and compensation for loss of office, if applicable, payable must be approved by shareholders (s230(1)) (New!)






No tax free payment to Directors (s226(1))

COMPENSATION FOR LOSS OF OFFICE





Not lawful for any payment of compensation for loss of office without the *prior approval* of shareholders. If public company, affected director and persons connected **must abstain** from voting on the resolution.

**SERVICE
CONTRACT
(NEW!)**

I Agree



A public company shall keep and maintain a copy of every Director's service contract for services performed by a director personally or otherwise as a director or otherwise for the public company or its subsidiaries at the RO for inspection. (s232(1)) Right of inspection by members holding 5% of members

Fail to



keep and maintain a copy of every director's service contract with the company or with its subsidiaries for inspection



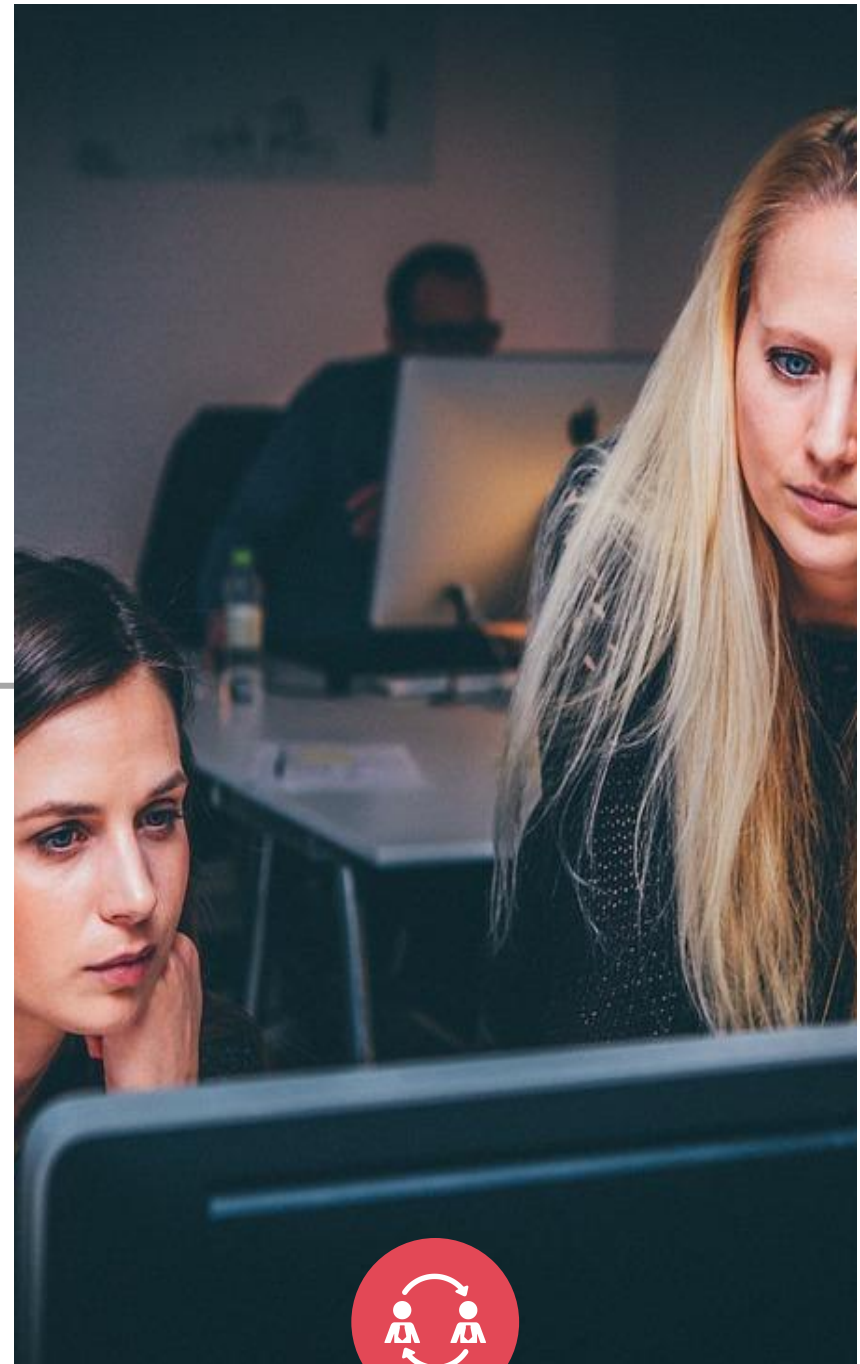
at the registered office of the company



Including those terminated or expired for at least one year after termination or expiry



The company and every officer who contravene subsection (1), (2) or (3) commit an offence and shall, on conviction, be liable to a fine not exceeding RM250,000.



DISQUALIFICATION OF A DIRECTOR





Convicted of offence involving **bribery**, fraud and dishonesty
(Changed!) (s198)
Note: within or without Malaysia.

By court, due to habitual contravention of the Act/his duties under the Act. (New!) (s199)

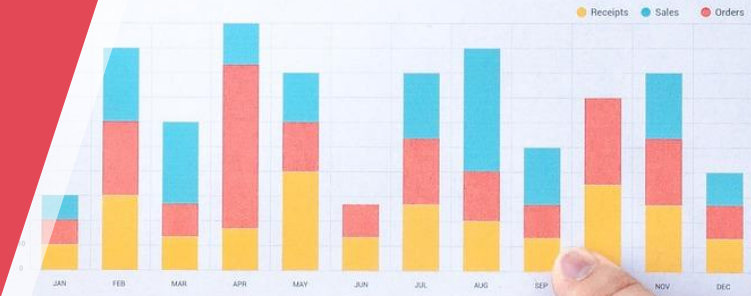




Power of Registrar to remove name of disqualified director -

Registrar is empowered to remove the name of directors from the Register **(New!)** (s200)

AUDITORS



Business Items



Rights of Auditors



Attendance of AGM
as of right (s285(1))



Auditor commits an offence if he fails to attend the general meeting UNLESS -

he is prevented by circumstances beyond his control from attending;



he arranges another auditor; or agent or another partner of the firm to attend



Appointment of Auditors - for each financial year (s271) by

-

- Board before 1st AGM or to fill casual vacancy only; or
- Members by ordinary resolution at AGM



Resignation of
Auditors - may
request company to
circulate statement to
members and the
Board to convene a
general meeting to
give explanation on
circumstances
leading to resignation
(s283)



Removal of Auditor by ordinary resolution at general meeting only (s276)



Need special notice (Note: to send special notice to affected auditor and Registrar** immediately upon receipt (s277)) and

Failing which is an offence under the Act.

to notify Registrar of removal within 14 days of passing of ordinary resolution.

ANNUAL GENERAL MEETING



Note: 21 days notice is required for AGM of a public company

Notice of AGM if published on website (s320)

Must notify member of the publication of notice on the website



Notification in writing either in hard copy or electronic form



Notice available on website throughout notice period until conclusion of the meeting



AGM (s340)



To hold its AGM in every calendar year within 6 months of the Company's financial year end and not more than 15 months (18 months for newly incorporated company) after the last preceding AGM

**ANNUAL
RETURN AND
AUDITED
FINANCIAL
STATEMENTS**





To lodge the AR
to SSM within 30
days from the
anniversary of its
incorporation
date (s68)

Note: “Not having
a share capital”

s258

Circulation of AFS to members at least 21 days before the date of AGM (s258) and within 6 months from the financial year end and to lodge to SSM within 30 days from the date of AGM.



**PENALTIES AND
FINES AND
FILING FEES**
**General Penalty Clause
(s588)**



(a)

in the case of a person who is an individual, to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding 3 years or to both;



(b)

in the case of a person other than an individual, to a fine not exceeding RM50,000



**FINES AND
SANCTIONS
(S591 TO
S598)**



FALSE AND MISLEADING STATEMENTS (S591)

(a) in the case of a corporation, on conviction, shall be liable to a fine not exceeding RM3,000,000; and



(b)

in the case of officer of the corporation, on conviction, shall be liable to imprisonment for a term not exceeding 10 years or a fine not exceeding RM3,000,000 or to both.

(1965 Act - 10 years imprisonment or a fine of RM250,000 or both)





False reports (s592)



On conviction, imprisonment for a term not exceeding 10 years or to a fine not exceeding RM3,000,000 or to both. (*1965 Act - 10 years imprisonment or a fine not exceeding RM250,000 or both*)

False report or statement to the Registrar (s593)



**On conviction, imprisonment for a term not exceeding 10 years or to a fine not exceeding RM3,000,000 or to both.
(1965 Act - No similar provision)**

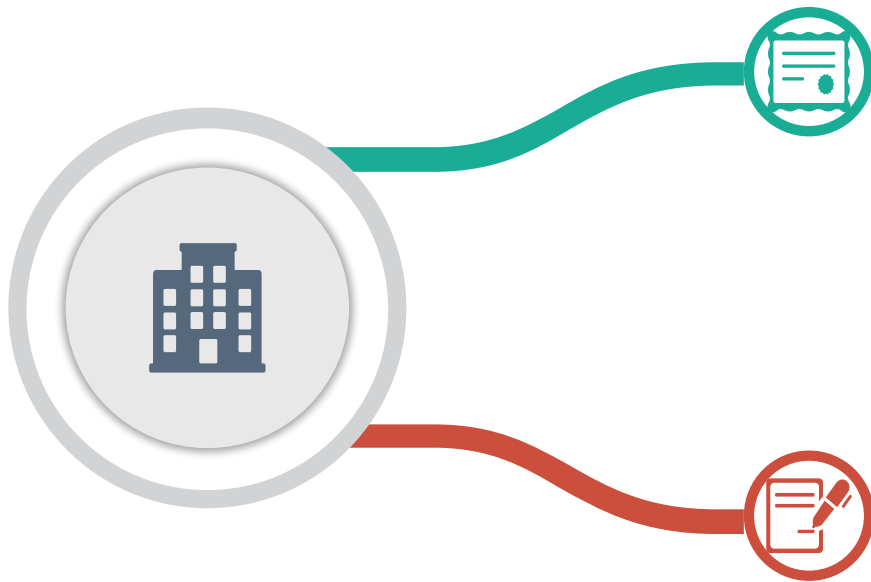
<u>Subject Matters</u>	<u>New Fees</u>	<u>Old Fees</u>
Application for reservation of name of company	RM50	RM30
Lodgement of alteration or amendment of constitution	RM30	Nil
Lodgement of annual return under section 68 of the Act	RM500	RM150
Lodgement of audited financial statements and reports under section 259 of the Act	RM200	Nil
Lodgement of any document relating to company not specifically mentioned in this Schedule	RM100	Nil

COMMON SEAL

APPROVED

(Signature)

Common Seal



Common seal is optional **New!**

Resolution and amend the Constitution if a CLBG wishes not to have a Common Seal

Thank You

