

COMPANY LIMITED BY GUARANTEE UNDER THE COMPANIES ACT 2016

Presented by Mah Li Chen

Formation of Company Limited By Guarantee (“CLBG”)

- A CLBG must have its own Constitution (s31)
- A CLBG is a public company (s11(2))
- Minister’s approval is required
- Incorporation fee payable to SSM - RM3,000
- (New!)
- Prohibited from having a share capital (s12)

Sample of conditional approval letter from SSM



Guideline and Sample Constitution from SSM

[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

37. (1) Notwithstanding section 30, a company limited by guarantee shall have a constitution.

(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.



The law on constitution

(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.



The law on constitution

(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.

(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.

(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

Section 45




Passing of Members' Resolutions


- At meeting of the members only (s290(2))
New!
- No resolution in writing is allowed.




Minister's Approval required

1. Before appointment of a Director subject to the Constitution of the CLBG or terms and conditions of the Minister upon incorporation of the CLBG
 2. Shall not hold land without a licence from the Minister (s45(4))
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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
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Directors

- Number of Directors - Minimum number remains at 2.
 - Appointment, Resignation, Retirement, Removal
 - Retirement age (**Abolished!**)
 - Disqualification **New!**
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Directors

- Roles, Duties, Responsibilities and Liabilities
 - Related Party Transactions (s228) **Broaden scope**
 - Fees, Benefits and Compensation for loss of office
New!
 - Service Contract **New!**
 - No Loans to Directors (s224)
 - Indemnity and insurance for directors (ss288 and 289)
 - Service Address **New!**
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Director's duties, responsibilities and liabilities

- Responsibility for actions of delegatee
 - Prohibition against improper use of company's property, position, corporate opportunity or competing with the company
 - Duty to disclose interests in contracts, property, offices
 - Prohibition on interested directors from voting on the contract
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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

- S227 - 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!)

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% shares.



Service Contract (New!)

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 RM1,000,000.

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)



Directors

- s196(2): a director must have a minimum age of 18 years.
- No subject to re-appointment at age 70. (New!)



Directors

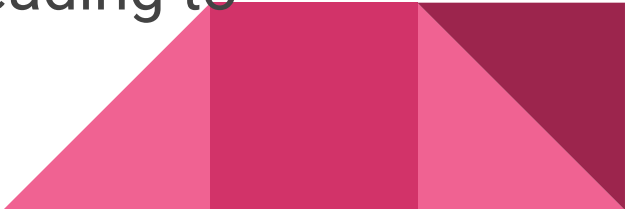
- New definition of director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions ***the majority of*** directors of a corporation are accustomed to act and an alternate or substitute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




Auditors

- Attendance of AGM as of right (s285(1))
 - Appointment - for each financial year (s271) by -
 - Board before 1st AGM or to fill casual vacancy only; or
 - Members by ordinary resolution at AGM
 - Resignation - 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)
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Auditors (continued)

- Removal 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
 - to notify Registrar of removal within 14 days of passing of ordinary resolution.
 - Failing which is an offence under the Act.
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Annual General Meeting


- ❖ 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
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Annual General Meeting (Continued)

- ❖ 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 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)
 - 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.
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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
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Penalties and Fines and Filing Fees (Continued)

Fines and Sanctions (s591 to s 598)

False and misleading statements (s591)

- (a) in the case of a corporation, be liable to a fine not exceeding RM3,000,000; and
- (b) in the case of officer of the corporation, 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)*

Penalties and Fines and Filing Fees (Continued)

Fines and Sanctions (s591 to s 598)

False reports (s592)

- 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)



Penalties and Fines and Filing Fees (Continued)

Fines and Sanctions (s591 to s 598)

False report or statement to the Registrar (s593)

- 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)



Penalties and Fines and Filing Fees (Continued)

<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

- Common seal is optional **New!**
- Resolution and amend the Constitution if a CLBG wishes not to have a Common Seal



THANK
YOU

The image features the words "THANK YOU" in a bold, blue, 3D sans-serif font. The letters are arranged in two lines: "THANK" on top and "YOU" below it. The text is set against a black rectangular background that is slightly tilted. The 3D effect is achieved through white highlights and blue shadows on the letters. At the bottom of the image, there is a decorative footer consisting of a dark blue horizontal bar and a pink and red geometric pattern of triangles on the right side.