



REGULATORY CHANGES : IMPACT ON CURRENT BUSINESS LANDSCAPE

Samantha Tai

Boardroom Corporate Services (KL) Sdn Bhd

OVERVIEW OF THE COMPANIES ACT 2016

Key Changes

STATUS : In force w.e.f. 31 January 2017 except s241 (Company Secretary Registration) & Div 8 Part III (CVA and JM)

CONSTITUTION : Replaces Memorandum and Articles of Association, now optional

EASIER : Incorporation and administrative processes

MEETINGS and RESOLUTIONS

SHARES

- No Par Value
- Capital Reduction without Court Order
- Financial Assistance Whitewash
- RPS redemption from capital
- Dividends – solvency test and clawback



OVERVIEW OF THE COMPANIES ACT 2016

Key Changes (cont'd)

SOLVENCY TEST AND SOLVENCY STATEMENT

ENHANCED Corporate Governance & Sanctions on Directors

NEW CORPORATE RESCUE MECHANISMS – CVA and JM

Transitional Issues

Interpretation issues

Utilising the Share premium account &
Capital Redemption reserve account

Decoupling of filing of Annual Return and
AGM

Constitution

CA1965 (Table A) vs CA 2016

Unlimited capacity

No more doctrine of constructive notice
(except for Charges)

Action/Inaction – constitution revision?

Shares / Share Capital

Implications of the no par value regime – tax, financial and legal

Disclosure of share premium/CRR in audited financial statements/quarterly report

Redemption of preference shares out of capital

Challenges

1. Differences in views on interpretation
2. Disclosure of beneficial owners in private companies
3. Applicable legislation for audited financial statements
4. Solvency Test and Solvency Statement requirements
5. Compliance eg. Filing of notice of location where accounting records are kept

Opportunities

1. Audit exemption – Practice Directive 3/2017 – Practical, tax and legal implications
2. Sole member & director companies
3. Capital reduction without court order
4. Dividends & schemes of profit extraction
5. Costs savings in administrative costs



QUESTIONS & ANSWERS

Q1. What do you believe is the top 3 areas of concern faced by businesses in view of all the recent regulatory changes?



QUESTIONS & ANSWERS

Q2. How would you propose to companies to try to resolve those areas of concern?



QUESTIONS & ANSWERS

Q3. Do you believe that given the recent regulatory changes, the fiduciary duties of Directors and Officers of company have increased exponentially and what would your advice be to mitigate this?

QUESTIONS & ANSWERS

Q4. What are the new requirements which companies find extremely difficult to implement or comply with? (eg. Constitution, Directors' remuneration and benefits, tenure of independent Directors, Directors' Report, redemption of RPS, Solvency Test, etc.)



QUESTIONS & ANSWERS

Q5. Do you think the regulatory requirements should be amended to overcome such difficulty and if so, what are the proposed amendments?



QUESTIONS & ANSWERS

Q6. What advice will you give to companies to assist them into a smooth transition and implementation of the new regulatory requirements?



QUESTIONS & ANSWERS

Q7. What are the new opportunities which businesses can leverage on pursuant to all the recent regulatory changes?



QUESTIONS & ANSWERS

Q8. Two new chapters on corporate rescue mechanism have been introduced in the Companies Act 2016. Could you briefly summarize what it is, how it works and suggestions, if any.



QUESTIONS & ANSWERS

Q9. Do you think Malaysia is over regulated?
What do you believe are the benefits arising from such regulatory changes to the different stakeholders?



Thank You