



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA



CHANGING THE CORPORATE LANDSCAPE: COMPANIES BILL AND INTEREST SCHEMES BILL

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COMPANIES BILL 2013

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INTEREST SCHEMES BILL 2013

- Background
- Changing the Landscape: New Initiatives
 - Policy statements

Enhanced Role of Company Secretaries

COMPANIES BILL: THE JOURNEY THUS FAR...



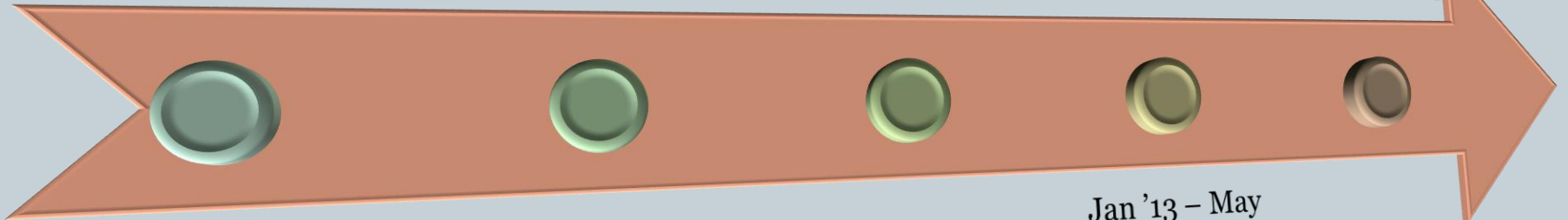
Jul '04- Oct
'08: Review
of the CLRC

May '12:
Submission to
PUU,
KPDNKK

July 2013 –
Public
Consultation
on Draft Bill

Jan '09-
Apr '12:
Drafting
Process
(more
consultations
with
stakeholders)

Jan '13 – May
'13 Drafting
input from
AGC



KEY FEATURES OF THE NEW COMPANIES BILL



Formation of companies:

- Single member/single director
- Simplified incorporation procedures – super form
- Cost effective incorporation fee
- MA&AA (Constitution) will not be mandatory
- Appointment of secretary shall be made within 1 month of incorporation date

Effect of incorporation:

- Notice of registration is conclusive evidence
- Company seal is not mandatory
- Issuance of share certificate not mandatory for private companies

KEY FEATURES OF THE NEW COMPANIES BILL



Share Capital and Maintenance:

- Migration to no par value regime – shares issued at a price
- Reliance on solvency statements for corporate exercises involving reduction of share capital, financial assistance, share buybacks and payment of dividends

Financial Reporting and Audit:

- Streamlining the accounting provisions with approved accounting standards
- Streamlining the auditing provisions with industry practices
- Decoupling of lodgement of financial statements with annual return
- Mandatory audit regime is retained but the Registrar is empowered to exempt certain categories of companies

KEY FEATURES OF THE NEW COMPANIES BILL



Members' rights and directors' duties:

- Rights of members to question, discuss and comment on the management of company – not binding on the Board unless passed as a special resolution
- Retention of current regime on directors' duties
- Statutory codification for approval of remuneration of directors of public companies at general meetings and rights for inspection of directors' service contracts.

Meetings and Decision Making:

- AGM is not mandatory for private companies
- Members written resolutions is only available for private companies
- More facilitative regime to convene meetings of members by leveraging the advent of ICT

KEY FEATURES OF THE NEW COMPANIES BILL



Corporate Rescue Mechanisms:

- Introducing rescue mechanisms for companies facing financial difficulties in the form of judicial management and corporate voluntary arrangement.
- Clarifying the provisions relating to schemes of arrangement.

Modernising the enforcement regime:

- Introducing administrative sanctions as tools to compel compliance.
- Usage of guidelines and practice notes to assist understanding of provisions and address practice issues.

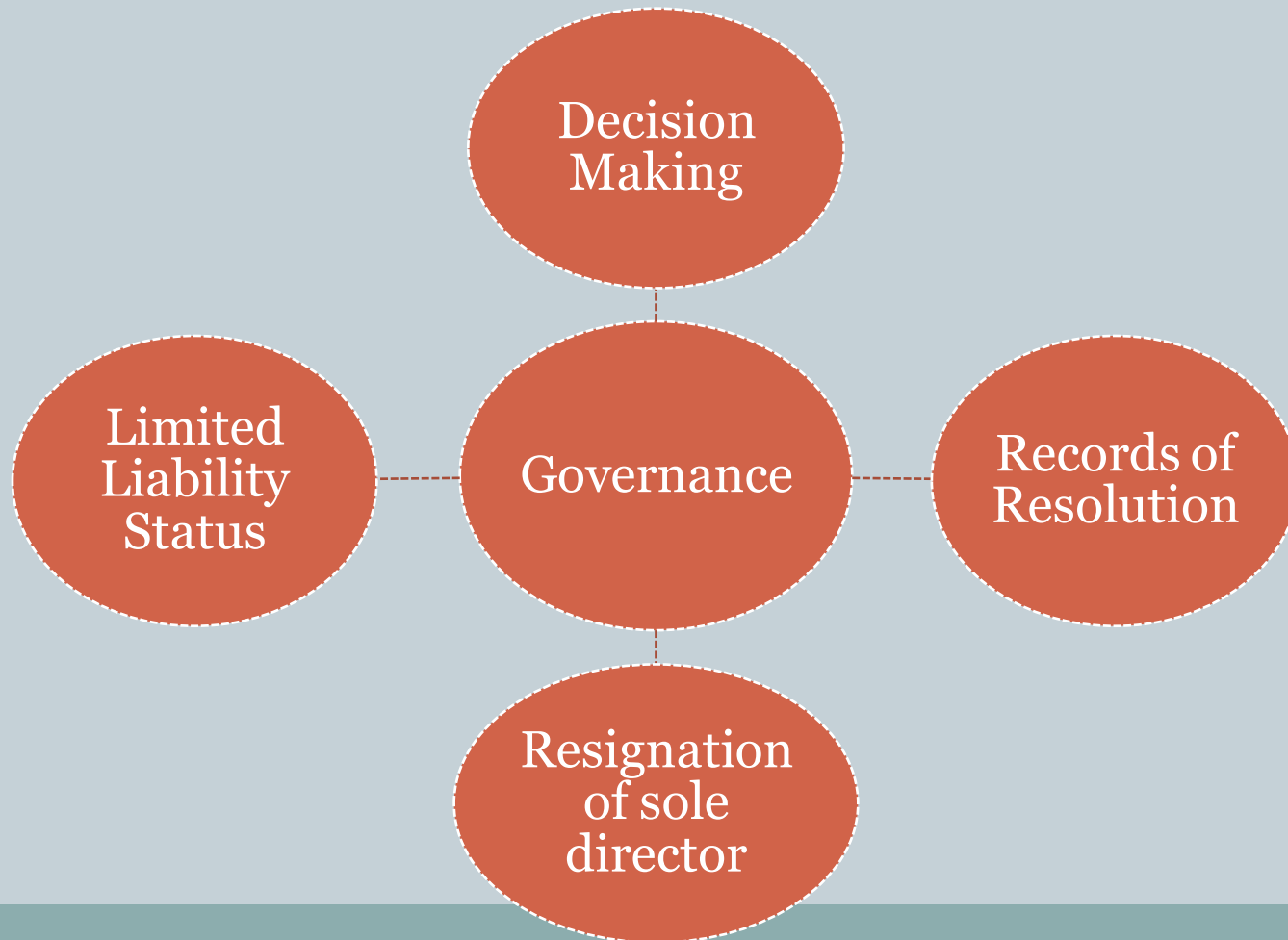
CHANGING THE CORPORATE LANDSCAPE: SNEAK PREVIEWS OF COMPANIES BILL



CHANGING THE LANDSCAPE: NEW INITIATIVES



DEALING WITH SINGLE MEMBER/DIRECTOR COMPANY



CHANGING THE LANDSCAPE: NEW INITIATIVES

DEALING WITH SINGLE MEMBER/DIRECTOR COMPANY

Definition

- A company having one member who may also be the sole director

A new concept?

- Wholly-owned subsidiary,
- “De-facto” single companies

Underlying policies

- To encourage competitiveness
- To address practical issues

CHANGING THE LANDSCAPE: NEW INITIATIVES



DEALING WITH SINGLE MEMBER/DIRECTOR COMPANY

Decision making

- Single member is required to provide details of decision if has made a decision that may be taken by the company at a meeting of shareholders and has effect as if agreed by the company.
- Exception – if the decision has been made through a written resolution.

Execution of document

- by the sole director and to be attested by a witness

CHANGING THE LANDSCAPE: NEW INITIATIVES



DEALING WITH SINGLE MEMBER/DIRECTOR COMPANY

Resignation single member/director

- Where a company has only one director, that director cannot resign unless he has called a meeting of members to receive his resignation and to appoint new director(s).

Death of single member/director

- In the case of death of sole member/director, the secretary shall call a meeting of next of kin or personal representatives to appoint new director.
- If the meeting failed to appoint new director, the Registrar is empowered to apply to court to appoint a person as director.

CHANGING THE LANDSCAPE: NEW INITIATIVES



SOLVENCY STATEMENTS

- Introduction of Solvency Statements as part of simplification of rules for the following corporate exercises:
 - Reduction of share capital
 - Redemption of share capital
 - Provision of financial assistance
 - Share buy back
- Overriding policy:
 - Facilitative and cost saving

CHANGING THE LANDSCAPE: NEW INITIATIVES



SOLVENCY STATEMENTS

Solvency Test for redemption of preference shares, providing financial assistance and reduction of share capital:

- Immediately after the transaction, there will be no ground on which the company is found to be unable to pay its debts; and
- Either –
 - (i) If it is intended to commence a winding up within 12 months after the transaction date, the company is able to pay its debts in full within 12 months after the commencement of the winding
 - (ii) In any other case, the company is able to pay debts as they become due during the following 12 months; AND
- At the date of transaction, the asset of the company is more than its liabilities.

CHANGING THE LANDSCAPE: NEW INITIATIVES



SOLVENCY STATEMENTS

Solvency Test for share buy back

- a company shall be deemed to be solvent if it is able to continue to meet its obligations as and when they become due without any substantial disposition of its assets outside the ordinary course of its business, restructuring its debts, externally forced revisions of its operations or other similar actions;
- the capital of a company shall be deemed to be impaired when the value of its assets is less than the aggregate amount of all the shares of the company after the share buy back.

CHANGING THE LANDSCAPE: NEW INITIATIVES



SOLVENCY STATEMENTS

What is a solvency statement?

- For the purposes a transaction involving redemption of preference shares, financial assistance and reduction of share capital , a statement signed by directors making an opinion that the company has satisfied the solvency test.
- In making that opinion, the directors must—
 - Inquire into the state of affairs and prospects of the company; and
 - Take into account all liabilities of the company (including contingent liability).

CHANGING THE LANDSCAPE: NEW INITIATIVES



SOLVENCY STATEMENTS

What is a solvency statement?

- For the purposes a transaction involving a share buy back exercise, a statement signed by directors making a declaration that they have made an inquiry into the affairs of the company and at a meeting of directors have formed an opinion that :
 - it is necessary for the company to buy back its own shares;
 - the company is solvent as at the date of the declaration and the share buy back would not result in the company being insolvent or its capital being impaired;
 - the company will remain solvent after each buy back during the period of six months after the date of the declaration; and
 - the share buy back is made in good faith and in the interests of the company

CHANGING THE LANDSCAPE: NEW INITIATIVES



SOLVENCY STATEMENTS

- The solvency statement will serve as a supporting document in the resolution to be passed by the company for the transaction.

CHANGING THE LANDSCAPE: NEW INITIATIVES



DOING AWAY WITH AGMs FOR PRIVATE COMPANIES

Private companies are no longer required to convene AGMs

Decision making will be by of written resolutions except in cases of removal of directors and auditors

Any meetings of private companies will be called “members’ meeting”.

5% of member(s) having voting rights may request a meeting to be held.

Secretaries have to monitor the passing of the resolutions.

Auditors have the right to receive all resolutions to be passed.

CHANGING THE LANDSCAPE: NEW INITIATIVES

DOING AWAY WITH AGMs FOR PRIVATE COMPANIES

Consequential
effect when
there is no
AGM

- Appointment or reappointment of directors and auditors will be made in accordance to the terms of service.
- Decoupling of AR with submission of audited financial statements.
- Audited financial statements must be circulated within 6 months of financial year end.

CHANGING THE CORPORATE LANDSCAPE: SNEAK PREVIEWS OF INTEREST SCHEMES BILL



CHANGING THE LANDSCAPE: NEW INITIATIVES



EXISTING

Interest schemes are regulated by SSM under Division 5 of Part IV of the Companies Act 1965 as an **alternative mode of fund raising, by way of subscription of interests.**

NEW INTEREST SCHEME BILL

A new stand alone framework to provide a more comprehensive and structured set of regulations for interest schemes.

CHANGING THE LANDSCAPE: NEW INITIATIVES



EXISTING

NEW INTEREST SCHEME BILL

PRE-REQUISITE

1. Public Company
2. Approved Trust Deed lodged with Registrar
3. Approved Prospectus registered with Registrar
4. Offer Interest to the Public

allowing offering of interests by all companies irrespective of size and nature;

introducing an entry point for private companies to be allowed to register interest scheme, based on the threshold to be determined;

Enhancement of governance framework through specific duties, responsibilities and powers of scheme operator with regard to the interest holders such as:

- ✓ to act in the best interest of the interest holders;
- ✓ to appoint auditor of scheme;
- ✓ to convene annual meeting of the interest holders;
- ✓ to circulate audited accounts of the scheme to interest holders;
- ✓ to prepare report on periodical basis.

CHANGING THE LANDSCAPE: NEW INITIATIVES



EXISTING

PRE-REQUISITE:

5. Compliance with SSM's Policy Guidelines and Requirements

NEW INTEREST SCHEME BILL

Prescribe the standard of conduct for the CEO/MD of the scheme operator (e.g: knowledge/expertise on the scheme)

Enhancement of rights of interest holders through:

- ✓ right of interest holders to request for the audited accounts of the scheme operator.

Enhancement of interest holders' protection through the power of the Registrar:

- ✓ To intervene in the management of the scheme on the application of the interest holders or any directors of the scheme operator.
- ✓ To issue guidelines, practice notes and power to take actions including the power to order for restitution.

ENHANCED ROLE OF COMPANY SECRETARIES



ENHANCED ROLE OF COMPANY SECRETARIES



GAME
ON!

- Chief Governance Advisor (governance and structure of a company, decision making, etc)
- Strengthened role as chief custodian of information (share register, changes in shareholding, records, etc)
- Guardian (sole company/director)

ENHANCED ROLE OF COMPANY SECRETARIES



**GAME
ON!**

- Change of Mindset
- Learn, Unlearn and Relearn



THANK YOU