



DM Corporate Holding (M) Sdn Bhd

No 20A Jalan BRP 1/2 Bukit Rahman Putra 47000 Selangor Darul Ehsan
Tel : 603-61488262 | 603-61562933 | 603-67311393 Fax: 603-27702527
Mobile No : 019-3260345 | 019-3698122
Website : www.registercompany.com.my | www.daftarsyarikat.com.my
E-Mail : sales@registercompany.com.my | dmcorporatesb@gmail.com

1103339-U

ABOUT COMPANY DIRECTORS

A limited and Private Limited company in Malaysia must have at least two directors at all times. They must be a natural persons (living persons, not organizations) who must have their principal or only place of residence within Malaysia.

FIRST DIRECTOR

S122(3)-Memorandum Of Articles also contained names of the first directors of the company

S16(7)- The Registrar must not register a Memorandum Of Articles -MOA / Articles Of Associations - AOA unless it contain the names of at least

2 persons who are to be the first directors of the company

DEFINITION OF DIRECTOR

Definition of director under Section 4 of the Companies Act1965:

Any person who occupies the position of Director of a corporation described by whatever name.

Full age, sound mind, not an un-discharged bankrupt.

Includes Alternate / substitute.

Person whose habitual directions/ instructions are habitually followed by the directors of the company though not formally appointed.

A director is an officer of the company; 12 as such he is liable to the prescribed penalties in the event of default in complying with the CA 1965. Every company must have at least two directors who each has his principal or only place of residence within Malaysia.13 Note that alternate director or substitute director would not be taken into consideration in determining the number of directors resident in Malaysia.

CRITERIA TO BE A DIRECTOR

Natural person,

Not Insane,

Not an un-discharged bankrupt,

Full age (18+),

Principal or only place of residence within Malaysia [Sec.122]

Holds qualifying shares [Sec. 122 and Article 71 Table A]

Age not > 70 years for public company (S.129) unless sanctioned by 75% of shareholders at the AGM. Private Companies no age limitation.



DM Corporate Holding (M) Sdn Bhd

No 20A Jalan BRP 1/2 Bukit Rahman Putra 47000 Selangor Darul Ehsan
Tel : 603-61488262 | 603-61562933 | 603-67311393 Fax: 603-27702527
Mobile No : 019-3260345 | 019-3698122
Website : www.registercompany.com.my | www.daftarsyarikat.com.my
E-Mail : sales@registercompany.com.my | dmcorporatesb@gmail.com

1103339-U

WHO CANNOT BECOME A DIRECTOR

Un-discharged bankrupt (Sec. 125) unless special leave granted by High Court.

Convicted of offences connected with promotion and management of corporation, fraud & dishonesty punishable with imprisonment for 3 months or more, offence under Sec.132, 132A &303 of the Act. (Within 5 years from his conviction unless with special leave by the court [Sec.130] The following persons are prohibited from being appointed or from acting as director without the leave of the court:

- a person who has been convicted of any offence in connection with the promotion, formation or management of a company;
- a person who has been disqualified by a court order under s 130A for directorship in insolvent companies;
- a person who has been convicted of any offence involving fraud or dishonesty on conviction with imprisonment for three months or more;
- a person who has been convicted for failing to act honestly and use reasonable diligence in the discharge of the duties of directorship;
- a person who has been convicted for improper use of any information acquired by virtue of his position as an officer or agent of the company or officer of the Stock Exchange to gain directly or indirectly an advantage for himself or for any other person or to cause detriment to the company;
- a person (who is an officer, agent or employee of a company or officer of the Stock Exchange) who has been convicted for dealing in securities of the corporation by making improper use of specific confidential price sensitive information acquired by virtue of his position to gain advantage for himself or any other person;
- a person who has been convicted for not keeping proper books of accounts throughout the period of two years immediately preceding the commencement of an investigation or winding up (or between the incorporation of the company and the commencement of the investigation or winding up if the company was formed for less than two years); and
- an undischarged bankrupt.

The period of disqualification for cases of (1) to (7) above is five years, i.e. within the period of five years after his conviction or if he is being sentenced to imprisonment, after his release from prison.

DIRECTORS' DUTIES & RESPONSIBILITIES

Directors owe a duty to act for a proper purpose and in good faith in the best interest of the company. They must manage the company's affairs in accordance with: related statutes; principles of the common law; and the company's memorandum & articles of associations



DM Corporate Holding (M) Sdn Bhd

No 20A Jalan BRP 1/2 Bukit Rahman Putra 47000 Selangor Darul Ehsan
Tel : 603-61488262 | 603-61562933 | 603-67311393 Fax: 603-27702527
Mobile No : 019-3260345 | 019-3698122
Website : www.registercompany.com.my | www.daftarsyarikat.com.my
E-Mail : sales@registercompany.com.my | dmcorporatesb@gmail.com

1103339-U

DIRECTORS' FIDUCIARY DUTIES

Directors stand in a fiduciary relationship to the company in the performance of their duties.

New sections 132(1), (1A), (1B), (1C), (1D), (1E), (1F) (1G) and 132(2) of CA provides for statutory fiduciary duties upon directors. S.132(6) & S. 4 of CA define 'officer' as to include:

- any director, secretary or employee;
- a receiver & manager appointed under an instrument; and - a liquidator appointed in voluntary winding up.

The role of a director is often likened to that of a trustee/quasi trustee (as directors being the holders of the company assets they owe fiduciary duty of loyalty and good faith to the beneficiaries (company & its stakeholders) of that trust).

WHAT DOES IT MEAN BY DIRECTORS?

- S122 – A company must have at least 2 directors, both of them must be residence of Malaysia
- No comprehensive definition of director but the term director include any person occupying the position of director by whatever name called
- S4(1)

"Includes any person occupying the position of a director of a corporation by whatever name called and include a person in accordance with whose directions and instructions the director of a corporation are accustomed to act and an alternate or substitute director"

Under section 4 - A director is an officer of a company but he is not an employee unless he has separate contract of employment as a salaried executive.

TYPES OF DIRECTORS

Non-executive director

- Take part in the collective decision of the BOD
- He has no other function except by express delegation

Managing or Executive Director

- Who is in addition to their function of attending board meeting (as full members) - but also work, usually full-time, in the management of the company as employee



DM Corporate Holding (M) Sdn Bhd

No 20A Jalan BRP 1/2 Bukit Rahman Putra 47000 Selangor Darul Ehsan

Tel : 603-61488262 | 603-61562933 | 603-67311393 Fax: 603-27702527

Mobile No : 019-3260345 | 019-3698122

Website : www.registercompany.com.my | www.daftarsyarikat.com.my

E-Mail : sales@registercompany.com.my | dmcorporatesb@gmail.com

1103339-U

HOW DIRECTOR CAN BE APPOINTED?

- S122(3) & S123(1) – First 2 directors must be appointed and named in Memorandum Of Articles - MOA / Articles Of Associations - AOA
- It is more common that they are appointed by subscribers to the Memorandum Documents which are lodged with the Registrar
- It must include particulars of the first directors and their signed consent to act as such
- Subsequent appointments of directors are arranged by the AOA of the company. The AOA of most public or private company are in accordance with Table A (Article 63-71)
- S129 – appointment & reappointment for director at age 70 years old or older.

HOW DIRECTOR CAN BE REMOVED?

- In certain events directors may be removed from office by disqualification arising under the statutory provisions or under the terms of the articles
- S28- For public companies, general meeting may by ordinary resolution remove a director before the expiration of his or her period in office notwithstanding the provision of the articles of any other agreement between the director and the company
- The office of director then becomes vacant on the passing of the resolution
- This is not the case where the director was appointed to represent the interest of a particular class or shareholder or debenture holder. In such case, the resolution to remove the director does not take effect until a successor has been appointed
- S123(2)&(3)- special notice to the director within 28 days must be given for him or her to defend himself both by written representation and by addressing the meeting before a vote is taken
- S128(2)- Independent right of removal without giving special notice
- A proper procedure must be followed whether a director is removed in accordance with the AOA or under section 128.



DM Corporate Holding (M) Sdn Bhd

No 20A Jalan BRP 1/2 Bukit Rahman Putra 47000 Selangor Darul Ehsan
Tel : 603-61488262 | 603-61562933 | 603-67311393 Fax: 603-27702527

Mobile No : 019-3260345 | 019-3698122

Website : www.registercompany.com.my | www.daftarsyarikat.com.my

E-Mail : sales@registercompany.com.my | dmcorporatesb@gmail.com

1103339-U

CAN A COMPANY LOANED FUND TO ITS DIRECTOR?

S133- A Company shall not make a loan to a director of the company and vice versa.

S6- Deemed to be related to the company, or enter any guarantee or provide any security in connection with a loan made to such a director by any other person.

WHAT ARE THE THREE TYPES OF DIRECTOR'S DUTIES?

- a. Fiduciary Duties
- b. Duties of skill, care and diligence
- c. Statutory duties

WHAT DUTIES INCLUDED UNDER FIDUCIARY DUTIES?

Duty to exercise power in good faith and in the interest of the company

- The directors occupy a fiduciary position and must therefore exercise their power in good faith and in the interest of the company.
- S132- " A director shall at all times at honestly..."