

New Code of Ethics for Company Director and Company Secretary

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1. Introduction

On 11 September 2023, the Companies Commission of Malaysia (“CCM”) issued the new Code of Ethics for Company Director and Company Secretary (“Code”), which will come into effect on 1 January 2024. The updates to the Code aim to enhance the corporate governance practices in Malaysia, focusing on the duties and responsibilities of a company director and a company secretary, the two of the most important positions in a company in ensuring the company operates in compliance with the laws and regulations.



A good corporate governance provides a framework of control mechanisms that support the company in achieving its goals while preventing conflicts. The Code provides general guidelines on the ethical expectations of the company director and company secretary, sets the standards they should follow based on their role and suggests measures and steps relating to the more recent issues in the region, specifically on corporate governance, transparency, integrity, accountability and sustainability.

2. Definition

For clarity purposes, a company director means any person occupying the position of director of a corporation by whatever name called. This includes a person in accordance with whose directions and instructions the majority of directors of a corporation are accustomed to act and an alternate or substitute director. A director also includes both executive and non-executive directors as some companies will not necessarily use the designation "director".

For a company limited by guarantee, where the officers are given various names including "governors", "trustees", "chief executive officer" and "managing director" - these individuals are considered as directors of the company if they occupy the position of a director or carry out such functions including primarily responsible for the management of the company.

3. Key highlights on duties and responsibilities of a company director and company secretary

- a. **Corporate governance** – a director should stay abreast of the affairs of the company and be kept informed of the company's compliance with relevant legislations and contractual requirements while a company secretary should disclose to the board of directors or an appropriate public officer any information that he honestly and reasonably believes suggesting that a fraud is being or is likely to be occurred by the company or by any of its directors or employees.
- b. **Corporate liability** – a director must ensure that the company has established adequate procedures in line with Section 17A of the Malaysian Anti-Corruption Commission Act (MACA) 2009 requirements which includes conducting corruption risk assessments

periodically and providing employees and business associates with adequate training to promote their understanding of the company's anti-corruption position.

- c. **Relationship with stakeholders** - a director should ensure the employees fully understand and appreciate the value of good corporate governance practices and procedures through ongoing training, awareness programmes and robust communication.
- d. **Sustainability practices** – a director must take accountability for the Environmental, Social and Governance (“ESG”) in the company by among others, integrating sustainability considerations into all aspects of decision-making (including strategic planning, risk management and investment decisions) and ensuring that the company sets its sustainability strategies, goals and targets which are aligned with the company's overall strategy and vision. A director must also adopt appropriate policies and initiatives for the company towards achieving sustainability in the social, economic and environmental conditions in furtherance of the pursuit of profitability.
- e. **Anti-money Laundering and Counter Financing of Terrorism (“AML/CFT”)** – a director and a company secretary must ensure that the company adopts policies and procedures which are consistent with the principles set out under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) and its related guidelines and ensures the company's business affairs are conducted in conformity with high ethical standards.
- f. **Professionalism** – a company secretary should take the necessary steps to ensure compliance with relevant legislations, regulations, procedures, rules and guidelines governing a company and be aware of all relevant reporting and other regulatory requirements.

4. Conclusion

The revised Code is a welcome move and a commendable endeavour in cultivating a positive culture towards good governance among the corporations in Malaysia. The core principles of corporate governance such as transparency, integrity, ethical behaviour, accountability and sustainability are important and companies embracing these principles are more likely to produce long-term value. Hence, it is very important for the company director and company secretary to understand the requirements prescribed in the Code. They should review the Code, identify requirements that are applicable to them and take active actions such as developing and implementing internal policies and procedures to adhere to the Code's requirements and mitigate any potential legal liabilities.

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He established his own firm in Japan and worked as a representative partner of a law firm with three offices in Japan. He has provided legal service as advisor to a wide range of organization in Japan, including companies in construction, real estate management, system development as well as local government and politic parties. He has been a member of One Asia Lawyers since September 2020, providing advice on general cross-border Asian legal matters (M&A, regulatory investigations, etc.) with a focus on Malaysia.

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