

Director's Duties in Malaysia

March 2022
One Asia Lawyers Group

Yuki Hashimoto
Lawyer (Japan)
Farhatun Najad Zulkipli
Lawyer (Malaysia)

1. Introduction

The legal system in Malaysia recognized companies as separate legal personalities from its officers, directors or shareholders. The separation renders certain actions (in the event of default) taken against the company alone and not against its directors.¹



The above principle is known as the doctrine of separate legal entities which imply the existence of “*corporate veil*” that gives the distinction between the company as one entity and its Directors as another separate entity. As much as this principle may sound like a safeguarding shield for a company's Directors, in certain situations, as precedented, the law could lift or pierce through the corporate veil and hold the Directors accountable for the default committed by him/her within the company.

Having the above exception in place, it is pertinent for Directors to understand their fundamental duties and responsibilities. This newsletter discusses the duties of Directors in Malaysia based on the provisions under the law.

2. The sources of Director's duties.

Directors are expected to utilise their skills and knowledge to primarily manage the affairs of the company. Directors' duties originate from many sources including the common law, the Companies Act 2016, the company's constitution as well as any agreement entered between the Directors and the company.

¹ The doctrine of “Separate Legal Entity” established in the case of Solomon v Solomon

Once nominated and appointed, Directors plays a fundamental role to exercise his power as the company's management to ensure the smooth business operation and make appropriate decisions for the best interest of the company².

The sources of the Directors' duties are derived from the following:

- (a) **Common Law and Equity** – it is settled that directors have the duty of care and skill as well as the fiduciary duties and loyalty.
- (b) **The Companies Act 2016** – sets out the statutory duties of directors which carry certain penalties for non-compliance.
- (c) **Company's Constitution / Agreements** – crafted specially to cater the duties of directors which are not spelled out in the Companies Act 2016.
- (d) **Any other relevant statutes** – e.g. Malaysian Anti-Corruption Commission Act 2009, AMLA, etc.

Not only the law provides the duties of directors, it also imposes the heavy penalties for Directors who contravenes with the laws. One of the most important points is the duty for Directors to exercise their reasonable care, skills and diligence with their knowledge. Any Directors who contravene with these requirements shall commit an offence, which may be, upon conviction liable to imprisonment or to a fine not exceeding RM3 million or both.³

3. What are the Director's duties?

The statutory duties of Directors include but not limited to the following:

- (1) Call for meetings to resolve the company's issues.⁴
- (2) Prepare and file required statutory documentations (e.g. financial statement, matters related to shares, etc.)⁵
- (3) Not to be in conflict and disclose interest in any contract or potential contracts made / to be entered by the company.⁶
- (4) Ensure the company's statutory books, registers and other legal documents are updated.

² Section 213 of the Companies Act 2016

³ Section 213(3) of the Companies Act 2016

⁴ Section 311(2) of the Companies Act 2016

⁵ Section 248 of the Companies Act 2016

⁶ Section 221(6) of the Companies Act 2016

Other than the above, Directors' duties might be spelled out in the company's Constitution as well as other arrangement as agreed by the company, shareholders and relevant parties, for example, the regulation of board of director or employment agreement. This may include the responsibility to execute documents on behalf of the company, passing resolutions via the board meeting to resolve certain issues, use its voting power assigned to them to decide for such proposed resolutions.

What will happen if the Directors do not undertake their statutory duties? Most of the requirements mentioned at the foregoing, to some extent will be charge as a criminal offence which will carry penalties of RM500,000,00 up to RM3 million or 1 year to 5 years imprisonment or both, if found guilty for the contravention of the said duties.⁷

4. What Directors are not allowed to do?

Besides the power vested onto Directors to manoeuvre the company's directions in business and operation, there are restrictions to limit this power from being abused provided under the law. Among the most well-known restrictions are as follows:

- (1) Loan to Directors made by the company⁸
- (2) Corporate guarantee made by the company to provide security in favour of the Directors (subject to certain exceptions).⁹
- (3) Enter into any transaction which may conflict with the Directors' interest.

Similar to the duties, any contravention of these restriction shall follow with heavy penalties as mentioned at the above. In addition to the abovementioned, the duties of Directors are not limited to what stated in the Companies Act 2016 or the Company's constitution and regulations only,

Directors are also expected to carry the duties under other specific laws, such as the Corporate Liability under Section 17A, MACC Act 2009 (Amendment) 2018 where Directors may be deemed guilty and liable for the corruption committed by any person associated by the commercial organization if the Directors could not prove that adequate procedure to prevent corruption is in place.

⁷ Section 248(3), 221(12)

⁸ Section 224 of the Companies Act 2016

⁹ Section 225 of the Companies Act 2016

5. Conclusion

Despite the great accountability, Directors enjoy certain rights and benefits, be it the remuneration package, the professional advantages such as ability to seek advice from business advisors, lawyers, accountants, auditors and others.

Having the clear regulations for Directors or company's constitution which are comprehensively and accurately drafted will help directors understand more on their roles, duties and responsibilities. The comprehensive documents are essential as a guide for the Directors to act in accordance with their duties so to function properly in establishing a great management.

Therefore, it is recommended to engage a professional service like ours to assist you with drafting your company's regulations for Directors and to assist with your understanding of your roles, as well as your rights under the law. If you have any question about our service, please contact us.

◆ One Asia Lawyers ◆

One Asia Lawyers is a network of independent law firms created expressly to provide seamless, comprehensive legal advice for Japanese clients. We are legal specialists in the myriad and very complex laws in each of all ASEAN countries. With our member firms in each ASEAN country as well as Japan, we provide an accessible and efficient service throughout the region.

For any enquiry regarding this article, please contact us by sending email to: info@oneasia.legal

< Author >



Yuki Hashimoto
One Asia Lawyers Malaysia
Lawyer (Japan)

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.

yuki.hashimoto@oneasia.legal
+60-17-3917-926



Farhatun Najad Zulkipli
One Asia Lawyers Malaysia
Lawyer (Malaysia)

She is a Malaysian lawyer with working experience mainly in general corporate and commercial area in both private and in-house practice. Advised various project implementation contracts, corporate facilities, real estate transactions, employment contracts, and regulatory compliance. Joined One Asia Lawyers in September 2021 and provide advice for legal affairs involving Malaysian laws and regulations.

najad.zul@oneasia.legal
+6013-265 6178