

Officers and Auditors of a Malaysia Company

Unless otherwise indicated, the Malaysia company stated in this article refers to a private company limited by share(s) (identified through the words 'Sendirian Berhad' or 'Sdn. Bhd. ') formed and incorporated in Malaysia in accordance with the Malaysia Companies Act 2016.

In accordance with the Companies Act 2016 (CA 2016), officer is defined to include any director, secretary or employee of the company. It also includes a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument and any liquidator of a company appointed in a voluntary winding up. A person shall not be appointed as an auditor of any company if he is an officer of that particular company. As such, an auditor is not considered as an officer of a company.

The company is required to update the Companies Commission of Malaysia (CCM) of any changes in relation to the officers and auditors of the company within the stipulated timeframe.

1. Director

The management of the company's affairs is usually vested upon a group of people called directors. Directors is defined to include any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act and an alternate or substitute director.

A company shall have a minimum of 1 director who shall be a natural person of at least 18 years of age and shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia. In addition, a person shall not hold office as a director if that person is an undischarged bankrupt and has been convicted of a serious offence and imprisoned for the past 5 years, within or outside Malaysia. The director and shareholder can be the same person.

Subject to the constitution, the board may, at any time, appoint a director in addition to existing director or to fill the casual vacancy by ordinary resolution.

SHENZHEN 深圳

Rooms 1203-06, 12/F.
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen, China
中国深圳市罗湖区深南东路5002号
地王商业中心12楼1203-06室
T: +86 755 8268 4480

SHANGHAI 上海

Room 603, 6/F., Tower B
Guangqi Culture Plaza
2899A Xietu Road, Xuhui District
Shanghai, China
中国上海市徐汇区斜土路2899甲号
光启文化广场B座6楼603室
T: +86 21 6439 4114

BEIJING 北京

Room 303, 3/F.
Interchina Commercial Building
33 Dengshikou Street
Dongcheng District, Beijing, China
中国北京市东城区灯市口大街33号
国中商业大厦3楼303室
T: +86 10 6210 1890

TAIPEI 台北

Room 303, 3/F., 142 Section 4
Chung Hsiao East Road
Daan District, Taipei
Taiwan 10688
台湾台北市大安区忠孝东路四段
142号3楼之3
邮编: 10688
T: +886 2 2711 1324

TOKYO 东京

308 BIZMARKS Akasaka
2-16-6 Akasaka, Minato-Ku, Tokyo
Japan 107-0052
日本东京都港区赤坂二丁目16番6号
BIZMARKS赤坂308室
邮编: 107-0052
T: +81 3 5776 2637

SINGAPORE 新加坡

138 Cecil Street, #13-02 Cecil Court
Singapore 069538
T: +65 6438 0116

KUALA LUMPUR 吉隆坡

Unit 28-13, 28/F., Menara Teguh
Alila Bangsar, 58 Jalan Ang Seng
50470 Kuala Lumpur, Malaysia
T: +60 17 672 0203

NEW YORK 纽约

202 Canal Street, Suite 303, 3/F.
New York, NY 10013, USA
T: +1 646 850 5888

LONDON 伦敦

Room 319, 3/F., One Elmfield Park
Bromley, Greater London
BR1 1LU, UK
T: +44 20 8176 3860

A director may resign his office by giving a written notice to the company at its registered office. The resignation need not be accepted (unless the contract of service or the constitution requires it) and it is sufficient if the letter of resignation is tabled and noted at the board meeting. The resignation will normally be effective on the day the letter of resignation is received by the company, unless the letter mentions any other date on which the resignation is to be effective or the constitution otherwise provide, eg a month's notice (which is rare).

A director may be removed before the expiration of the director's period of office by ordinary resolution. Special notice is required of a resolution to remove a director or to appoint another person instead of the director at the same meeting.

A director of the company shall not resign or vacate his office if by his resignation or vacation from office if he is the sole director or the last remaining director of the company. Any purported resignation or vacation of office shall be deemed to be ineffective unless a person is appointed in his place.

2. Manager

Manager of a company means the principal executive officer for the time being by whatever name called and whether or not he is a director. Therefore, the particulars of the chief executive officer of the company (if there is one in office) are required to be included in the register.

The office of a manager is on a full time basis and the service agreement would set out in detail the duties to be performed, the remuneration payable and the privileges and restraints attaching to the appointment.

Third Schedule of the CA 2016 empowers the director to appoint managing directors and to decide on the terms and conditions of the appointment as they think fit. The board is empowered to determine the remuneration of a managing director upon such terms and conditions and with restrictions as the board may think fit and may from time to time revoke, withdraw, alter or vary all or any of those powers. The abovesaid Third Schedule also empowers the directors, subject to the terms of any particular agreement, to revoke the appointment. Thus, a managing director appointed by the board may be removed from that office by the board at any time.

For companies that adopt constitution, the constitution usually provides for the appointment of one or more of the directors to be office of managing director. If there is no such provision in the constitution, the directors cannot appoint a managing director. The constitution must first be altered to empower the directors to so appoint before such appointment is made. Once the power for appointment of managing director is given to the board, the company in general meeting cannot itself make such appointment.

3. Secretary

The company secretary is an officer of the company with substantial authority in the administrative sphere with powers and duties derived directly from the CA 2016 and the constitution of the company (if any). The company secretary ensures compliance with the many regulations affecting the company.

Every company is required by statute to have at least 1 company secretary who shall be a natural person of 18 years of age, a citizen or permanent residence of Malaysia and ordinarily reside in Malaysia by having a place of residence in Malaysia. A company secretary shall be a member of any one of the following professional bodies as set out in the Fourth Schedule of the CA 2016 and licensed by CCM:

- (a) Malaysian Institute of Chartered Secretaries and Administrators
- (b) Malaysian Institute of Accountants
- (c) Malaysian Bar
- (d) Malaysian Association of Company Secretaries
- (e) Malaysian Institute of Certified Public Accountants
- (f) Sabah Law Association
- (g) Advocates Association of Sarawak

There is no prohibition for companies to have more than 1 company secretary. Companies may thus have joint and several secretaries. The appointment of 2 or more secretaries can be done in a single board resolution. The advantage of having joint and several secretaries is that the company is ensured of always having at least one secretary present to perform the function and to discharge the duties of company secretary.

Although it is not mandatory to have a company secretary at the time of incorporation, the board of directors of a company shall appoint a company secretary within 30 days from the date of incorporation of a company.

The office of the company secretary must not be left vacant for more than 30 days at any one time.

4. Auditor

Every company must have auditors for the main purpose of auditing its accounts and reporting to the members of the company. Basically, auditors are entitled to trust the officers and employees of the company they are auditing and to rely on the figures presented to them. However, if they have reason to be suspicious of any information presented, they should personally make enquiries or checks.

A company shall appoint an auditor for each financial year of the company. In case of newly incorporated companies, an auditor must be appointed by the board at least 30 days before the end of the period for the submission of the first financial statements of the company to CCM.

The company when appointing an auditor must ensure that the proposed auditor is qualified for appointment as auditor as provided by Section 263 and Section 264 of the CA 2016. Only approved company auditors shall be appointed as the auditors of companies incorporated under CA 2016. An approved company auditor means a person who has been approved by the Minister of Finance under Section 263 as an auditor and whose approval has not been revoked.

Before a company appoints a proposed auditor/audit firm as the company's auditor, consent in writing to act as auditor must be obtained from the proposed auditor (or from the firm as the case may be). The secretary will usually be instructed to write to the proposed auditor for the letter of consent.

An auditor of a company shall cease to hold office 30 days from the circulation of the financial statements to the members unless he is re-appointed. An auditor may resign his office by giving a notice in writing to that effect to the company at its registered address. The notice of resignation shall bring the auditor's term of office to an end after 21 days from which the notice is given or from the date as may be specified in the notice.

The members of a company may remove an auditor from office at any time by ordinary resolution with special notice passed at the general meeting of the company.

Kaizen, together with its associate firms in Malaysia, can help the clients to perform these compliances formalities so as to maintain the Malaysia company in good standing. Please call and talk to our professional accountants in Kaizen for further clarification.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

Email: info@kaizencpa.com, enquiries@kaizencpa.com

Tel: +852 2341 1444

Mobile: +852 5616 4140, +86 152 1943 4614

WhatsApp/ Line/ Wechat: +852 5616 4140

Skype: kaizencpa