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# Members' Written Resolution of Malaysia Companies

Not every corporate decision needs to be approved at a formal shareholders' meeting. A private company may obtain member approval via a written resolution rather than a general meeting under the Malaysian Companies Act 2016 ("CA 2016").

This is a more flexible arrangement, particularly where the shareholders are in different jurisdictions or where it's necessary to obtain approval on a particular issue without the need to convene a meeting.

While written resolutions may appear to be the simplest of things, companies are still bound by the procedures set out in the CA 2016. It's important to understand how these resolutions operate, who is entitled to propose them and what level of approval is required in order to avoid all sorts of procedural pitfalls.

## 1. What Is a Members' Written Resolution?

A members' written resolution is a formal decision put forward for shareholders' approval without requiring them to attend a general meeting.

Members of private companies may pass resolutions either through a written resolution pursuant to Section 290 of the CA 2016 whilst for public companies, members' resolutions must be considered and passed at general meetings in accordance with the applicable requirements of the CA 2016.

## 2. Who Can Propose a Written Resolution?

A written resolution need not be put forward by the Board of Directors. Section 297 of the CA 2016 allows a written resolution to be proposed by the Board of Directors or any member of the private company.

However, only members representing at least 5% of the total voting rights of all eligible members or a lower threshold as specified in the company's constitution may request the company to circulate a proposed written resolution to its members.

It is also important to note that the decisions for the removal of director and removal of auditors must still be dealt with at a general meeting pursuant to Section 297(2) of the CA 2016.

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## 3. Ordinary and Special Written Resolutions

Same as at the general meetings, written resolutions can be of two types (ordinary or special) depending on the nature of the matter to which they relate. The resolution to be proposed should expressly state whether it is to be a special or ordinary resolution.

An ordinary resolution requires approval from more than 50% of the votes cast by members entitled to vote on the resolution. A special resolution requires the approval of members representing at least 75% of the votes of members entitled to vote on the resolution. The company should make sure that the requisite votes have been obtained before it treats the resolution as being duly passed.

## 4. How Does the Written Resolution Process Work?

The first step is to prepare the proposed resolution setting out the matter that requires shareholders' approval. Once prepared, the proposed resolution must be circulated to all eligible members in hard copy or electronic form in accordance with the CA 2016. The company should also inform members how they can indicate their agreement and specify the cut-off date for response.

Members who are in favour of the proposed resolution may indicate their agreement in hard copy or electronic form, subject to the relevant requirements. It is important to note that once a member has indicated their agreement to a proposed written resolution they cannot withdraw that agreement at a later stage.

A written resolution is passed once the requisite agreement of eligible members has been obtained.

## 5. How Long Do Members Have to Respond?

For a written resolution proposed by members, Section 307 provides that the resolution will lapse if it is not passed within 28 days beginning with the circulation date, unless the company's constitution provides otherwise.

For a resolution proposed by the Board, the company should specify the date by which members must signify their agreement in accordance with Section 301.

If the resolution is not passed within the applicable period, it cannot simply be treated as approved. The company may need to circulate a fresh resolution if it still wishes to obtain members' approval.

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## 6. Keeping Proper Records of Written Resolutions

Once a written resolution has been passed, the company must ensure that the relevant records are properly maintained to demonstrate that the necessary shareholders' approval was obtained for that particular corporate decision.

Under Section 341 of the CA 2016, companies are required to keep records of resolutions passed by members for at least 7 years . These records should include the relevant written resolutions and supporting documentation evidencing the members' approval.

## 7. Conclusion

Members' written resolutions provide private companies in Malaysia with a very effective means of obtaining shareholder approval without the need to hold a general meeting each time a decision is required. However, the process is still subject to the relevant legal requirements which include the method of circulation, the requisite vote and the record keeping. Companies should work closely with their company secretary to ensure that any written resolutions are properly drafted and passed.

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 consultant 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:*
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