

COMMON OFFENCES UNDER

THE

COMPANIES ACT 2016

(ACT 777)

03 OCTOBER 2018

MENARA SSM@SENTRAL

KUALA LUMPUR



BRIEF Overview

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Introduction

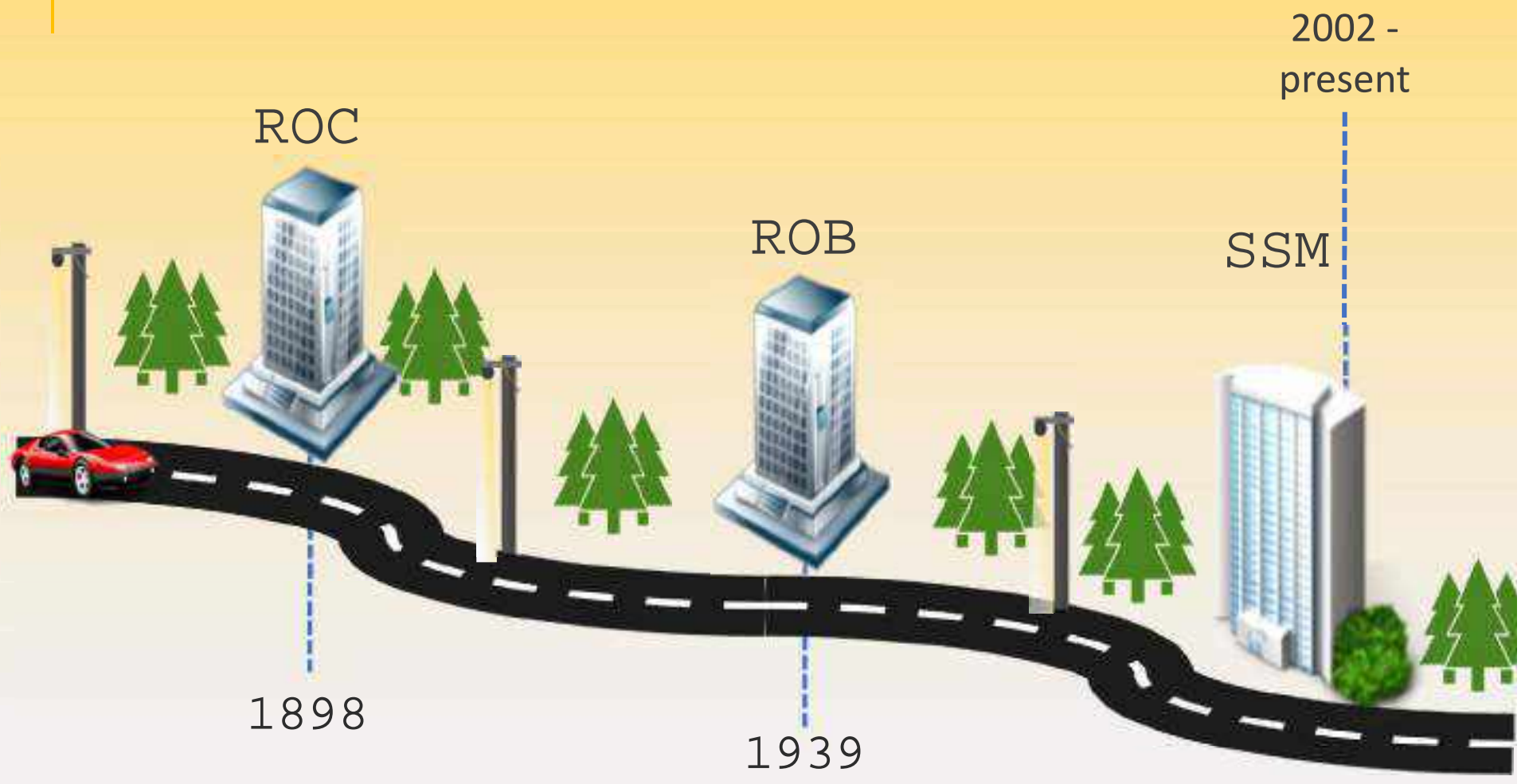
SSM NATIONWIDE





Introduction

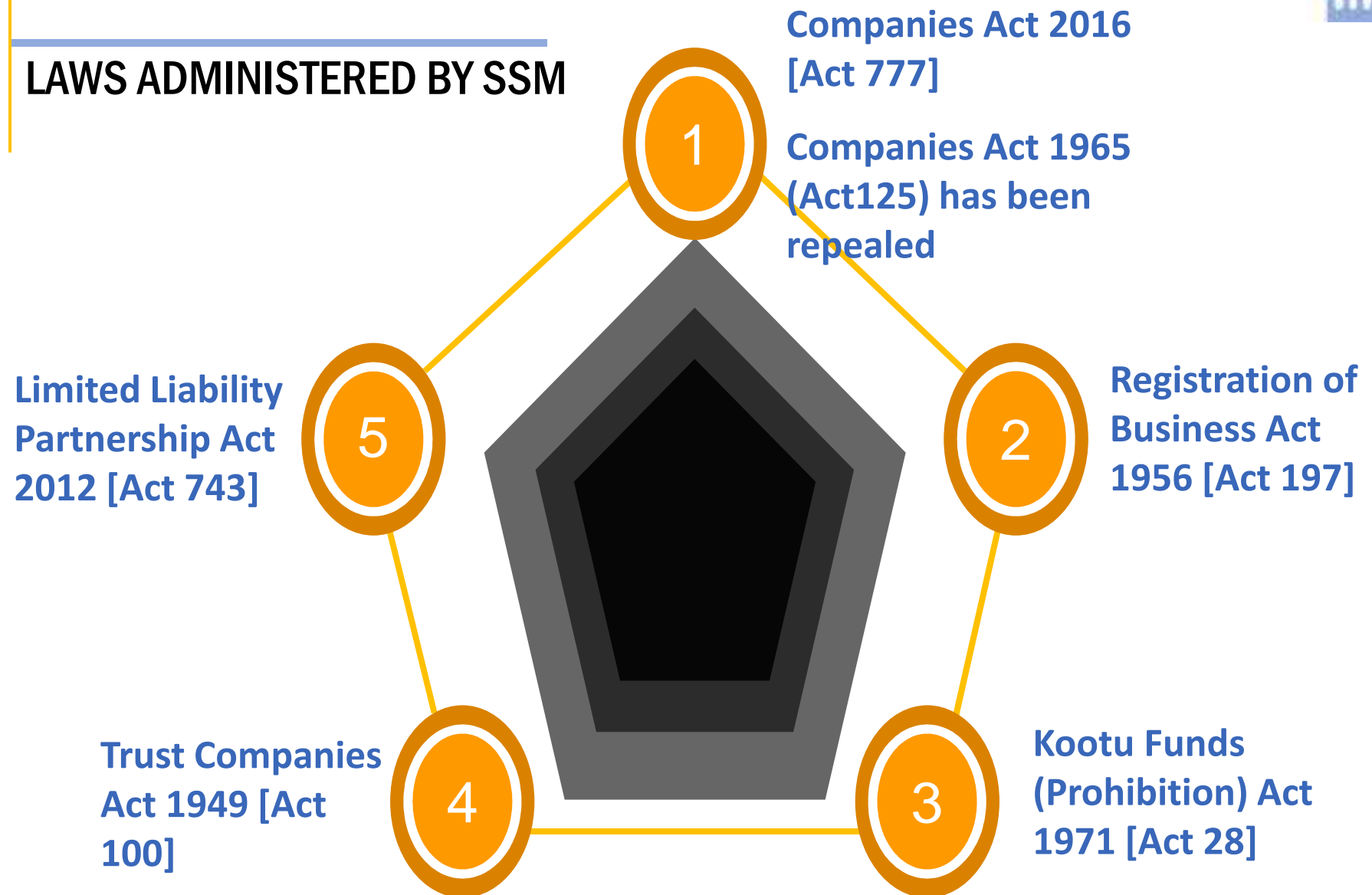
EVOLUTION OF SSM





Introduction

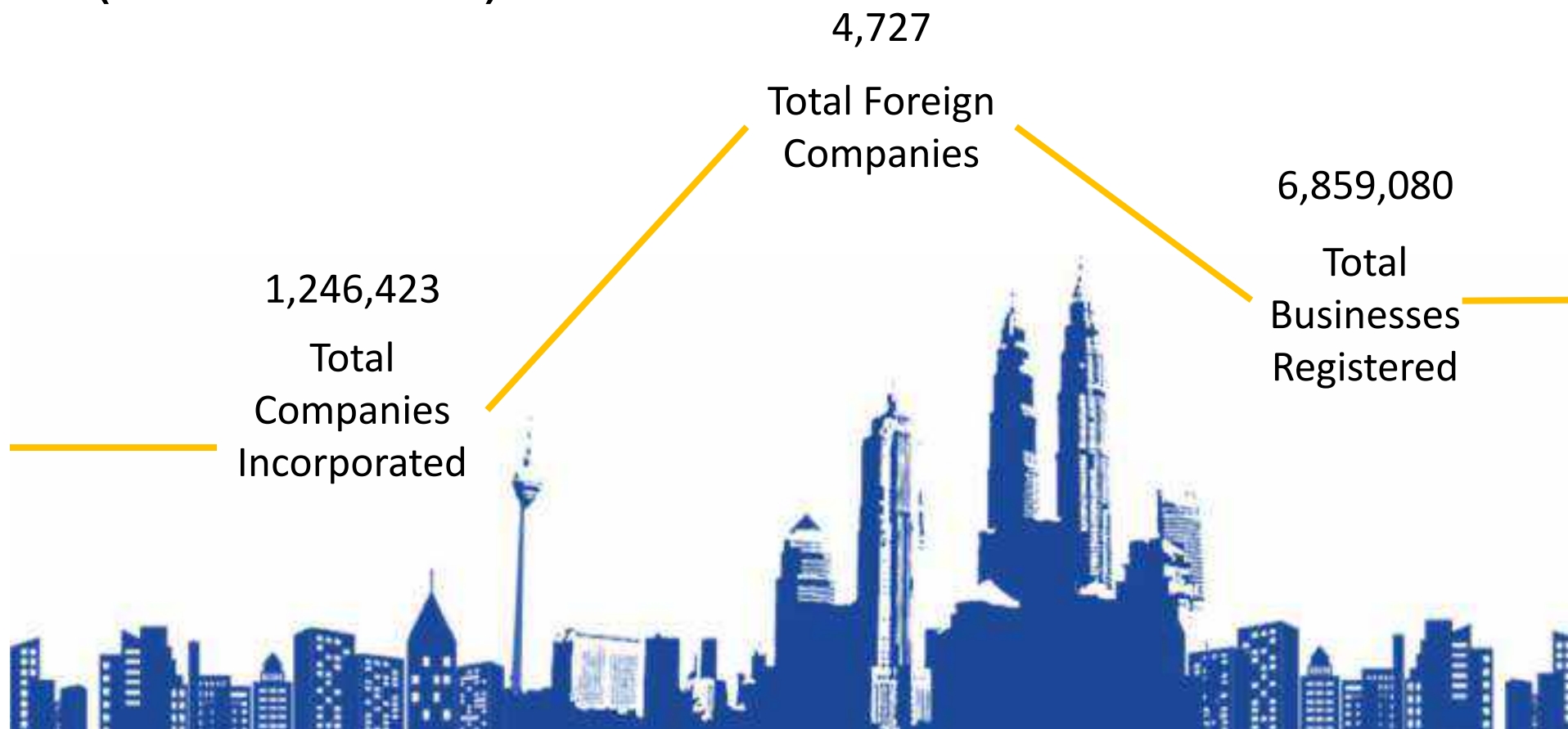
LAWS ADMINISTERED BY SSM





Introduction

NUMBER OF COMPANIES & BUSINESSES REGISTERED (as at 31 Dec 2017)





Introduction

BALANCE ENFORCEMENT APPROACH

CRIMINAL SANCTIONS

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ADMINISTRATIVE & CONTINUOUS EDUCATION

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COMMON OFFENCES UNDER COMPANIES ACT 2016

Company as Separate Legal Entity |
Common Offences Committed By
Officers | Non – compliance Cases |
Serious Corporate Governance Cases



Common Offences Under Companies Act 2016

COMPANY AS A SEPARATE ENTITY



LEGAL ENTITY

Separate legal entity, artificial legal person distinct from other individuals who constitute its members.



ASSETS

Own property in its own name, incur debts and liabilities on its own behalf, sue and be sued.



MENS REA

A company acts through its directing mind (agency of persons such as directors, managers & employees).

Common Offences Under Companies Act 2016



COMMON OFFENCES COMMITTED BY OFFICERS

Offences

- ▶ More than 234 offences under the Companies Act 2016 involving company directors and officers of the company

Definition

- ▶ Section 4 of CA 1965 : “Director” as any person occupying the position of director even though he may be described by some other name; a alternate or substitute director; and any person whose directions or instructions are customarily followed by the directors or management of a company
- ▶ Section 4 of CA 1965 : “Officer” to include any director, secretary, employee, receiver and manager and in cases of a voluntary winding up, the liquidator

Prosecution Action

- ▶ Generally relating to serious corporate governance offences e.g fraud, false and misleading statements, breaches of fiduciary duty of directors



NON-COMPLIANCE OFFENCES

Common Offences Under Companies Act 2016 – Non-compliance Offences



SECTION 68 : FAILURE TO LODGE ANNUAL RETURN - The Provision

THE LAW



- ▶ Not later than 30 days from the anniversary of its incorporation
- ▶ Sec 68(6): Lodgement of statement signed by a director or a secretary certifying that there is no change in any of the matters stated from previous years.
- ▶ Sec 68(8): Registrar has power to strike off the company dormant for more than 3 years.
- ▶ CA 1965 - Section 165(4) : Requires a company to lodge Annual Return within 1 month after its AGM

OFFENDER



- ▶ Company and;
- ▶ Every officer of the company

PENALTY



- ▶ Not exceeding RM5,000.00.
- ▶ Default Penalty

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 68 : FAILURE TO LODGE ANNUAL RETURN - Case Study

“SSM OBTAINS CONVICTION AGAINST ALL DIRECTORS OF GENNEVA SDN BHD, GENNEVA MALAYSIA SDN BHD & SAMUDRA-GV SDN BHD”

**CASE
STUDY**

Monday, 21 July 2014 – 8 directors as well as 3 gold-trading companies were convicted at Kuala Lumpur Sessions Court today for committing 76 counts of offences under the Companies Act 1965. They were from Genneva Sdn Bhd, Genneva Malaysia Sdn Bhd and Samudra-GV Sdn Bhd which had a common registered address at Suite D23, 2nd Floor, Plaza Pekeliling, No.2, Jalan Tun Razak, 50400 Kuala Lumpur.

They were convicted after pleaded guilty for offences relating to failure to hold the Annual General Meeting ('AGM') which contravened Section 143(1), failure to lodge the Annual Return of the companies which contravened Section 165(4) and failure to table the audited accounts at the AGM within the required period which contravened Section 169(1) as imposed by the Companies Act 1965. All offences were in relation to the calendar year ranging from 2007 until 2012.

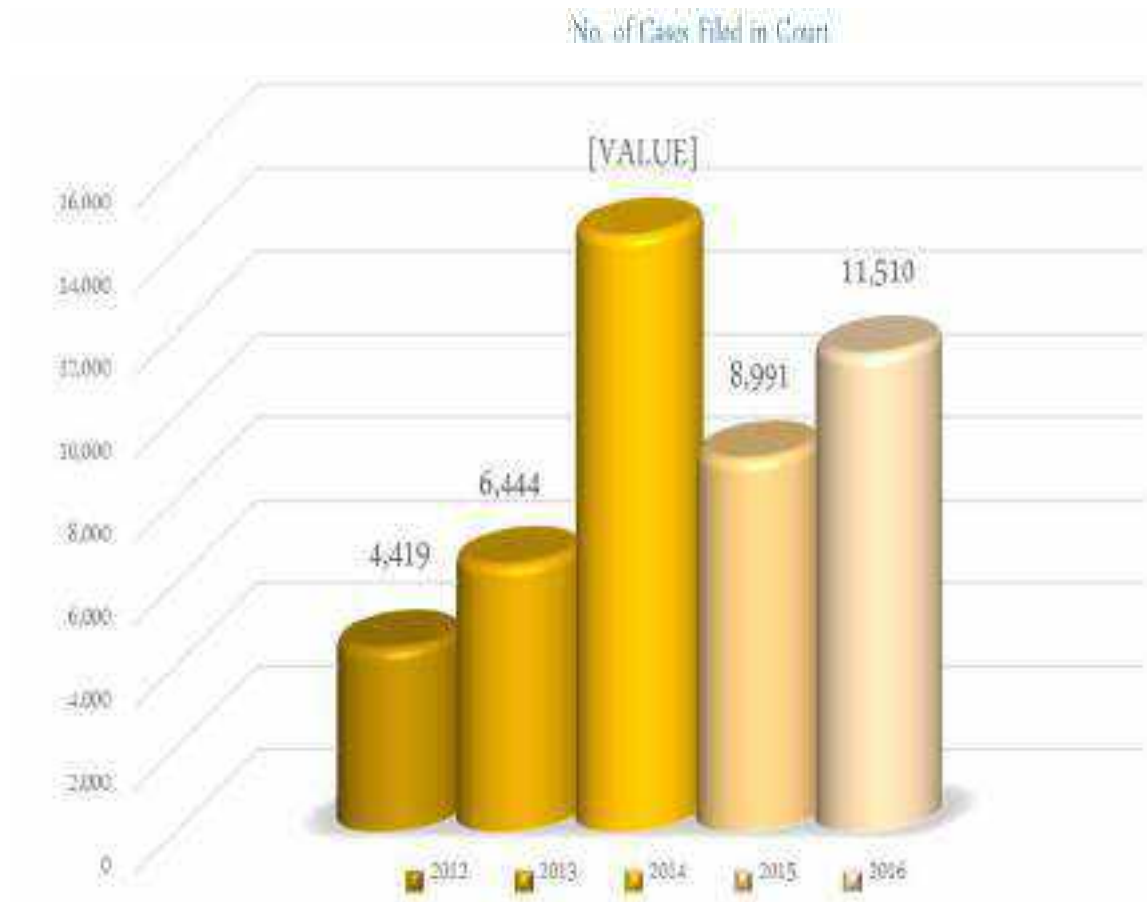
The directors concerned are Dato' Tan Liang Keat, Dato' Ng Poh Weng, Dato' Philip Lim Jit Meng, Dato' Marcus Yee Yuen Seng, Dato' Chin Wai Leong, Ng Wan Yee, Alex Yew Soo Hun and Ahmad Khairuddin Ilias.

The Sessions Court Judge, Zulqarnain Hassan found all of them guilty and sentenced them to a total fine of RM42,700.00, in default 3 months imprisonment for the said offences.



Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 68 : FAILURE TO LODGE ANNUAL RETURN - Statistics





Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 340 (1) : FAILURE TO HOLD AGM - The Provision

THE LAW

- ▶ Must hold AGM within 6 month of the company's financial year end; and
- ▶ Not more than 15 months after the last preceding AGM.
- ▶ Not required to hold an AGM in the year of its incorporation or in the following year the company hold its first AGM within 18 months of its incorporation
- ▶ Sec 340(4) : Company may apply to SSM for extension of time to extend holding of AGM based on good reasons
- ▶ This new provision only applies to Public company
- ▶ CA 1965 – Sec 143(1) : Requires both Private and Public company to hold an AGM every calendar year

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM5,000.00.
- ▶ Default Penalty

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 340 (1) : FAILURE TO HOLD AGM - Case Study

“DIRECTORS OF MEGASTAR RESOURCES SDN. BHD. CONVICTED FOR VARIOUS NON-COMPLIANCE OFFENCES UNDER THE COMPANIES ACT 1965”

On 20th March 2015, the Magistrate at the Georgetown Magistrate’s Court, Puan Catherine Nicholas had convicted the directors of Megastar Resources Sdn Bhd after they pleaded guilty to three charges each under Section 165 of the Companies Act 1965 for offences committed in 2010, 2011 and 2012.

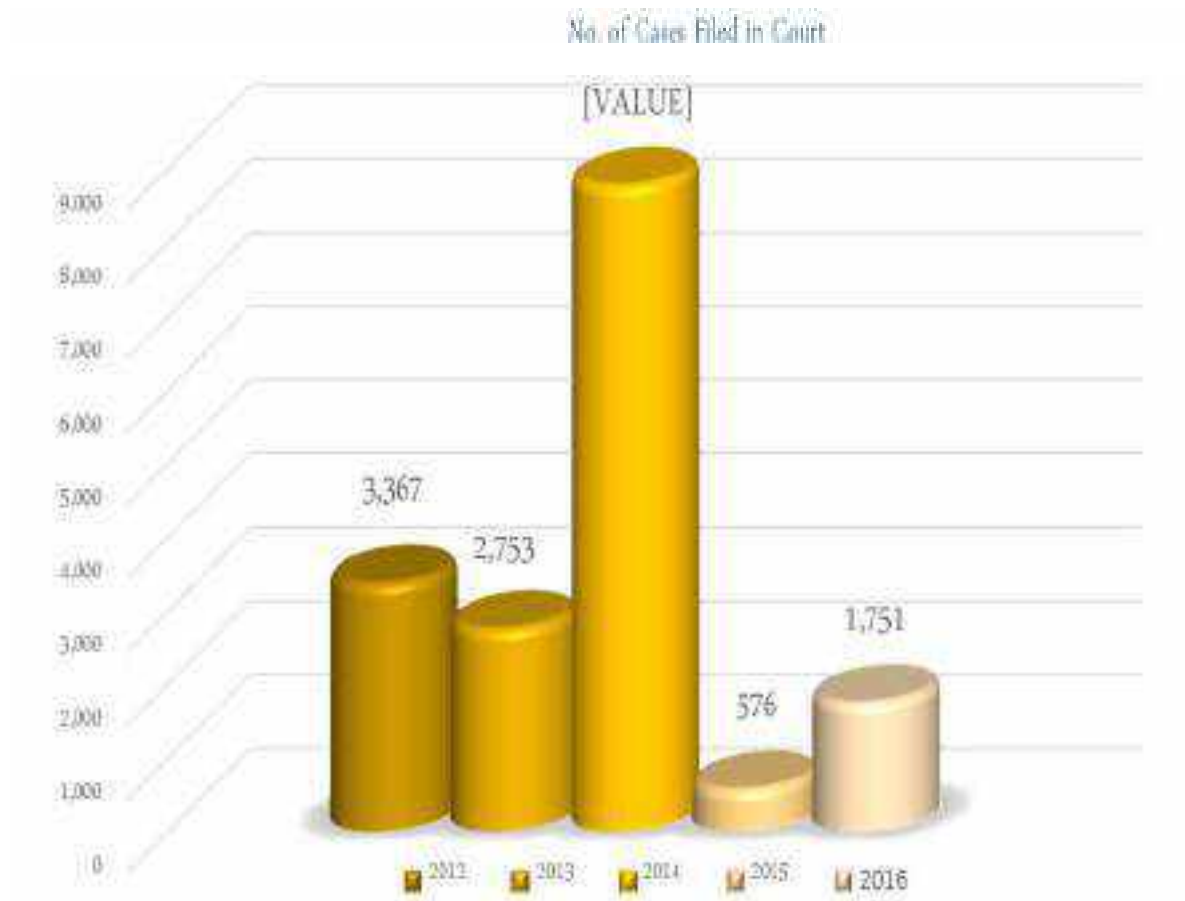
The company directors namely, Sim Chung Seng, 55, and Teoh Tiang Hoe, 36, were sentenced to a fine totaling RM3,000 each, in default two months imprisonment. Both directors had paid the fines.

A default penalty of RM30.00 per day for each charge was also imposed upon the company if it fails to lodge its Annual Returns and Audited Accounts within three months from the date of sentencing.



Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 340 (1) : FAILURE TO HOLD AGM - Statistics





Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 259 : FAILURE TO LODGE FINANCIAL STATEMENTS & REPORTS - The Provision

THE LAW

- ▶ Private company: Within 30 days from the financial statements and reports are circulated to its members under section 258
- ▶ Public company: Within 30 days from its AGM.
- ▶ Sec 259(2) : A company may apply to SSM for an extension of time based on good reasons before the expiry of time specified.
- ▶ If Registrar allows for extension of time, no enforcement action will be taken against the company
- ▶ CA 1965 – Sec 165(4) : Requires the company to lodge financial statement and reports

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM50,000.00.

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 259 (1) : FAILURE TO LODGE FINANCIAL STATEMENT - Case Study

“DENDA MAKSIMUM DIKENAKAN KE ATAS SYARIKAT MANDUCEKAP HI-TEC SDN BHD BAGI KESALAHAN KETIDAKPATUHAN DI BAWAH AKTA SYARIKAT 1965”

Shah Alam - Jumaat, 4 November 2016: Syarikat Manducekap Hi-Tec Sdn Bhd dan 9 orang pengarah – pengarahnya telah disabitkan dengan kesalahan ketidakpatuhan di bawah Seksyen 169(1), 165(4) dan 143(1) Akta Syarikat 1965 di Mahkamah Mejistret Shah Alam setelah pihak pendakwaan daripada Suruhanjaya Syarikat Malaysia (SSM) berjaya membuktikan kes melampaui keraguan munasabah.

Puan Majistret telah mempertimbangkan hujahan pihak pendakwaan dan menjatuhkan hukuman maksimum kepada Syarikat Manducekap Hi-Tec Sdn Bhd bagi kesalahan di bawah seksyen 143(1) iaitu denda sebanyak RM5000 dan denda sebanyak RM2000 bagi kesalahan di bawah seksyen 165(4).

Bagi setiap pengarah pula, hukuman yang dijatuhkan bagi kesalahan di bawah seksyen 143(1) ialah denda sebanyak RM2500 jika gagal bayar 3 bulan penjara, denda sebanyak RM1500 jika gagal bayar 2 bulan penjara bagi kesalahan di bawah seksyen 165(4) dan denda sebanyak RM5000 jika gagal bayar 6 bulan penjara bagi kesalahan di bawah seksyen 169(1) AS 1965. Jumlah keseluruhan denda yang dikenakan ialah sebanyak RM88000.

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 248 : TABLING FINANCIAL STATEMENT AT AGM - The Provision

THE LAW

- ▶ Directors failed to table the audited financial statement at AGM –
 - ▶ Within 18 months from incorporation
 - ▶ Subsequently, within 6 months from the date of financial statement.
- ▶ This provision must be read together with section 340 of the Act.
- ▶ Directors also must ensure that the financial statement duly audited before laying at AGM
- ▶ CA 1965 – Sec 169(1) : Requires the company to table financial statement and reports at AGM

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

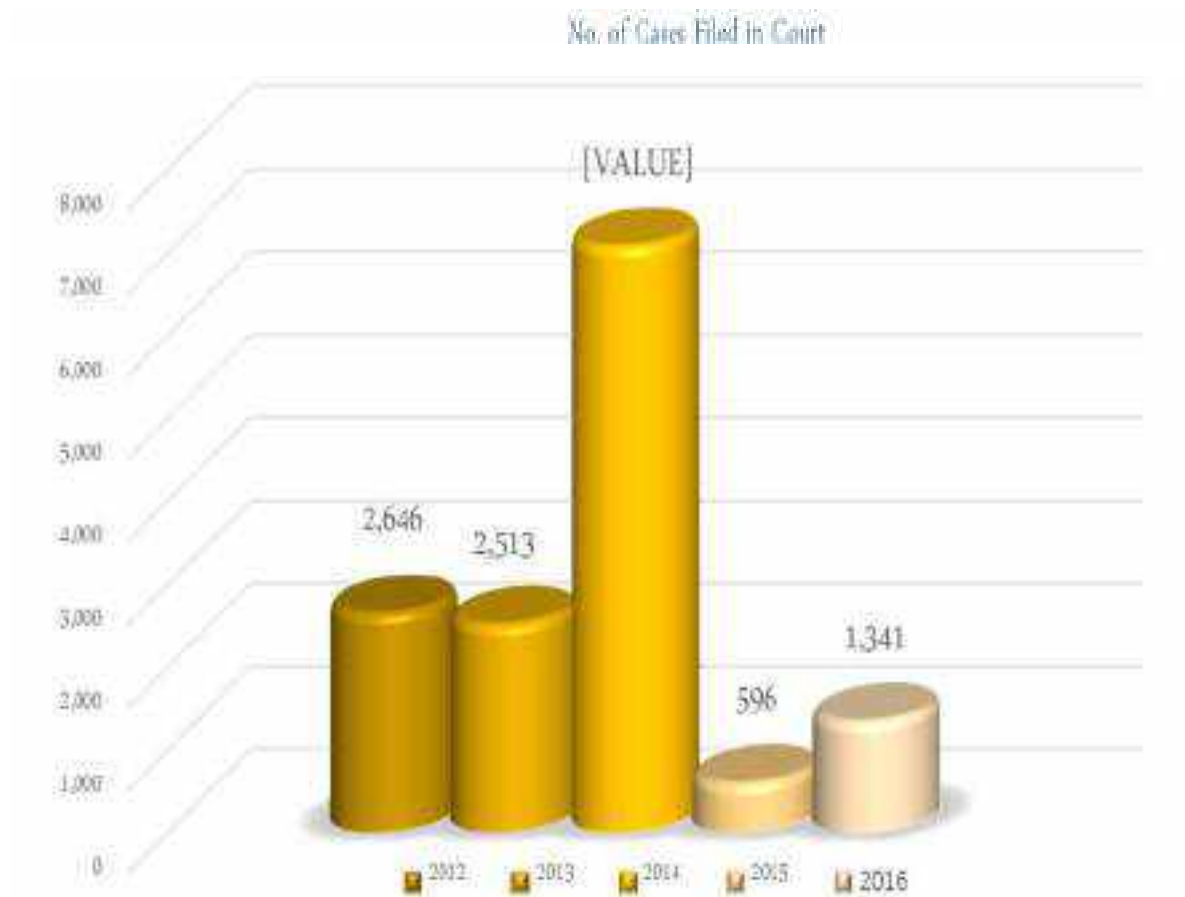
PENALTY

- ▶ Not exceeding RM500,000.00 or
- ▶ Imprisonment not exceeding 1 year or
both

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 248 : TABLING FINANCIAL STATEMENT AT AGM - Statistics



Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 257 & 258 : DUTY TO CIRCULATE COPIES OF FINANCIAL STATEMENTS AND REPORTS - The Provision

THE LAW

- ▶ Company shall send a copy of its financial statements and reports for each financial year-
 - ▶ Private company, within 6 months of its financial year end;
 - ▶ Public company, shall be at least 21 days before the date of AGM (it's also might be send shorter period agreed by members)
- ▶ A copy of financial statements and reports must send to-
 - ▶ Every member of the company;
 - ▶ Every person who is entitled to receive notice of general meetings;
 - ▶ Every auditor of the company; and
 - ▶ Every debenture holder

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 257 & 258 : DUTY TO CIRCULATE COPIES OF FINANCIAL STATEMENTS AND REPORTS - The Provision...cont.

- ▶ In summary, within 6 month the directors must:
 - ▶ Prepare the financial statement;
 - ▶ Audit the financial statement;
 - ▶ Send copy according to section 257;
 - ▶ Lodge with registrar (in case Public company within 30 days from AGM and for Private company within 30 from the FS circulated to members)

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM50,000.00

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 245 : FAILURE TO KEEP ACCOUNTING RECORDS-The Provision

THE LAW

- ▶ **Sec 2** : “Accounting Records” includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are prepared.
- ▶ **Sec 245(2)** : All accounting transactions must be recorded within 60 days of completion of transactions to which it relates.
- ▶ Accounting records must be kept and maintained for 7 years from the date of the completion of the transactions
- ▶ **CA 1965 – Sec 167**

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM500,000.00 or
- ▶ Imprisonment not exceeding 3 years or

both.

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 30 : PUBLICATION OF COMPANY NAME AND REGISTRATION NUMBER - The Provision

THE LAW

- ▶ A company shall display and disclose its registered name and company registration number at/on-
 - ▶ Registered office;
 - ▶ Every place of business is carried on;
 - ▶ Every place where its books are kept;
 - ▶ Business letters, notices and other official publications including in electronic form;
 - ▶ Websites;
 - ▶ Bills of exchange, receipts etc
- ▶ Registrar shall determine the manner a registered name is to be displayed or disclosed by a company

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 30 : PUBLICATION OF COMPANY NAME AND REGISTRATION NUMBER - The Provision...continue

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

General Penalty (Section 588)

- ▶ Not exceeding RM50,000.00 or
- ▶ imprisonment not exceeding 3 years or both (for individual)

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 47 : DOCUMENTS TO BE KEPT AT REGISTERED OFFICE - The Provision

THE LAW

- ▶ A company shall keep at its registered office—
 - ▶ Notice of registration issued under section 15;
 - ▶ The constitution of the company, if any;
 - ▶ Certificates given under this act or corresponding previous written law, if any (i.e: form 9);
 - ▶ All registers, books, records and documents as required under this act;
 - ▶ Minutes of all meetings of members and resolutions of members;
 - ▶ Minutes of all meetings and resolutions of the board and committees of the board;
 - ▶ Copies of all written communications to all members or all holders of the same class of shares;



Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 47 : DOCUMENTS TO BE KEPT AT REGISTERED OFFICE - The Provision...continue

THE LAW

- ▶ Copies of all financial statements and group financial statement;
- ▶ The accounting records of the company required under section 245;
- ▶ Copies of all instruments creating or evidencing charges as required under section 357; and
- ▶ Such other documents required to be kept by the registrar 71.
- ▶ Directors must ensure that all the requirements to be kept at registered office.

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM10,000.00
- ▶ Default penalty.



Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 57 : REGISTER OF DIRECTORS, MANAGERS AND SECRETARIES - The Provision

THE LAW

- ▶ A company shall keep at registered office a register of directors, managers and secretaries.
- ▶ The changes in the particulars of a director, manager or secretary the company shall effect in the register within 14 days from the date of changes. [S. 57(4) – New Provision]

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM10,000.00
- ▶ Default penalty

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 58 : DUTY TO NOTIFY OF PARTICULARS AND CHANGES OF DIRECTOR, MANAGER AND SECRETARY - The Provision

THE LAW

- ▶ A company shall notify the Registrar within **14 days** from the date –
 - ▶ After its incorporation
 - ▶ Any change in the name, residential address and other prescribed particulars
 - ▶ After a person becomes or ceases to be a director, manager or secretary of the company
- ▶ Similar to **section 141 CA 1965**

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM15,000.00
- ▶ Default penalty

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 77 : REGISTRATION OF ALLOTMENT IN THE REGISTER OF MEMBERS - The Provision

THE LAW

- ▶ A company shall register an allotment of shares in the register of members within **14 days** from the date of the allotment.
- ▶ The company directors /secretary must ensure that the changes/allotment of shares recorded accordingly.
- ▶ This is new provision under the Act.

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM50,000.00
- ▶ Default penalty



Common Offences Under Companies Act 2016 - Non-compliance Offences

SECTION 78 : RETURN OF ALLOTMENT - The Provision

THE LAW

- ▶ Company shall **lodge** with the Registrar a return of the allotment within fourteen days from an allotment of shares.
- ▶ The directors of company must ensure that the **Return** to be lodge with Registrar after allotment is made..
- ▶ **Similar to section 54 CA 1965.**

OFFENDER

- ▶ Company and;
- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM10,000.00
- ▶ Default penalty

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 341 : RECORDS OF RESOLUTIONS AND MEETINGS - The Provision

THE LAW

- ▶ Every company shall keep records comprising—
 - ▶ All resolutions of members passed otherwise than at the meeting of members;
 - ▶ Minutes of all proceedings of meetings of members; and
 - ▶ Details provided to the company in accordance with **section 344**.
- ▶ The records **shall be kept** for at least **7 years** from –
 - ▶ The date of the resolution;
 - ▶ Meeting or decision, as the case may be.

OFFENDER

- ▶ Every officer of the company

PENALTY

- ▶ Not exceeding RM10,000.00

Common Offences Under Companies Act 2016 - Non-compliance Offences



SECTION 245 : FAILURE TO KEEP ACCOUNTING RECORDS –

The Provision

THE LAW

- ▶ All accounting transactions must be recorded within **60 days** of completion of transactions to which it relates [**S. 245(2)**].
- ▶ Accounting records must be kept and maintain for **7 years** from the date of the completion of the transactions.
- ▶ **Section 2 of the CA - ‘Accounting Records’** *includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are prepare.*

PENALTY

OFFENDER

- ▶ Company; and
- ▶ Every officer of the company

- ▶ Not exceeding RM500,000.00
- ▶ imprisonment not exceeding 3 years;
or
- ▶ both.



CORPORATE GOVERNANCE OFFENCES

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 221 : DISCLOSURE OF INTEREST IN CONTRACTS, PROPOSED CONTRACTS, PROPERTY, OFFICES, ETC. - The Provision

THE LAW

- ▶ Every director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of his interest at a meeting of the board of directors.
- ▶ Every director of a company who holds any office or possesses any property **where duties or interests may be created in conflict** with his duties or interests as director shall declare the fact and the nature, character and extent of the conflict at a meeting of the directors of the company.

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 221 : DISCLOSURE OF INTEREST IN CONTRACTS, PROPOSED CONTRACTS, PROPERTY, OFFICES, ETC. - The Provision...continue

- ▶ The **declaration shall be made** at the first meeting of the directors held –
 - ▶ after he becomes a director; or
 - ▶ if already a director, after he commenced to hold the office or to possess the property,
as the case requires.
- ▶ **The secretary of the company shall record** every declaration made in the minutes of meeting at which the declaration was made.

OFFENDER

- ▶ every officer; and
- ▶ any other person or individual

PENALTY

- ▶ imprisonment not exceeding 5 years;
- ▶ fine not exceeding three million ringgit ;
or

▶ both.

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 221 : DISCLOSURE OF INTEREST IN CONTRACTS, PROPOSED CONTRACTS - Case Study

Monday, 21st July 2014 - The Court of Appeal in Putrajaya today unanimously dismissed the appeal brought by Lee Yew Kay and Koo Kok Bun, the directors of Penasuria Corporation Sdn Bhd for committing offences under Sections 132(1) and 131(1) of the Companies Act 1965 ('CA 1965').

Previously on 4/7/2013, the High Court Judge had convicted and sentence Lee Yew Kay and Koo Kok Bun for the commission of the above offence as follow:

- 1. six (6) months imprisonment and fined RM10,000 each in default one (1) month imprisonment for contravening Section 132(1) Companies Act 1965; and**
- 2. twelve (12) months imprisonment and fined RM50,000 each in default three (3) months imprisonment for contravening Section 131(1) Companies Act 1965.**

Lee Yew Kay and Koo Kok Bun dissatisfied with the decision of the High Court, appealed to the Court of Appeal against their conviction and sentence.

On appeal, the Court of Appeal

- 1. fine of RM30,000 in default nine (9) month imprisonment for contravening Section 132(1) Companies Act 1965; and**
- 2. fine of RM150,000 each in default eighteen (18) months imprisonment for contravening Section 131(1) Companies Act 1965.**

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 213 : DUTIES AND RESPONSIBILITIES OF DIRECTORS

- The Provision

THE LAW

▶ A director of a company shall at all times exercise his powers in accordance with this Act, for a proper purpose and in good faith in the best interest of the company.

Business judgment rule

Section 214 (1) deems a director to have met the requirements under subsection 214 (2) if the director:

- (a) makes the judgement in good faith for a proper purpose;
- (b) does not have material personal interest in the subject matter;
- (c) is informed about the subject matter to the extent he reasonably believes to be appropriate under the circumstances; and
- (d) reasonably believes that the judgement is in the best interest of the company.

Section 214 (2) “business judgment” means any decision on whether or not to take action in respect of a matter relevant to the business of the company.

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 245 : DUTIES AND RESPONSIBILITIES OF DIRECTORS - The Provision

OFFENDER

- ▶ director

PENALTY

- ▶ imprisonment not exceeding 5 years;
- ▶ fine not exceeding three million ringgit ; or
- ▶ both.



Common Offences Under Companies Act 2016 - Corporate Governance Offences

SECTION 248 : DUTIES AND RESPONSIBILITIES OF DIRECTORS - Statistics



Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 221 : DUTIES AND RESPONSIBILITIES OF DIRECTORS - Case Study

On 19 November 2012 - Noorhamizam bin Hamid, the director of Rebana Emas Sdn Bhd was sentenced to one (1) year imprisonment by the Kuala Lumpur's High Court for committing an offence under section 132(1) of the Companies Act (CA) 1965.

Noorhamizam bin Hamid had previously on 23 February 2012 pleaded guilty to the charge in the Sessions Court and was sentenced to pay fine of RM12,000.00 in default five (5) months imprisonment. Suruhanjaya Syarikat Malaysia (SSM) dissatisfied with the decision of the Sessions Court filed an appeal to the High Court.

The charge against Noorhamizam read that he did not exercise his powers for a proper purpose and in good faith in the best interest of the company as he had misappropriated company's money of RM160,000.00 into his personal bank account.

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 218 : PROHIBITION AGAINST IMPROPER USE OF PROPERTY, POSITION, ETC - The Provision

THE LAW

- ▶ A director or officer of a company shall not, without the consent or ratification of a general meeting –
 - ▶ use the property of the company;
 - ▶ use any information acquired by virtue of his position as a director or officer of the company;
 - ▶ use his position as such director or officer;
 - ▶ use any opportunity of the company which became aware of; or
 - ▶ engage in business which is in competition with the company,

to gain directly or indirectly, a benefit for himself or by any other person, or cause detriment to the company.

Common Offences Under Companies Act 2016 - Corporate Governance Offences



SECTION 218 : PROHIBITION AGAINST IMPROPER USE OF PROPERTY, POSITION, ETC - The Provision...Continue

OFFENDER

- ▶ Director; or
- ▶ officer

PENALTY

- ▶ imprisonment not exceeding 5 years;
- ▶ fine not exceeding three million ringgit ; or
- ▶ both.