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**Circular No 295/2011
Dated 16 Dec 2011**

To all Members of the Malaysian Bar

**Companies Commission of Malaysia's Practice Note No. 10/2011
Practice Note No. 11/2011 and Practice Note No. 12/2011**

We have been informed by Companies Commission of Malaysia ("SSM") of its Practice Note No. 10/2011: Lodgement of Annual Return where Annual General Meeting Cannot be Convened; Practice Note No. 11/2011: Clarification on whether a Society can be a Member of a Company; and Practice Note No. 12/2011: Compliance Programme to Encourage Timely Submission of Annual Returns and Audited Financial Statements.

Please find attached Practice Note No. 10/2011, Practice Note No. 11/2011 and Practice Note No. 12/2011.

For further information, please contact SSM by telephone at 03-2299 5489, or refer to the SSM website at <http://www.ssm.com.my>.

**Tony Woon Yeow Thong
Secretary
Malaysian Bar**



SURUHANJAYA SYARIKAT MALAYSIA
(COMPANIES COMMISSION OF MALAYSIA)
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Ruj. Tuan : SSM/SPA/ / /

Ruj. Kami : 7 Oktober 2011

Tarikh :

Kepada Presiden/ Setiausaha

Badan Profesional / Persatuan Setiausaha / Dewan Perniagaan

Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan

**PENGUMUMAN BERHUBUNG PENERBITAN NOTA AMALAN
SURUHANJAYA SYARIKAT MALAYSIA:**

- **PRACTICE NOTE NO. 10/2011: LODGEMENT OF ANNUAL RETURN WHERE ANNUAL GENERAL MEETING CANNOT BE CONVENED**
- **PRACTICE NOTE NO. 11/2011: CLARIFICATION ON WHETHER A SOCIETY CAN BE A MEMBER OF A COMPANY**

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Untuk makluman pihak Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan, bersama-sama ini dilampirkan pengumuman Nota Amalan 10/2011 dan Nota Amalan 11/2011 yang dikeluarkan oleh Suruhanjaya Syarikat Malaysia (SSM) berkaitan dengan perkara yang disebut di atas.

3. Untuk makluman Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan seterusnya, ringkasan kandungan Nota-Nota Amalan tersebut adalah seperti berikut:

- (a) **PRACTICE NOTE NO. 10/2011: LODGEMENT OF ANNUAL RETURN WHERE ANNUAL GENERAL MEETING CANNOT BE CONVENED**

Nota Amalan ini dikeluarkan dengan tujuan memberi makluman dan prosedur yang perlu dipatuhi berhubung penyerahsimpanan Penyata Tahunan oleh syarikat di mana Mesyuarat Agung Tahunan tidak dapat diadakan disebabkan kekurangan kuorum di dalam keadaan-keadaan tertentu.

(b) **PRACTICE NOTE NO. 11/2011: CLARIFICATION
ON WHETHER A SOCIETY CAN BE A MEMBER OF
A COMPANY**

Nota Amalan ini dikeluarkan dengan tujuan untuk memperjelaskan kepada pihak-pihak berkepentingan sama ada sesebuah persatuan dibenarkan menurut undang-undang untuk menjadi ahli sesebuah syarikat dan keperluan-keperluan lanjut yang berkaitan dengannya.

4. Di sini kami ingin memohon perhatian dan jasa baik pihak Y.Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan untuk menyebarkan dan menghebahkan makluman ini kepada semua ahli persatuan melalui laman web, emel dan pos.

5. Sebarang maklumat lanjut bolehlah menghubungi kami di talian telefon 03-2299 5489 atau dengan melayari laman web SSM : www.ssm.com.my

Segala sokongan, perhatian dan kerjasama yang diberikan dalam perkara ini amat dihargai.

Sekian terima kasih.

"KE ARAH KECEMERLANGAN SSM"

Yang benar,

b/p 

MOHAMMAD SHAHREN MOHAMAD YUSRI

b/p Ketua Pegawai Eksekutif
Suruhanjaya Syarikat Malaysia



COMPANIES ACT 1965: SSM'S PRACTICE NOTE NO 10/2011

**RE: LODGEMENT OF ANNUAL RETURN WHERE ANNUAL
GENERAL MEETING CANNOT BE CONVENED**

1. This Practice Note serves to inform the requirements for the lodgement of annual return where Annual General Meeting (AGM) cannot be convened due to lack of quorum.

**THE HOLDING OF AGM AND LODGEMENT OF ANNUAL
RETURN**

2. Pursuant to section 143 of the Companies Act 1965 (CA 1965), companies are required to strictly observe the requirements relating to the holding of AGM as follows:

- (i) A company is required to hold an AGM in every calendar year end; and**
- (ii) The AGM must be held not more than fifteen (15) months after the holding of the last preceding AGM.**

3. Section 165 of the CA 1965 requires all companies to lodge annual return within one (1) month after an AGM. The annual return of a company shall be in accordance with the Eighth Schedule of CA 1965 and be accompanied by such copies of

documents as are required or such certificates or other particulars as prescribed in Part II of that Schedule.

4. The above provisions form part of the corporate disclosure and transparency requirements under CA 1965 towards ensuring that the public have access to regularly updated information relating to a company's members, directors and other relevant information.

5. The lodgement of annual return will only be considered as complete and in accordance with the provisions of the law if an AGM has been duly convened. SSM will not accept the lodgement of annual return by companies where no AGM is held save in the circumstances outlined in the paragraphs below.

DIFFICULTIES IN HOLDING AN AGM IN CERTAIN CIRCUMSTANCES

6. SSM recognises that there may be situations where a company may encounter difficulties to convene its AGM due to lack of quorum in the following circumstances:

- (i) when the absent member(s) cannot be contacted by the company; or**
- (ii) when a member(s) has passed away;**
- (iii) when a member(s) has been disqualified (e.g. recently adjudicated bankrupt); or**
- (iv) any other reasons where the Registrar is satisfied that the non-holding of AGM is due to circumstances beyond the control of the company or shareholders.**

7. As a result of any of the above, the company is unable to increase its membership immediately or to meet the quorum requirement to enable a valid AGM to be convened even though the company has complied with the procedures for lack of quorum in its Articles of Association.

8. SSM is prepared to accept the lodgement of an annual return without the AGM being held under the circumstances highlighted in paragraph 6 above AND where the company is only aware of such impending lack of quorum after the notice of the AGM has been issued.

9. Where the company is aware or has prior notice that there will be a lack of quorum as a result of circumstances highlighted in paragraph 6 prior to the issuance of the notice of the AGM, the company must apply for an extension of time under section 143(2) of CA 1965 to rectify the matter.

LODGEMENT OF ANNUAL RETURN WHERE NO AGM IS CONVENED

10. In order to lodge an annual return where an AGM could not be convened due to a lack of quorum, a company shall make prior application to the Registrar within 1 month after the date of the purported AGM. The application as per Appendix 1 shall be accompanied with a fee of RM120 and must be substantiated with the following documents (whichever is applicable):

- (i) proof of service of the notice of AGM within the time period prescribed in the CA 1965 and proof that the notice cannot be delivered/effectuated;**
- (ii) a copy of the adjudication and receiving orders of the member(s) who has been an adjudged bankrupt;**
- (iii) a copy of certificate of death of the deceased member; or**
- (iv) a detailed explanation on the (accompanied by any other proof evidencing) circumstances which renders the situation beyond the control of the company or shareholders resulting in the company's inability to conduct the AGM.**

11. The Registrar shall have the discretionary power to approve such an application based on its merits. In the case where an approval is granted, the company shall lodge the annual return within 1 month after such approval is given. In the case where the application is rejected, the company shall still be liable for the penalty imposed under section 143 of the CA 1965.

12. However, after the annual return is filed, the company must take immediate steps to rectify the situation to avoid a situation of a lack of quorum at the AGM of the following calendar year. SSM shall reject any repeat application for the lodgement of annual return where an AGM could not be held due to lack of quorum.

13. This Practice Note serves to reiterate the importance of complying with the provisions under section 143 of the CA 1965.

REGISTRAR OF COMPANIES

COMPANIES COMMISSION OF MALAYSIA

7 OCTOBER 2011

APPENDIX 1

THE REGISTRAR

COMPANIES COMMISSION OF MALAYSIA

Date:

2, 10-19th FLOOR, PUTRA PLACE

100 JALAN PUTRA

50622 KUALA LUMPUR

Sir,

**APPLICATION TO LODGE ANNUAL RETURN WHERE ANNUAL
GENERAL MEETING CANNOT BE CONVENED**

I, ... being the director/secretary of (*Company's name and number*) hereby apply for the lodgement of annual return where the annual general meeting could not be convened due to a lack of quorum.

The company has called for its annual general meeting pursuant to section 143 of the Companies Act 1965 on and its adjourned annual general meeting in accordance with the company's Articles of Association on

I attach herewith the following*:

- * Proof of service of the notice of AGM within the time period prescribed in the CA 1965 and proof that the notice cannot be delivered/effectuated**
- * an office copy of the adjudication and receiving orders**
- * a copy of certificate of death of the deceased member**

* others (please specify and where necessary substantiated with proof attached) _____

Dated this day of 20...

.....

Director/Secretary¥

* Tick whichever is applicable

¥ Delete whichever is not applicable



COMPANIES ACT 1965: PRACTICE NOTE NO. 11/2011

RE: CLARIFICATION ON WHETHER A SOCIETY CAN BE A MEMBER OF A COMPANY

This Practice Note serves to assist the stakeholders in clarifying the issue on whether a society can be a member of a company.

BACKGROUND

1. The Companies Commission of Malaysia (SSM) has received numerous queries from the public on whether a society can be a member of a company (including in a company limited by guarantee).

LEGAL PROVISIONS

Companies Act 1965 (CA 1965)

2. Section 14(1) of the CA states that:

“Subject to this Act, any two or more persons associated for any lawful purpose may by subscribing their names to a memorandum and complying with the requirements as to registration form an incorporated company.”

3. Further, section 16(6) of the CA 1965 provides that :

“The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company”.

4. By virtue of the above provision, members are referred to as every *person* whose name has been entered in the company's register of members and he/she agrees to become a member.

Interpretation Act 1948 (IA 1948)

5. Section 3 of the IA 1948 defines “*person*” as to include a body or persons, corporate or unincorporate.

Society Act 1966 (SA 1966)

6. Section 2 of the Society Act 1966 (SA 1966) defines society as to include any club, company, partnership or association of seven or more persons whatever its nature or object, whether temporary or permanent. By virtue of this definition, society would fall under the definition of *person* under the IA 1948 and therefore, a society can be a member of a company.

7. Section 9 (a) of the SA 1966 further provides that:

“(a) the movable property of a society, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of the society, and in all proceedings civil and criminal, may be described as the property of the governing body of the society by its proper title if known;”

8. Further Section 9 (c) of the SA 1966 provides as follows :

“(c) A society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officers of the society for that purposes, and if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any officer-bearer of the society.”

9. Based on section 9 (a) of the SA 1966 above, a society is allowed to hold movable property including shares of a company. Such shares, being regarded as movable property, however, if not vested in the trustees of the society, shall be deemed to be vested for the time being in the governing body of the society.

10. By becoming a member of a company (the process which involves a contract to purchase/acquire the shares of the company), a society is indeed entering into transactions resulting in debts and liabilities. Thus, a society would have to act by agents which includes its registered public office or, if there is no registered public officer, in the name of an office bearer of the society.

11. As such, the Registrar further clarifies that the name of one of the office bearers must appear in the register of members, instead of only the name of the society as follows:

“Persatuan Penternak Ikan Air Tawar, Perak (represented by Ali bin Ahmad, President)”

REGULARISATION OF INFORMATION ON SOCIETY AS MEMBER

12. For existing companies whose members are registered in the name of a society, such companies are required to include the name of the registered public officer or office bearer of the society as illustrated in paragraph 11 above in its next Annual Return.

**REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
7 OCTOBER 2011**



SURUHANJAYA SYARIKAT MALAYSIA
(COMPANIES COMMISSION OF MALAYSIA)

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Ruj. Tuan :

Ruj. Kami : SSM/SPA/PR1/4/7

Tarikh : 17 Oktober 2011

Kepada Presiden/ Setiausaha

Badan Profesional / Persatuan Setiausaha / Dewan Perniagaan

Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan

**PENGUMUMAN BERHUBUNG PENERBITAN NOTA AMALAN
SURUHANJAYA SYARIKAT MALAYSIA: PRACTICE NOTE NO.
12/2011: COMPLIANCE PROGRAMME TO ENCOURAGE
TIMELY SUBMISSION OF ANNUAL RETURNS AND AUDITED
FINANCIAL STATEMENTS**

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Untuk makluman pihak Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan, bersama-sama ini dilampirkan pengumuman Nota Amalan 12/2011 yang dikeluarkan oleh Suruhanjaya Syarikat Malaysia (SSM) berkaitan dengan perkara yang disebut di atas.

3. Untuk makluman Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan seterusnya, Nota Amalan 12/2011 ini dikeluarkan bertujuan untuk memberi panduan kepada syarikat berhubung penyerahsimpanan penyata tahunan dan penyata kewangan yang telah diaudit bagi menekankan keperluan pematuhan yang berkaitan di bawah Akta Syarikat 1965.

4. Di sini kami ingin memohon perhatian dan jasa baik pihak Y. Bhg. Tan Sri/ Dato'/ Datin/ Tuan/ Puan untuk menyebarkan dan menghebahkan makluman ini kepada semua ahli persatuan melalui laman web, emel dan pos.

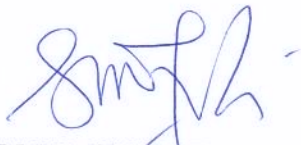
5. Sebarang maklumat lanjut bolehlah menghubungi kami di talian telefon 03-2299 5489 atau dengan melayari laman web SSM : www.ssm.com.my

6. Segala sokongan, perhatian dan kerjasama yang diberikan dalam perkara ini amat dihargai.

Sekian terima kasih.

"KE ARAH KECEMERLANGAN SSM"

Yang benar,

b/p 

MOHAMMAD SHAHREN MOHAMAD YUSRI

b/p Ketua Pegawai Eksekutif
Suruhanjaya Syarikat Malaysia



COMPANIES ACT 1965: PRACTICE NOTE NO. 12 /2011

**RE: COMPLIANCE PROGRAMME TO ENCOURAGE TIMELY
SUBMISSION OF ANNUAL RETURNS AND AUDITED
FINANCIAL STATEMENTS**

1. This Practice Note serves to advise the compliance programme to be adhered to by companies in order to encourage timely submission of annual returns and audited financial statements.

BACKGROUND

2. In June 2008, SSM issued Practice Note 1/2008 (PN1/2008) which was aimed at streamlining the provisions of the law and the practice of the industry regarding the submission of annual returns. In essence, PN1/2008 seeks to require all annual returns to be accompanied with a copy of the audited financial accounts, otherwise such submission are deemed incomplete.

3. In the efforts to facilitate the public to comply with PN1/2008, an addendum was issued in 2010 to clarify or resolve post implementation issues in ensuring that all submissions of annual returns are in order.

4. In view of the introduction of the new Companies Bill in the near future, SSM is intensifying its effort to ensure that all companies are up to date in their submission of annual returns prior to migrating to a new compliance regime.

5. Whilst SSM is still subscribing to the full requirement of PN1/2008, SSM takes cognisance that appropriate and sufficient preparation period must be given to all companies to facilitate the smooth transition into the new regime.

6. In this regard, in cases where companies have duly prepared audited financial statements for financial years prior to 2010 but were unable to lodge annual returns with SSM due to the unavailability of the audited financial statements for the corresponding financial year, SSM is pleased to advise the following compliance programme to be observed:

	SITUATION	COMPLIANCE PROGRAMME TO BE OBSERVED
1.	Companies have prepared overdue audited financial statements for financial year ending prior to 2010 but the financial statements for 2010 were not available and no annual general meetings were convened.	• Convene the annual general meeting (AGM) for calendar year 2011 for the tabling of the audited financial statements for years ending prior to 2010. • Apply for an extension of time under section 169(2) to enable the current year financial statements to be tabled at a later date. • Submit the annual return to be accompanied with: a. the audited financial statements prior to 2010;

		and b. the approval letter for extension of time under section 169(2).
2.	A company which has convened AGM between 2008 and 2009 or any other previous years and had duly tabled the above overdue audited financial statements without the corresponding audited financial statements for the respective calendar year. The company has prepared the relevant annual return but unable to lodge with SSM as there is no audited financial statements for the corresponding year. Example: The financial year end for Company X is 30 June. In December 2010, Company X convened an AGM and only tabled audited accounts for 2007 and 2008. Company X prepares the annual return accordingly.	• Lodgement of annual accompanied with the overdue audited financial statement will be accepted by SSM subject to the relevant penalties.
3.	A company convened AGM in 2008, 2009 or 2010 without tabling any audited financial statements and subsequently directed or ordered by the Registrar or the Court to lodge annual returns.	• Lodgement of annual returns for these years will not be accepted as they are not accompanied with the audited financial statements unless a company has received an instruction by the Registrar or

		the Court to file annual returns. • If direction by the Registrar or order from the Court, as the case may be, has been received, lodgement of annual return will be accepted even if there is no accompanying audited financial statement. • The actual date of the AGM shall be stated in the annual return. The annual return shall be made up to the date of the AGM or a date not later than fourteenth day after the AGM. • The lodgement will be subjected to the relevant penalties.
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7. Please note that strict adherence to PN1/2008 is expected in the submission of annual return for calendar year 2012. This means that in 2012, all annual returns must be accompanied with the audited accounts for financial year ending 2011.

8. In gearing towards full compliance of PN1/2008, companies must observe the following steps:

- Prepare and audit the financial statements in accordance to section 169(1) of the Companies Act 1965; and
- Convene AGM in accordance to section 143(1) of the Companies Act 1965.

9. Should companies fail to observe the above, companies must apply for an extension of time under sections 143(2) and/or 169(2) of the Companies Act 1965 accordingly.

10. This notification serves to reiterate the need to comply strictly with PN1/2008.

**Registrar of Companies
Companies Commission of Malaysia
17 October 2011**