

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia

T +603 6208 5888

F +603 6201 0122/0136

E [enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)

W [www.lh-ag.com](http://www.lh-ag.com)

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## Resignation of Company Secretary

Companies Act 2016:<sup>[1]</sup> Practice Note No 4/2018

| by Sharmeen Dahlia |

On 1 October 2018, the Companies Commission of Malaysia, or CCM, released Practice Note 4/2018 entitled, “Procedures on Resignation of Secretary under section 237 of the Companies Act 2016”.

Pursuant to s 237, and subject to the constitution of the company and/or the terms of appointment relating to such secretary, he may resign from his office by giving a notice to the board of directors of the company.

Previously, the repealed Companies Act 1965 (**CA 1965**) did not provide for a similar provision regulating the resignation of a secretary and, in practice, the terms of the engagement of company secretaries are usually regulated by the company’s constitution and/or the letter of appointment. As such, company secretaries faced practical issues in respect of their resignation under the CA 1965, whereby upon their resignation (provided that it is permitted under the constitution of the respective company), company secretaries were not able to sign and lodge Form 49<sup>[2]</sup> on the changes of particulars to the company. Consequently, their resignation would not be reflected in the CCM records if the company or the directors fail to take any action in filing the said form with the CCM.

To address such difficulties, the Practice Note provides that where a secretary resigns pursuant to sub-section 237(1), the secretary may lodge a copy of the resignation notice together with a Declaration<sup>[3]</sup> to the CCM, if the secretary is “*of the view that his resignation may not be notified to the Registrar*” of the CCM due to the company’s failure/delay in doing so (typically due to the fact that a new company secretary has yet to be appointed by the Board at the material time).

Further, in addressing the aforesaid practical issue where none of the

directors of the company can be communicated with at the last known residential address, a secretary can officially resign by notifying the CCM of his intention to resign and of the fact that the directors cannot be communicated with.<sup>[4]</sup> In such circumstances, the Practice Note requires that the notice be accompanied with supporting evidence such as proof of returned correspondences that were addressed to the directors.

**Sharmeen Dahlia** ([smd@lh-ag.com](mailto:smd@lh-ag.com))

If you have any queries regarding the resignation of company secretaries, please contact the author or her team partner [Obi Bee Hong](mailto:Obi.Bee.Hong@lh-ag.com) ([obh@lh-ag.com](mailto:obh@lh-ag.com)).

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<sup>[1]</sup> Companies Act 2016 [Act 777]

<sup>[2]</sup> Form 49 (Return Giving Particulars in Register of Directors, Managers and Secretaries and Changes of Particulars) pursuant to s 141(6) of the repealed Companies Act 1965 [Act 125]

<sup>[3]</sup> Declaration by Secretary to Cease Office is attached to the Practice Note as an Appendix

<sup>[4]</sup> CA 2016, s 237(2)