

## The Relief Measures Provided by the Companies Commission of Malaysia for Companies during and as a Result of the Movement Control Order

The Government has imposed the Movement Control Order (“**MCO**”) on 18<sup>th</sup> March 2020 and extended to 28<sup>th</sup> April 2020 to contain the spread of COVID-19. The effect of the MCO has created uncertainties and disruptions to most companies and businesses especially to small and medium enterprises (“**SMEs**”) as well as the nation’s economy as a whole.

In view of the foregoing, the Companies Commission of Malaysia (“**CCM**”) had on 10<sup>th</sup> April 2020 announced **seven (7) relief measures** to reduce the burden of corporate sector and to help the companies and businesses which have been affected by the MCO during this difficult and unprecedented period.

### 1. Increase in the Indebtedness Threshold from RM10,000.00 to RM50,000.00 and extension of the time frame to 6 Months for responding to Statutory Demands

The indebtedness threshold for winding up purposes under Section 466(1)(a) of the Companies Act 2016 (“**CA 2016**”) is prescribed at RM10,000 pursuant to the Federal Gazette dated 26<sup>th</sup> January 2017. To ease the financial constraints, the indebtedness threshold has been increased from RM10,000 to **RM50,000.00** by the Minister of Domestic Trade and Consumer Affairs from 23<sup>rd</sup> April 2020 to 31<sup>st</sup> December 2020<sup>1</sup>. This increase is significant as it means that no winding up proceedings can be commenced against a company for a debt sum below RM50,000.00 until **31<sup>st</sup> December 2020**.

Further, the time frame to pay the sum stated in a statutory notice of demand has also been increased from twenty-one (21) days to **six (6) months**. With these relief measures in place, companies that faces cash flow issues arising from the implementation of MCO will be given a period of six (6) months to settle or negotiate for the settlement of the sum demanded by their respective creditors<sup>2</sup>.

The increase in the indebtedness threshold is welcoming as this would offer some breathing space for business owners in view of the current economic outlook.

### 2. Moratorium for Lodgement of Statutory Documents

CCM has granted an **automatic moratorium of thirty (30) days** after the MCO is lifted to lodge and submit all the requisite statutory documents under the CA 2016 and Limited Liability Partnerships Act 2012 with CCM. The usual late lodgement fee will also be exempted during the 30-day moratorium period<sup>3</sup>.

<sup>1</sup> P.U.(A) 122/2020 - Companies (Exemption) Order 2020.

<sup>2</sup> For further details, see the [“Frequently Asked Questions \(“FAQ”\) on Increase to the value of indebtedness from RM10,000 to RM50,000 until 31<sup>st</sup> December 2020”](#) issued by CCM.

<sup>3</sup> For further details, please access [“FAQ on Moratorium of Submission of Statutory Documents To CCM”](#) issued by CCM.

### 3. Extension of Time (“EOT”) for Annual General Meetings

CCM will grant an EOT for companies to hold annual general meetings (“AGM”) under Section 340(4) of the CA 2016. The EOT will be granted for a period of **ninety (90) days** from the end of the MCO. However, companies are required to apply to CCM for such EOT without incurring any expenses as the usual application fee of RM100.00 will be waived.

The [Practice Directive No 6/2020 dated 7<sup>th</sup> April 2020 \(“Practice Directive”\) issued by CCM on 7<sup>th</sup> April 2020 \(revised on 15<sup>th</sup> April 2020\)](#), has provided the special procedures for companies which are affected by the MCO to apply for EOT to hold AGM and lodgement of financial statements. The salient points are presented in the Q&A format, as tabulated below.

No.	Question	Answer
1.	Can a private company apply for the EOT for AGM?	With the abolishment of the compulsory requirement of holding AGM by a private company under the CA 2016, private companies are not required and eligible to apply for the EOT.
2.	Is this an automatic approval of EOT for AGM?	No, this is not an automatic approval.  The affected companies are required to lodge an application to CCM by completing the information in <b>Appendix A of the Practice Directive</b> and the application must be addressed to <a href="mailto:eot@ssm.com.my"><u>eot@ssm.com.my</u></a> .
3.	When is the last day to submit the application for EOT under the Practice Directive?	The application for EOT in the form of Appendix A must be submitted to the Registrar of Companies via email by <b><u>30<sup>th</sup> June 2020</u></b> in order to be eligible for an EOT given pursuant to this Practice Directive.

### 4. EOT for circulating and lodgement of Financial Statement

In view that companies might be unable to prepare and audit their financial statements and reports as a result of the MCO, CCM will grant an EOT for a period of **ninety (90) days** for companies to:

- (i) circulate its financial reports to its members under Section 258(1) of the CA 2016; and
- (ii) lodge their financial statements and reports to CCM under Section 259(1) of CA 2016.

The usual EOT application fee of RM100.00 will also be waived by CCM. However, this EOT application only applies to **companies with financial year End (“FYE”) after 31<sup>st</sup> August 2019 to 31<sup>st</sup> December 2019.**

The FAQs below are summarised from the Practice Directive and the “[FAQ on EOT For Circulation and Lodgement of Financial Statements](#)” issued by CCM on 15<sup>th</sup> April 2020.

No.	Question	Answer
1.	Can a company with FYE 31 <sup>st</sup> August 2019 apply for an EOT under this initiative?	<p>With reference to “... companies having FYE <b><u>AFTER</u></b> 31<sup>st</sup> August 2019 to 31<sup>st</sup> December 2019” referred to in paragraph 12 (a) and (ba) of the Practice Directive, a company with FYE 31<sup>st</sup> August 2019 (or earlier) is not eligible for this initiative.</p> <p>Only companies with FYE <b><u>beginning 1<sup>st</sup> September 2019 until 31<sup>st</sup> December 2019</u></b> are entitled to apply for the EOT under this initiative.</p>
2.	What is the period for the application of the EOT under this initiative?	The company may submit the application for the EOT under this initiative starting from <b><u>9<sup>th</sup> April 2020 until 30<sup>th</sup> June 2020.</u></b>
3.	Is this an automatic approval of EOT under this initiative?	<p>No, this is not an automatic approval.</p> <p>The affected companies are required to lodge an application to CCM by completing the information in <b><u>Appendix A of the Practice Directive</u></b> and the application must be addressed to <a href="mailto:eot@ssm.com.my">eot@ssm.com.my</a>.</p>
4.	Can the EOT application made through Malaysian Business Reporting System (MBRS) or CCM’s counter?	No. The EOT application for the circulation and lodgement of financial statements can only be made by sending the application through email to <a href="mailto:eot@ssm.com.my">eot@ssm.com.my</a> .
5.	Can a private company apply for the EOT under this initiative?	Yes. The EOT application under this initiative can be made by both private and public companies.
6.	How long will the EOT for circulation and lodgement of financial statements be given under this initiative?	<p>The EOT will be for a period of <b><u>90 days from the original expiry date of circulation and lodgement of financial statements</u></b>, not from the last day of the MCO.</p> <p><u>For illustration purposes:</u>            FYE: 30<sup>th</sup> September 2019            Expiry date for Financial Statement Circulation: 31<sup>st</sup> March 2020            Expiry date for Financial Statement Lodgement: 30<sup>th</sup> April 2020</p> <p>New expiry date for Financial Statement Circulation: 29<sup>th</sup> June 2020            New expiry date for Financial Statement Lodgement: 29<sup>th</sup> July 2020</p>

No.	Question	Answer
7.	Who should submit the EOT application?	The application should be submitted by the company secretary, not director.

## 5. Extension of “2020 Compliance Campaign of the CA 2016” (“Compliance Campaign”)

The Compliance Campaign is an initiative by CCM to increase the corporate community’s compliance rate to the Companies Act 1965 (“CA 1965”) and the CA 2016, by offering a maximum compound reduction rate of ninety per centum (90%) from the original compound rate imposed under the CA 1965 and CA 2016.

This Compliance Campaign has started since 1<sup>st</sup> January 2020. In order to achieve the abovementioned objectives, CCM has taken the initiative to extend the Compliance Campaign from 30<sup>th</sup> April 2020 to **30<sup>th</sup> June 2020** as a result of the MCO. This mean that companies will still be able to obtain the maximum of ninety per centum (90%) compound reduction rate from CCM if they rectify their non-compliance before 30<sup>th</sup> June 2020. The Compliance Campaign only applies to compounds for common offences under CA 1965 and CA 2016 which include the company’s failure to hold AGM, the failure to lodge annual return, the failure to prepare, circulate and lodge financial statement.<sup>4</sup>

## 6. Exemption for Approval for Companies Limited by Guarantee (“CLBG”) to collect donations

CCM has introduced an exemption for CLBG from the need to obtain approval before soliciting and collecting donations from the public to help those affected by COVID-19 pandemic<sup>5</sup>. CLBG which has obtained approval from the Inland Revenue Board Malaysia (“IRB”) pursuant to subsection 44(6) of the Income Tax Act 1967 (“ITA 1967”) will be **automatically exempted until 31<sup>st</sup> December 2020** from seeking CCM’s approval to collect such donations and funds from the public.

However, a CLBG which has not previously obtained an approval from IRB is allowed to proceed to solicit and collect donations for COVID-19 related charities on the condition that **formal application must be made within thirty (30) days after the MCO is lifted**<sup>6</sup>. Each CLBG is also required to keep proper records of all the donations and funds collected for COVID-19 related charities for CCM’s supervision. This is to ensure that good corporate governance practice is always in place.

<sup>4</sup> For further details, see [“FAQ on Compliance Campaign 2020 of CA 2016 provided by CCM”](#).

<sup>5</sup> For further details, see [FAQ on the Exemption from Obtaining Approval for Solicitation of Donation from the Public by CLBG](#) issued by CCM.

<sup>6</sup> The application shall be made in accordance with Checklist 6 of the CLBG Guidelines which can be downloaded from [CCM’s website](#).

## 7. EOT for Company Secretaries to Comply with Section 241 of the CA 2016

CCM is prepared to grant eligible company secretary an EOT to fulfil their Continuing Professional Education (CPE) requirements until **31<sup>st</sup> December 2020**, subject to the terms and conditions as provided in the FAQs issued by CCM on the application of practicing certificate under section 241 of the CA 2016<sup>7</sup>.

In conclusion, it is important for companies and enterprises to be aware of and tap into the initiatives by CCM as these relief measures would alleviate the hardships faced during these challenging times.

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**DISCLAIMER:** This article is for general information only and should not be relied upon as legal advice. Please note that this article was first published on 21<sup>st</sup> April 2020 and was revised on 23<sup>rd</sup> April 2020. The position stated herein is as at the date of publication on 23<sup>rd</sup> April 2020. For any enquiries on this article, please contact our partner **Gan Khong Aik** ([khongaik@ganlaw.my](mailto:khongaik@ganlaw.my)) or **Fan Xiao Jun** ([xiaojun@ganlaw.my](mailto:xiaojun@ganlaw.my))

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<sup>7</sup> For further information, see "[FAQ on Application of Practising Certificate under Section 241 of the CA 2016](#)" issued by CCM.