MAICSA

Leading Governance

GUIDELINES ON RESIGNATION OF COMPANY SECRETARY

The Institute has developed guidelines on resignation of company secretary from the office of the secretary. These guidelines have been formulated to improve the effectiveness of this process while upholding the principles of good corporate governance practice.

The Guidelines recommend the following steps:-

(a) Inserting new clause in the AA ie Vacation of Office via Resignation

(b) Submission of non prescribed form to Companies Commission of Malaysia

(c) Professional Clearance issued by the outgoing company secretary.

Should you have any enquiry regarding these Guidelines, please address to technical@maicsa.org.my

We hope members will be guided accordingly.

(A) New Clause in the Articles of Association –Resignation of Company Secretary

There is no provision under Section 139 of the Companies Act 1965 (CA 65) to cater for the resignation of secretary. Thus, the resignation of secretary is governed by the provision of the Articles of Association (AA) and Letter of Engagement/Letter of Appointment/Service Contract.

As a matter of practice, a company secretary whose resignation is not accepted by the Board will copy his/her resignation letter to SSM. SSM cannot act on the letter as the CA65 does not provide for submission of resignation letter to SSM. However, the letter helps in the investigation process or for mitigation of penalties in the event of defaults.

It is also the duty of the directors to ensure that Form 49 is submitted to SSM in compliance with Section 141(6)(c)CA65. Upon lodgement of Form 49, SSM records will be updated and the company profile will show the updated information in the column for company secretary.

Members are encouraged to insert a new clause in the AA in respect of resignation in order to further protect your interest in the company. The following are samples AA for resignation of company secretary:-

Sample 1	Sample 2
The office of the Secretary shall be vacated if the Secretary resigns by notice in writing to the directors, left at the registered office and copies sent to the directors for the time being at their last known addresses.	Where a Secretary gives notice of resignation to the directors, the Secretary shall cease to be the Secretary of the Company on the expiry of (to specify period as provided in the terms of engagement between the company secretary and the company involved) from the date of the notice. Note: reference be made and should be in line with Letter of Engagement/Letter of Appointment/Service Contract.

(B) Non-Prescribed Form to be lodged with the Companies Commission of Malaysia(SSM)

SSM has agreed to accept lodgement of the non-prescribed form (see below) together with the resignation letter of the company secretary in the interest of uniformity and to facilitate due process of resignation. However, lodgment of this form does not absolve directors from his/her duty to lodge Form 49 with SSM.

The following is the due process:-

- To submit letter of resignation together with non-prescribed standard form with the Registrar pursuant to terms and conditions as stipulated in the letter of engagement/contract

- After a lapse of the period as stated in the letter of resignation, Compliance Department of SSM will monitor the progress of change of company secretary .

Article No. XX
Resignation of secretary

Company No.

NOTICE OF INTENTION TO RESIGN FROM THE OFFICE OF SECRETARY

_____(*name of company*)

To the Registrar of Companies,

Whereas I, ……*I/C No./Passport No……..am the secretary of (*name of company*) ……..and pursuant to Article No. .....of the Company's Articles of Association, I have submitted a notice in writing to the Company, left at the registered office and copy(ies) sent to the directors for the time being at their last known addresses, of my intention to resign from the office of secretary of the Company which is to take effect from.....(effective date of resignation) upon which I shall cease to be the secretary of the Company.

Dated …….

……..
(Name)
*(*Licence No./Prescribed Body Membership No.)*

* Strike out whichever is inapplicable.

Lodged by :

(C) Professional Clearance Letter by the incoming company secretary

Members are encouraged to issue a Professional Clearance Letter to the outgoing company secretary.

We append below sample letters and pointers on professional reason for resignation.

a) Professional reasons

- Non compliance with Companies Act 1965 and or /or other legislations;
- Outstanding of statutory and any other fees or any amount owing to any government agency
- Management decision

b) Sample 1 Professional Clearance Letters by incoming company secretary
Sample 2 Reply by outgoing company secretary to the incoming company

SAMPLE 1 (To be sent by incoming company secretary(ies) to the outgoing company secretary(ies)	**RE : BCD SDN. BHD ("the Company")** I/We have been approached by the directors of the Company to act as company secretary(ies) of the Company. I/We am/are writing to you as the last named company secretary(ies) to ask if there is any professional or other reason that I/we should not be accepting the appointment as secretary(ies) of the Company. We look forward and thank you in advance for your early reply to this letter. Yours faithfully, ...
	Your ref :

SAMPLE 2 Sample reply by outgoing company secretary(ies) to the incoming company secretary(ies)	Our ref : Date: Add Dear Sirs, **RE : BCD SDN. BHD ("the Company")** With reference to your letter dated XXXXXX, I/we wish to advise that we are not aware of any professional or other reason that would prevent you from accepting the appointment as company secretary (ies) of the Company. Yours faithfully, ...