



**SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA**

COMPANIES ACT 1965: SSM'S PRACTICE NOTE NO. 8/2010

RE: EXPLANATION ON THE APPLICATION OF THRESHOLDS PROVIDED FOR UNDER SECTION 132C(1B) OF THE COMPANIES ACT 1965

1. This Practice Note serves to assist the stakeholders in understanding the application of thresholds provided under section 132C(1B) of the Companies Act 1965 (CA 1965) in determining whether:

- (i) the value of the proposed acquisition or disposal of the company's property amounts to a substantial value or substantial portion; and
- (ii) prior approval of shareholders is required before effecting the acquisition or disposal of a property.

BACKGROUND

2. Section 132C of CA 1965 was introduced via the Companies (Amendments) Act 2007 and came into force on 15 August 2007. The main objective of section 132C is to ensure that directors in the exercise of their power to transact any form of acquisition or disposal of any property, effect such transaction in a transparent manner to uphold the principles of good corporate governance.

3. Since the implementation of section 132C, the Companies Commission of Malaysia (SSM) has received requests from the public to clarify the application of the thresholds provided under section 132C(1B) of CA 1965.

SECTION 132C AND ITS APPLICATION

4. Section 132C(1) of CA 1965 requires directors of a company to obtain prior approval from the shareholders of the company before effecting any acquisition or disposal of a property that is considered to be of substantial value or substantial portion. Section 132C(1A) of CA 1965 also provides that in the case of a listed company, the terms substantial value or substantial portion shall mean the same value prescribed by the provisions in the Listing Requirements of Bursa Malaysia.

5. In the case of a non-listed company, an arrangement or transaction relating to a property is considered to be of substantial value or substantial portion [in accordance with section 132C(1B)(a), (b) and (c) of CA 1965] if:

- (i) the value of the acquisition or disposal of such a property exceeds 25% of the total assets of the company;
- (ii) the net profits before tax and extraordinary items attributed to it amounts to more than 25% of the total net profit of the company; or
- (iii) the value of the acquisition or disposal of such property exceeds 25% the issued share capital of the company;

whichever is the highest.

6. The directors of a company will only be required to obtain prior approval from the company's shareholders if the value of the acquisition or disposal exceeds the value of the highest thresholds. Conversely, the directors can carry out the transactions without any prior approval of the shareholders if the value of the acquisition or disposal does not exceed the value of the highest thresholds.

7. For purposes of clarification, the application of the thresholds provided for under section 132C(1B) of CA 1965 is illustrated as follows:

AB Sdn. Bhd. wishes to acquire a piece of land belonging to CD Sdn. Bhd. for RM2 million. The assets, net profits and issued capital of AB Sdn. Bhd. are as follows:

- Total assets of AB Sdn. Bhd. - RM8 million
- Net profits of AB Sdn. Bhd. - RM2 million
- Issued capital of AB Sdn. Bhd. - RM10 million

The relevant thresholds for AB Sdn. Bhd. under section 132C(1B) of the CA 1965 are as follows:

- 25% of total assets (RM8million) - RM2million
- 25% of net profits (RM2million) - RM500,000
- 25% of issued capital (RM10million) - RM2.5million (highest)

Since the value of the land (i.e. RM 2million) is less than the highest identified threshold (i.e. RM2.5 million), the directors of AB Sdn. Bhd. are not required to obtain the shareholders' approval prior to acquiring the land from CD Sdn. Bhd.

8. The directors may rely on the company's latest interim or management accounts for the purposes of determining whether the value of the proposed acquisition or disposal of the company's property is of substantial value or substantial portion pursuant to section 132C(1B)(a), (b) or (c) of CA 1965.

REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
22 April 2010