



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

COMPANIES ACT 1965: SSM'S PRACTICE NOTE NO. 4/2009

**RE: NOTIFICATION IN RELATION TO THE IDENTIFICATION
OF THE CHARGEES FOR THE EXECUTION OF FORM 42B
FOR THE DISCHARGE OF CHARGE UNDER THE
COMPANIES ACT 1965**

1. This Practice Note serves to inform and assist chargor companies experiencing difficulties in identifying their respective chargees for the purpose of executing Form 42B (Evidence of Satisfaction of Charge/Release of Property or Part of Property from Charge) for the discharge of a charge. The "*chargees*" referred to herein are banks or financial institutions licensed under the Banking and Financial Institutions Act 1989 and fall under the regulatory purview of Bank Negara Malaysia (BNM).

Background

2. Suruhanjaya Syarikat Malaysia (SSM) has conducted an exercise to update its Register of Charges by sending out notices under section 7(11) of the Companies Act 1965 (CA 1965) to the relevant companies requiring them to update the status of their charges. This exercise is to enable the information kept in SSM's

database to be updated for the purposes of conducting due diligence by members of the public.

3. Following the exercise, SSM received several requests from the chargor companies for the requirement of lodgement of Form 42B to be dispensed with as the charges have been duly satisfied. The failure to lodge Form 42B was pursuant to the inability of the chargor companies to identify the chargee(s) (usually banks or financial institutions) due to the effect of corporate restructuring exercises (in the form of merger or take over) or dissolution of the chargees.

4. In addressing this issue, SSM has concluded the following:

- (i) It is the duty of a chargor company to comply with the requirements of section 113(1) and (2) of CA 1965 by lodging Form 42B with SSM within 14 days upon the full payment of the charge amount to enable SSM to update its Register of Charges. In this regard, the requirement to lodge Form 42B is mandatory;
- (ii) In order to satisfy the above requirement, it is the duty of the chargor company to liaise with the solicitors or parties who handle the charge documentations and obtain the information in relation to the discharge of a charge;

- (iii) In cases where a chargee has undergone corporate restructuring or has ceased to exist, the chargor company should conduct a due diligence exercise to obtain the current status of the chargee to enable the execution of Form 42B.

5. SSM initiated a meeting with Bank Negara Malaysia (BNM) on 20 January 2009 to resolve the chargor companies' predicaments. Pursuant to the meeting, BNM advised that chargor companies facing difficulties in tracing or determining the respective chargees to contact the Association of Banks of Malaysia (ABM) to identify the relevant chargee(s) for the purpose of executing Form 42B. The ABM can be contacted at the following address:

The Executive Director
The Association of Banks of Malaysia
34th Floor, UBN Tower
10, Jalan P. Ramlee
50250 Kuala Lumpur.
Tel : 03-20788041 Fax : 03-20788004

6. In the event:
- (a) the chargor companies still face problems in identifying the chargee(s) upon completion of the due diligence with ABM; or

(b) the duly identified chargee(s) refuses to execute the Form 42B,

they are advised to contact SSM to enable SSM to bring the matter for the attention and further action by BNM.

7. For the chargor companies whose chargees fall under the regulatory purview of the Labuan Offshore Financial Services Authority (LOFSA) and the Ministry of Housing and Local Government (Kementerian Perumahan dan Kerajaan Tempatan), SSM will engage such authorities towards solving similar problems.

REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
13 July 2009