



**Shareholders**

**VS**

**Directors**



Responsible for  
managing the  
company on  
behalf of the  
shareholders

**Directors**

**Shareholders**

Owners of the  
company who holds  
shares



# Can One Person Hold Both Positions of a Director and Shareholder?

Yes, both positions can be held by the same or by different persons.

For many SMEs in Malaysia, it is common to find shareholders appointing themselves to be the directors of the company.



**EXCEPT!**

According to the Companies Act of Malaysia, an individual is not allowed to serve as a director of a company or either directly or indirectly be involved with the management of a company if:

He/She has been convicted of an offense relating to the creation or management of a business, fraud, dishonesty, or bribery

He/She is an undischarged Bankrupt

He/She has been convicted of an offense under any other relevant sections of the Companies Act, or has been disqualified by court





### a) Directors

- ❖ General decisions for the running of the company;
- ❖ Entering the company into binding contracts with third parties;
- ❖ Providing authority to change the registered address; and
- ❖ Authorizing the appointment of directors with a term less than 2 years

## DECISIONS they make



### b) Shareholders

- ❖ Amending the companies articles by special resolution;
- ❖ Changing the name of the company by ordinary resolution;
- ❖ Approving a substantial property transaction by ordinary resolution;
- ❖ Approving a director's service contract for a fixed term of two years or more by ordinary resolution;
- ❖ Authorizing director's to allot shares by ordinary resolution; and
- ❖ Displaying shareholders' pre-emption rights by special resolution



Execute official documents such as partnership agreements, business contracts, etc. with their signatures, in replacement of a common seal.



Prepare director reports that explain the business operation and profits earned for the financial year, which will be submitted together with the financial statements.



Issue shares upon approval of shareholders



Establish and amend a constitution, if there is any.



Approve the disposal or acquisition of properties under the company name, fin. statements prepared by the directors & transactions of  $x > \text{RM}250,000$  or  $\text{RM}50,000 < x < \text{RM}250,000$  if it is  $x > 10\%$  of net assets owned by the company.



**Shareholders' Duties**

Authorize the directors to increase the paid-up capital or to issue shares.





## a) Directors

- ❖ Seek help from professionals such as lawyers, accountants, business advisors, etc. in gathering information to make decisions or prepare reports for the company
- ❖ Paid a director fee, as approved by the board and shareholders
- ❖ However, the company cannot provide a loan or become a guarantor of the loan to its director or anyone connected to the director, unless it is approved by the shareholders

## b) Shareholders

- ❖ Request directors to hold shareholder meetings in order to discuss matters related to the business.
- ❖ Raise concerns and questions regarding the decisions made by directors on behalf of the company.
- ❖ Receive a % of dividends according to the annual profits of the company.
- ❖ If the company is issuing new shares, existing shareholders have the priority in buying these shares first before they are taken up by third parties



# LIABILITY

## they are subjected to



### a) Directors

- As a director, you will not be personally liable for paying the company debts, so if the limited company does not pay its debts and if the creditor takes legal action, only the company assets are at risk.
- As a fundamental rule of company law, directors cannot be held liable for the decisions they made on behalf of the company provided that they had acted honestly, reasonably and in the best interest of the company.

**EXCEPT!**

Directors may still be personally liable for the debts of its company in cases of fraud, breach of warrant of authority and other exceptional circumstances



# LIABILITY

## they are subjected to



### b) Shareholders

- Under the law, shareholders are legally separate from the company itself.
- Generally not liable for the debts of the company and the shareholders' liability for company debts are said to be limited to the unpaid share price, unless if a shareholder has offered guarantees.

### EXCEPT!

- When a shareholder of the business provides a personal guarantee on a loan that the company takes out. In that case, the shareholder(s) who gave the guarantee will be personally liable if the loan cannot be repaid.
- Where a shareholder is also involved in the day-to-day operations as a director or officer of the company, they could also be made personally liable for company debt.





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