



ARRIS MANAGEMENT SERVICES SDN. BHD.

(Company No. 607434 – P)

No. 39, Second Floor, Jalan Kenari 17C, Bandar Puchong Jaya,
47100 Puchong, Selangor Darul Ehsan

Tel: 603 – 8076 3063 Fax : 603 – 8073 1232

COMPANIES ACT 1965

Arris Notes 5

Section 364. False and misleading statements.

Description	Comments
<p>(1) Every corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading or in which the amount of nominal or authorized capital is stated without the words "nominal" or "authorized", or in which the amount of capital or authorized or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of authorized or subscribed capital is stated, and every officer of the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication shall be guilty of an offence against the Companies Act 1965.</p>	<p>All companies must ensure that all its publications or statements relating to the share capital of the company reflecting its true status and is according to the company's statutory records filed to SSM.</p> <p>Every person who authorizes or makes any information, declaration, statement, report or document on behalf of the Company pursuant to the Companies Act 1965, must ensure true and correct of the same.</p>
<p>(2) Every person who in any return, report, certificate, balance sheet or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or thing thereby making the document misleading in a material respect shall be guilty of an offence against the Companies Act 1965.</p> <p>Penalty: Imprisonment for ten years or two hundred and fifty thousand ringgit or both.</p>	<p>The penalty amount shows the seriousness of the offence of making of a false or misleading statement in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or thing.</p>



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Arris Notes 5

Section 364. False and misleading statements.

Description	Comments
(3) For the purposes of subsection (2) where a person at a meeting votes in favour of the making of a statement referred to in that subsection knowing it to be false, he shall be deemed to have authorized the making of that statement.	Every person who “authorizes” includes a person at meeting votes in favour of making of a false statement knowing it to be false.

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Disclaimer: This secretarial notes is prepared as a service to our valuable clients. The information contained in this notes regarding the interpretation of law and the legal implications are solely for reference purposes only. No one should act upon the provisions without getting appropriate legal advice on specific situation in consideration. Please refer to the Companies Act 1965 for any new updates or amendments.



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COMPANIES ACT 1965
Section 364A. False reports.

Arris Notes 5

Description	Comments
<p>(1) An officer of a corporation who, with intent to deceive, makes or furnishes or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report to:-</p> <ul style="list-style-type: none"> (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; (b) in the case of a corporation that is a subsidiary, an auditor of the holding company; (c) a prescribed Stock Exchange whether within or without Malaysia or an officer thereof; or (d) the Securities Commission established under the Securities Commission Act 1993, <p>relating to the affairs of the corporation shall be guilty of an offence against the Companies Act 1965.</p> <p>Penalty: Imprisonment for ten years or two hundred and fifty thousand ringgit or both.</p>	<p>Authorizing or furnishing of false statements or false reports relating to the affairs of the company by any officer of a company knowing it to be false, to relevant individuals or corporation or governing authorities, will also commits an offence against the Companies Act 1965.</p> <p>The penalty amount shows the seriousness of the offence.</p>
<p>(2) In subsection (1) "officer" includes a person who at any time has been an officer of the corporation.</p>	<p>"Officer" includes former director, former employee, former company secretary, etc.</p>



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The screenshot shows the official portal of the Companies Commission of Malaysia (SSM). The header includes the SSM logo and the text 'SURUHANJAYA SYARIKAT MALAYSIA COMPANIES COMMISSION OF MALAYSIA'. Below the header is a navigation menu with links for Home, About SSM, Services, Legal Framework, Publication, Gallery, and Career. The main content area features a news article with the following details:

THE COURT OF APPEAL UNANIMOUSLY UPHELD HO WOON CHOON CONVICTION FOR THE OFFENCE OF MAKING A FALSE STATEMENT UNDER SECTION 364(2) COMPANIES ACT

Thursday, 16th June 2011: The Court Of Appeal in Putrajaya, Kuala Lumpur unanimously upheld the order of the High Court in convicting Ho Woon Choon for the commission of an offence under section 364(2) Companies Act 1965 (Act 125).

This is a landmark decision and a milestone for the Suruhanjaya Syarikat Malaysia ('SSM') in securing a conviction against Ho Woon Choon. The three members panel of the Honourable Court of Appeal Judges agreed with the Prosecution submission that the information contained in the material Form 24 is false and Ho Woon Choon has the knowledge of the falsity.

The Court of Appeal further agreed with the Prosecution contention that the information in the **Form 24 must be accurately recorded as to reflect the correct status of a company's paid up capital**. In this regards, the Court of Appeal ruled that a payment via a cheque for the purpose of subscribing company shares cannot be regarded as effective payment until the cheque is cashed or paid.

The panel of the Honourable Court of Appeal Judges are The Honourable Datin Paduka Zaleha bt. Zahari, The Honourable Datuk Sulong bin Matjeraie and The Honourable Dato' Azhar @ Izhar bin Haji Ma'ah. Deputy Public Prosecutor, Iskandar Shah bin Ibrahim appeared for the Public Prosecutor and on behalf of the Suruhanjaya Syarikat Malaysia.

Previously, on 22.11.2005, Ho Woon Choon was charged in the Sessions Court, Kuala Lumpur for making a false statement in Form 24, a statutory document under the Companies Act 1965. The **false statement was in relation to the declaration that the allotment of new Dataco Communications Sdn Bhd shares to Ng Keng Kiat and Gen-X Technology Sdn Bhd was fully paid but that was not the case**, Ho Woon Choon, as the company secretary for Dataco Communications Sdn Bhd made the declaration.

The Sessions Court held that although the Prosecution had established a prima facie case against Ho Woon Choon, it had failed to prove the case beyond reasonable doubt and Ho Woon Choon was acquitted and discharged at the end of a defence case. The Public Prosecutor appealed to the High Court against the decision of the Sessions Court.

On 10.11.2009, the High Court, Kuala Lumpur reversed the decision of the Sessions Court and ruled that the Prosecution has proved its case beyond reasonable doubt and convicted Ho Woon Choon. He was sentenced to a fine of RM30,000 and in default 3 months imprisonment.

At the time of the commission of the offence, Ho Woon Choon is the company secretary for Dataco Communications Sdn Bhd. As a result of the conviction, **Ho Woon Choon is now disqualified from holding any directorship post for a period of 5 years and act as company secretary in Malaysia** pursuant to section 130 and section 139C of the Companies Act 1965 respectively.

SSM hopes the above decision will send out a clear message that officers of companies in Malaysia have a great responsibility and they have to discharge their functions responsibly and with high integrity. SSM will continue its enforcement action so as to encourage and promote proper conduct amongst directors, secretaries, managers and other officers of a corporation in Malaysia.

ISSUED BY : SURUHANJAYA SYARIKAT MALAYSIA (SSM)
DATED : 20th JUNE 2011

Source: <http://www.ssm.com.my/en/press-public>

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The screenshot shows the official portal of the Companies Commission of Malaysia (SSM). The header includes the SSM logo and the text 'SURUHANJAYA SYARIKAT MALAYSIA COMPANIES COMMISSION OF MALAYSIA'. There are language options for 'BAHASA MELAYU' and 'ENGLISH', and a search bar. The main navigation menu includes 'Home', 'About SSM', 'Services', 'Legal Framework', 'Publication', 'Gallery', and 'Career'. The article title is 'ASHARI MD SARIP THE FORMER DIRECTOR OF UTAVEST SDN BHD CHARGED UNDER THE COMPANIES ACT 1965 FOR MAKING FALSE STATEMENT TO SSM'. The article text states that Ashari bin Md. Sarip, the former director of Utavest Sdn Bhd, was charged by SSM at the Sessions Court of Kuala Lumpur for committing an offence under section 364(2) of the Companies Act (CA) 1965. The charge against him read that he had knowingly made a false statement in Form 49 of Utavest Sdn Bhd dated 16.02.2009 in relation to the resignation of Nor Hafinar binti Hayazi and Noor Fa'ezah bt Mohd Amir as the directors of Utavest Sdn Bhd. The offence under section 364(2) CA 1965 carries a penalty of 10 years imprisonment or a maximum fine of RM250,000.00 or both. Ashari bin Md. Sarip who was represented by his counsel, Mohd Tajuddin bin Abd Razak pleaded not guilty to the aforesaid charge. The Sessions Court Judge Dato' Rozana Ali Yusuf released Ashari bin Md. Sarip on a bail sum of RM5,000 with one surety. The Court in deciding the amount of bail took into account that he has been earlier charged by SSM at Johor Bahru Sessions Court for another offence under section 364(2) CA 1965. Prosecuting officer, Cik Fadilah binti Abdul Wahab prosecuted on behalf of SSM. The case is now fixed for mention on 19.03.2012. The charge brought against the director demonstrates SSM continuous efforts to ensure the compliance of the Companies Act and to curb the lodgment of false and/or misleading statement to the Registrar. The article is dated 22nd February 2012.

Source: <http://www.ssm.com.my/en/press-public>



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- SHARE** (with social media icons)
- DIRECTOR OF BULCON SHIPPING SDN BHD PLEADED GUILTY FOR OFFENCE UNDER THE COMPANIES ACT 1965**
- Home » DIRECTOR OF BULCON SHIPPING SDN BHD PLEADED GUILTY FOR OFFENCE UNDER THE COMPANIES ACT 1965**
- He was charge for making a false statement in the Form 49 on the appointment of two (2) individuals as directors of the aforesaid company without their knowledge and consent.**
- Evidence revealed that he instructed the company secretary to prepare the said Form 49 on the appointment of the two individuals and the said form was subsequently lodged to Suruhanjaya Syarikat Malaysia (SSM).**
- The Honourable Kuala Lumpur Sessions Court Judge, Tuan Zulhazmi Bin Abdullah sentenced Douglas Leong Choong Meng to a fined of RM30,000.00 in default eight (8) months imprisonment. Puan Shari'ah Abu prosecuted on behalf of SSM.**
- The charge brought against the aforesaid director's clearly demonstrates SSM continuous efforts to ensure the compliance of the Companies Act through effective enforcement as well as instilling good corporate governance practices among company directors in Malaysia**
- ISSUED BY: SURUHANJAYA SYARIKAT MALAYSIA (SSM)**
- DATED : 2 APRIL 2012**

Source: <http://www.ssm.com.my/en/press-public>