

Company Documents — To Retain or Destroy?

By SM Shanmugam and Siew Hui Yi



SM Shanmugam
Partner
Corporate & Commercial Disputes
E: ssm@lh-ag.com

As a company grows, so does its volume of documents and consequently costs for storage of those documents. At some point, the company must decide whether to retain or destroy its documents. In this article, we will discuss company documents that must be retained, the necessity to retain them and the consequences of destroying documents.

Documents to retain

There are several laws which state the type of documents that must be retained by a company. Among others, they are minutes of meetings, financial statements, accounting records, records, books of a company, etc.¹ Under the Companies Act 2016, some of the documents are defined:

- **Records:** Information stored or recorded by means of a computer, electronic or digital medium or any other means of recording or storage.²
- **Accounting records:** Invoices, receipts, order for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, working papers and other documents which are necessary to explain the methods and calculations by which the accounts are made up.³
- **Books:** Any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document.⁴

Necessity to retain

The purpose of retaining and maintaining company documents is to:

- Explain transactions and financial position of the company.
- Give a true and fair view of profit or loss arising out of the company's operations.
- Enable documents to be conveniently and properly audited.

1 The list outlined is by no means exhaustive
2 Capital Markets and Services Act 2007, s 4
3 Companies Act 2016, s 2
4 *Ibid*



- Protect members of the public in their dealings with companies by requiring companies to disclose certain information regarding their affairs and financial position.⁵
- Enable members of the public, potential investors and creditors to make rational and informed decisions regarding a company based on the retained company documents.⁶

With these documents retained, under necessary circumstances required by law, a company will be able to disclose the above information for inspection and as evidence.

Duration of retaining documents

As a rule of thumb, documents should be retained for at least seven years. Section 245 of the Companies Act 2016 requires accounting records of a company to be retained for at least seven years after completion of transactions or operations to which the entries relate.⁷ Similarly, s 82A of the Income Tax Act 1967 states that tax returns and other tax records and documentation shall also be retained for seven years.⁸ It is possible that a retention period of seven years is chosen to ensure evidence is available and admissible in the event of a lawsuit. For example, in an action for contract or tort, the limitation period for a plaintiff to commence a claim is six years from the date the cause of action arose or the date a plaintiff discovers or is able to discover the breach.⁹ Therefore, if a company retains documents for seven years, it would be able to produce the documents in question in the event of a lawsuit.

Consequence of destroying company documents

As the law¹⁰ requires a company to retain documents for at least seven years, it is an offence if the director does not do so. The director may be fined a sum not exceeding RM500,000 or imprisonment for a term not exceeding three years, or both.¹¹

Section 136 of the Capital Markets and Services Act 2007 also reads that it is an offence for a person to destroy, conceal or alter any record or account that is required to be kept under relevant rules or laws. A director may be fined a sum not exceeding RM10 million or imprisonment up to 10 years, or both.

⁵ Shanty Rachagan, Janine Pascoe and Joshi Anil, *Concise Principles of Company Law in Malaysia* (LexisNexis Malaysia, 2nd Ed, 2010)

⁶ *Ibid*

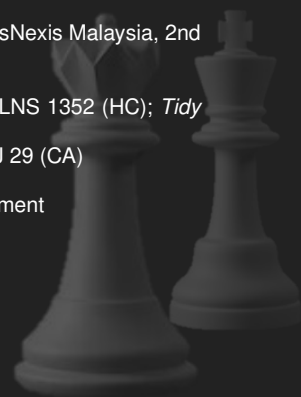
⁷ *Chip Lam Seng Enterprise Berhad (In Liquidation) v Euphoria Technologies Sdn Bhd & Anor* [2017] 1 LNS 1352 (HC); *Tidy Non-Woven Sdn Bhd v Law Chen Huat & Ors* [2020] 1 LNS 398 (HC)

⁸ Income Tax Act 1967, s 82; *Ketua Pengarah Hasil Dalam Negeri v Lai Keng Chong & Anor* [2012] 6 CLJ 29 (CA)

⁹ Limitation Act 1953, s 6

¹⁰ Subject to any other laws and regulations which expressly state the retention period of a particular document

¹¹ Companies Act 2016, s 245(9)



In *Huatah Sdn Bhd*,¹² the High Court remarked that adverse presumption should be inferred against directors for destroying company documents:

“I find it to be very bizarre for the directors of BSSB to destroy all the documents and records of the company. This raises a “red flag” of deep suspicion, particularly so in this case, where no paper trail can be done since there are no documents available. Nevertheless, the defendants are urging the Court to conclude that there was nothing sinister in their action in destroying the documents and records of BSSB. ... In my view, based on the destruction of the books and records of BSSB (in violation of Section 245(3) of the Companies Act 2016) it is only proper in the circumstances that an adverse presumption should be inferred against the defendants...”.¹³

Conclusion

Ideally, all documents should be retained as one never knows for sure if a lawsuit will be filed. This is easier said than done. An alternative to physical storage would be electronic storage. The law allows a company to store its documents electronically if certain requirements are met.¹⁴ It bears the same probative value as paper records.¹⁵ Therefore, instead of keeping or printing e-mail correspondences, a company can store these correspondences electronically. This would reduce the storage space taken up by the documents. As to other documents such as article of associations, agreements, signed contracts, etc. the original must be retained for at least seven years.¹⁶

Editor: Koay Sook Kuan

If you have any queries, please contact associate, **Siew Hui Yi (shy@lh-ag.com)** or her team partner, **SM Shanmugam (ssm@lh-ag.com)**.

Published by the Corporate & Commercial Disputes Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved.

¹² *Huatah Sdn Bhd v Yap Chee Klan & Ors* [2020] 2 CLJ 560
¹³ At the time of writing, the authors understand an appeal has been filed against the decision in *Huatah Sdn Bhd*
¹⁴ Electronic Commerce Act 2006, ss 13-18
¹⁵ Electronic Commerce Act 2006, s 13
¹⁶ Subject to any other laws and regulations which expressly state the retention period of a particular document

