

A BILL

i n t i t u l e d

An Act to amend the Companies Act 2016.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Companies (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 4

2. The Companies Act 2016 [Act 777], which is referred to as the “principal Act” in this Act, is amended in subparagraph 4(1)(a)(iii) by substituting for the words “issued share capital” the words “total number of issued shares”.

Amendment of section 66

3. Section 66 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) For the purposes of this section, “document” means a document which is required to be executed by any written law, resolution, agreement or constitution in accordance with subsection (1).”.

Amendment of section 72

4. Section 72 of the principal Act is amended—

(a) in subsection (4), by substituting for the words “The shares shall” the words “Subject to subsections (5) and (6), the shares shall”; and

(b) by substituting for subsection (5) the following subsection:

“(5) Where any such shares are redeemed out of profits pursuant to paragraph 4(a) which would otherwise have been available for dividend, there shall be transferred into the share capital accounts of the company, a sum equal to the amount of the shares redeemed.”.

Amendment of section 84

5. Subsection 84(1) of the principal Act is amended by deleting the word “special”.

Amendment of section 93

6. Paragraph 93(2)(b) of the principal Act is amended by inserting after the words “on behalf of the shareholders” the words “representing at least ten per centum of the total voting rights in the class”.

Amendment of section 247

7. Subsection 247(3) of the principal Act is amended by inserting after the words “in writing to the Registrar” the words “not less than thirty days before the circulation of the financial statement of the holding company”.

Amendment of section 253

8. Subsection 253(2) of the principal Act is amended—

(a) by deleting the words “or (2)”; and

(b) in the English language text, by substituting for the word “were” the word “is”.

Amendment of section 304

9. Section 304 of the principal Act is amended—

(a) in paragraph (a), by substituting for the word “statement” the word “resolution”; and

(b) in paragraph (b), by substituting for the word “meeting” the words “company becomes subject to the requirement under section 302 to circulate the resolution”.

Amendment of section 340

10. Paragraph 340(1)(c) of the principal Act is amended by substituting for the words “the fee of directors” the words “the remuneration of auditors”.

Amendment of section 386

11. Subsection 386(1) of the principal Act is amended—

(a) by substituting for the words “commencement of winding up of a company” the words “appointment of a receiver or receiver and manager under section 385”;

(b) by deleting the word “and” at the end of paragraph (a); and

(c) by substituting for paragraph (b) the following paragraph:

“(b) a receiver and manager may continue to act as a receiver as referred to in paragraph (a); and”; and

(d) by inserting after paragraph (b) the following paragraph:

“(c) a receiver and manager may continue to exercise all the powers of a receiver and manager for the purpose of carrying on the business of the company provided that the receiver and manager obtains consent from the liquidator or if the liquidator withholds his consent, the consent of the Court.”.

Amendment of section 409

12. Paragraph 409(a) of the principal Act is amended by substituting for the word “and” at the end of the paragraph the word “or”.

Amendment of section 433

13. Section 433 of the principal Act is amended—

(a) in subsection (2)—

(i) by substituting for the words “and (c)” the words “, (c), (d) and (e)”; and

(ii) in paragraph (b), by substituting for the words “and (c)” the words “, (c), (d) and (e)”; and

(b) by inserting after subsection (4) the following subsections:

“(4A) Any approval granted by the Minister under subsection (4) may be made subject to such limitations or conditions as he thinks fit and may be revoked at any time by the Minister by the service of a notice of revocation on the approved person.

(4B) Every approval under this section including the renewal of approval of a liquidator shall be in force for a period of two years after the date of issue unless sooner revoked by the Minister charged with the responsibility for finance.

(4c) The Minister charged with the responsibility for finance may delegate all or any of his powers under this section to any person or body of persons.”.

New section 580A

14. The principal Act is amended by inserting after section 580 the following section:

“Security for costs

580A. (1) Where a company is the plaintiff in any action or other proceedings and if it appears by a credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if the defendant is successful in his defence, the Court may order the plaintiff to give sufficient security for all the costs and to stay all action or proceedings until the security is given.

(2) The Court may direct the costs of any action or proceedings to be borne by the party to the action or proceedings.”.

Saving

15. (1) Any pending application for—

(a) an order to authorize any subsidiary of the holding company to have a financial year that does not coincide with its holding company; and

(b) an approval or permission to be appointed as a liquidator,

made before the date of coming into operation of this Act and pending before the Registrar or the Minister charged with the responsibility for finance, as the case maybe, shall continue to be valid and shall be dealt with under the principal Act as if the principal Act had not been amended by this Act.

(2) Any order, approval or permission made or given under the principal Act immediately before the date of coming into operation of this Act shall continue to remain in full force and effect in relation to the persons to whom the order, approval or permission applied until amended, repealed, rescinded, revoked or replaced under the provisions of this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Companies Act 2016 (“Act 777”).

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
3. *Clause 2* seeks to amend subparagraph 4(1)(a)(iii) of Act 777 to provide that a corporation shall be deemed to be a subsidiary of another corporation if the corporation holds more than half of the total number of issued shares. This amendment also seeks to affirm the application of the no par value environment for the purpose of calculating the total number of issued shares of the corporation.
4. *Clause 3* seeks to introduce a new subsection (6) into section 66 of Act 777 to provide a definition for “document” to specify the type of documents that is required to be executed in accordance with subsection 66(1) of Act 777.
5. *Clause 4* seeks to amend subsections 72(4) and (5) of Act 777 to provide that if the shares are redeemed out of profit and is available for dividend, a sum of equal to the amount of the shares redeemed shall be transferred into the share capital accounts of the company.
6. *Clause 5* seeks to amend subsection 84(1) of Act 777 to provide that a company may alter its share capital by passing a resolution.
7. *Clause 7* seeks to amend subsection 247(3) of Act 777 to provide that the directors may apply in writing to the Registrar not less than thirty days before the circulation of the financial statement of the holding company for an order to authorise any subsidiary of the holding company to not coincide its financial year with the holding company. This amendment also seeks to allow the Registrar to have an ample time to process the application and to avoid deliberate non-compliance by the applicant.

8. *Clause 9* seeks to amend section 304 of Act 777 to provide that the company is required to circulate written resolution proposed by members once the members have deposited or tendered to the company a sum sufficient to meet the company expenses not later than one week before the company becomes subject to the requirement to circulate the resolution under section 302 of Act 777.

9. *Clause 10* seeks to amend paragraph 340(1)(c) of Act 777 to provide that the appointment and the fixing of the remuneration of auditors shall be transacted at the annual general meeting in every calendar year.

10. *Clause 11* seeks to amend section 386 of Act 777 to provide that a receiver or receiver and manager that has been appointed under section 385 of Act 777 may continue to exercise all the powers provided to the receiver or receiver and manager under section 386 of Act 777.

11. *Clause 13* seeks to amend section 433 of Act 777.

Subclause 13(a) seeks to provide that the application under paragraphs 433(1)(a), (c), (d) and (e) with regard to the qualification of a person to be appointed as a liquidator under section 433 of Act 777 does not apply to the company that has been wound up by member's voluntary winding up or creditors' voluntary winding up.

Subclause 13(b) seeks to introduce the following new subsections (4A), (4B) and (4C) into section 433 of Act 777.

The proposed subsection 433(4A) seeks to empower the Minister, upon giving an approval for the appointment of a liquidator under subsection 433(4) of Act 777, to impose any limitation or condition as he thinks fit.

The proposed subsection 433(4B) seeks to provide that the period for every approval or renewal of a liquidator under this section is two years.

The proposed subsection 433(4C) seeks to empower the Minister responsible for finance to delegate all or any of his powers under this section to any person or body of persons.

12. *Clause 14* seeks to introduce a new section 580A into Act 777 to provide that the company, acting as plaintiff in any action or other proceedings, is required to give a sufficient security for costs. This amendment also seeks to provide that the Court may direct the costs of any action or proceedings to be borne by the party to the action or proceedings.

13. *Clause 15* seeks to provide for the saving provision.

14. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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