

A BILL

intituled

An Act to amend the Companies Act 1965.

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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) (No.2) Act 1998.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for different provisions of this Act.

Amendment of section 67A

2. Section 67A of the Companies Act 1965 [*Act 125*], which in this Act is referred to as the "principal Act", is amended—

(a) in subsection (1), by deleting the words "or give financial assistance to any person for the purpose of purchasing its shares";

(b) in subsection (2)—

(i) in paragraph (a), by substituting for the words "or the giving of financial assistance" the words "and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased";

(ii) in paragraph (b), by inserting after the word "quoted" the words "and in accordance with the relevant rules of the Stock Exchange"; and

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(iii) in paragraph (c), by deleting the words “or the giving of financial assistance”;

(c) by substituting for subsection (3) the following subsection:

“(3) Notwithstanding section 60, the company may apply its share premium account to provide the consideration for the purchase of its own shares.”;

(d) by inserting after subsection (3) the following subsections:

“(3A) Where a company has purchased its own shares, the directors of the company may resolve—

(a) to cancel the shares so purchased;

(b) to retain the shares so purchased in treasury (in this Act referred to as “treasury shares”); or

(c) to retain part of the shares so purchased as treasury shares and cancel the remainder.

(3B) The directors of the company may—

(a) distribute the treasury shares as dividends to shareholders, such dividend to be known as “share dividends”; or

(b) resell the treasury shares on the market of the Stock Exchange on which the shares are quoted, in accordance with the relevant rules of the Stock Exchange.

(3C) While the shares are held as treasury shares, the rights attached to them as to voting, dividends and participation in other distribution and otherwise are suspended and the treasury shares shall not be taken into account in calculating the number or percentage of shares or of a class of shares in the company for any purposes including, without limiting the generality of this provision, the provisions of any law or requirements of the articles of association of the company or the listing rules of a Stock Exchange on substantial shareholding, takeovers, notices, the requisitioning of meetings, the quorum for a meeting and the result of a vote on a resolution at a meeting.

(3D) Where the directors decide to distribute the treasury shares as share dividends, the costs of the shares on the original purchase shall be applied in the reduction of either the share premium account or the funds otherwise available for distribution as dividends or both.

(3E) Where the directors resolve to cancel the shares so purchased, or cancel any treasury shares, the issued capital of the company shall be diminished by the shares so cancelled and the amount by which the company's issued capital is diminished shall be transferred to the capital redemption reserve."; and

(e) in subsection (5), by substituting for the words "(3)" the words "(3E)".

Amendment of section 68

3. Subsection 68(1) of the principal Act is amended by substituting for the word "five" the word "ten".

New section 68A

4. The principal Act is amended by inserting after section 68 the following section:

"Register of options to take up unissued shares. 68A. (1) A company shall keep a register of options granted to persons to take up unissued shares in the company.

(2) The company shall, within fourteen days after the grant of an option to take up unissued shares in the company, enter in the register the following particulars:

- Act 78.*
- (a) the name, address and the number of the identity card issued under the National Registration Act 1959, or the passport number or other identification number, and the nationality of the holder of the option;
 - (b) the date on which the option was granted;

- (c) the number and description of the shares in respect of which the option was granted;
- (d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;
- (e) the consideration, if any, for the grant of the option;
- (f) the consideration, if any, for the exercise of the option or the manner in which that consideration is to be ascertained or determined; and
- (g) such other particulars as may be prescribed.

(3) Division 4 of Part V shall apply to a register kept under this section as if the register was the register of members.

(4) A company shall keep at the place where the register under this section is kept a copy of every instrument by which an option to take up unissued shares in the company is granted, and for the purposes of subsection (3) those copies shall be deemed to be part of the register.

(5) Failure by the company to comply with any provision in this section shall not affect any rights in respect of the option.

(6) If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: One hundred thousand ringgit. Default penalty: Ten thousand ringgit.”.

Amendment of section 69A

5. Subsection 69A(3) of the principal Act is amended by substituting for the words “fifty thousand” the words “one million”.

Amendment of section 69D

6. Section 69D of the principal Act is amended by substituting for the word “five” wherever it appears the word “two”.

Amendment of section 69E

7. Paragraph 69E(2)(b) of the principal Act is amended by substituting for the word “fourteen” the word “seven”.

Amendment of section 69F

8. Subsection 69F(2) of the principal Act is amended by substituting for the word “fourteen” the word “seven”.

Amendment of section 69G

9. Subsection 69G(2) of the principal Act is amended by substituting for the word “fourteen” the word “seven”.

Amendment of section 69M

10. Section 69M of the principal Act is amended—

- (a) by substituting for the words “Five thousand” the words “One million”; and
- (b) by substituting for the words “Five hundred” the words “Fifty thousand”.

Amendment of section 69o

11. Section 69o of the principal Act is amended—

- (a) in subsection (6), by substituting for the words “five thousand” the words “one million”; and
- (b) by inserting after subsection (7) the following subsections:

“(8) A stock exchange or the Securities Commission may by notice in writing direct a company to which this section applies to invoke its powers under subsections (1) and (2) and to forthwith provide it with the information so obtained.

(9) Where a company to which this section applies fails to comply with the direction of a stock exchange or the Securities Commission, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: One million ringgit.”.

New section 69P

12. The principal Act is amended by inserting after section 69O the following section:

“Disclosure of bare trustees. 69P. (1) Notwithstanding that a person who is a bare trustee is not regarded as having an interest in the share held by him under subsection 6A(9), he shall be deemed to be a substantial shareholder for the purposes of this Division if the aggregate of the nominal value of the shares held by him is not less than two per centum of the aggregate of the nominal amounts of all the voting shares in the company or, if the share capital of the company is divided into two or more classes of shares and the shares held by him are in one or more of those classes, of the aggregate all the voting shares included in that class or those classes.

Act 78.

(2) With regard to the nature of the interest in the relevant notice to be given under section 69E, the fact that he is a bare trustee shall be stated and, in relation to the particulars of the voting shares, the full name and address, the nationality and the number of the identity card issued under the National Registration Act 1959, or the passport number or other identification number, of each of the beneficiaries and the number of shares held by each of the beneficiaries shall be disclosed.

(3) The notice under section 69E shall be given—

- (a) if the person was a substantial shareholder on the date on which this section came into operation, within fourteen days after that date; or
- (b) if the person becomes a substantial shareholder after that date, within seven days after becoming a substantial shareholder.

Act 453.

(4) This section shall not apply to a central depository as defined in the Securities Industry (Central Depositories) Act 1991 or its nominee company.”

New Division 6A

13. The principal Act is amended by inserting after section 107 the following Division:

“DIVISION 6A

**PROVISIONS APPLICABLE TO COMPANIES
WHOSE SECURITIES ARE DEPOSITED WITH
THE CENTRAL DEPOSITORY**

Interpretation. 107A. In this Division, unless the contrary intention appears—

Act 453. “central depository” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“deposited securities” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“depositor” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“security” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

Act 280. “stock exchange” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983.

Depositor deemed to be member. 107B. (1) Notwithstanding section 100, a depositor whose name appears in the record of depositors maintained by the central depository pursuant to section 34 of the Securities Industry (Central Depositories) Act 1991 in respect of the securities of a company which have been deposited with the central depository shall be deemed to be a member, debenture holder, interest holder or option holder, as the case may be, of the company, and shall, subject to the

provisions of the Securities Industry (Central Depositories) Act 1991 and any regulations made thereunder, be entitled to the number of securities stated in the record of depositors and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such securities (whether conferred or imposed by the Act or the memorandum or articles of association of the company).

(2) Nothing in this Division shall be construed as affecting the obligation of the company to keep a register of its members under section 158, a register of holders of debentures under section 70, a register of interest holders under section 92 and a register of option holders under section 68A and to open them for inspection in accordance with the provisions of this Act except that the company shall not be obliged to enter in such registers the names and particulars of depositors who are deemed to be members, debenture holders, interest holders or option holders.

(3) Notwithstanding any other provision of this Act, a depositor shall not be regarded as a member of a company entitled to attend any general meeting and to speak and vote thereat unless his name appears on the record of depositors not less than three market days before the general meeting.

(4) The record of depositors shall be *prima facie* evidence of any matters inserted therein as required or authorized by this Act.

(5) For the purpose of this section, "market day" means any day between Mondays and Fridays which is not a market holiday of the stock exchange or public holiday.

Transfer of securities is by way of book entry.

107c. (1) On or after the coming into operation of this section, the transfer of any securities or class of securities of a company whose securities or any class of whose securities have been deposited with a central depository shall be by way of book entry by the central depository

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in accordance with the rules of the central depository and, notwithstanding sections 103 and 104, such company shall be precluded from registering and effecting any transfer of securities.

(2) Subsection (1) shall not apply to a transfer of securities to a central depository or its nominee company.

Rectification
of record of
depositors.

107D. (1) Notwithstanding anything in this Act or any written law or rule of law, no order shall be made by the Court for the rectification of the record of depositors except in the circumstances and subject to the conditions specified in subsection (2).

(2) If the Court is satisfied that—

- (a) a depositor did not consent to a transfer of any securities;
- (b) a depositor should not have been registered as having title to any securities,

it may award to the depositor mentioned in paragraph (a) or any person who would have been entitled to be registered as having the title to such securities, as the case may be, on such terms as the Court deems to be equitable or make such other order as the Court deems fit, including an order for the transfer of such securities to such depositor or person.

Non-
application
of section
223 to
disposition
made by
way of book
entry.

107E. Section 223 shall not apply to a disposition of property made by way of book entry by a central depository, but where the Court is satisfied that a party to the disposition, other than the central depository, had notice that a petition had been presented for the winding up of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other orders as the Court thinks fit, including an order for the transfer of deposited securities by that party but not an order for the rectification of the record of depositors.

Exemption from Division 6A. 107F. The Minister may, by notice published in the *Gazette*, exempt any company or class of companies, subject to such terms and conditions as he deems fit to impose, from complying with all or any provisions of this Division in relation to any securities of a company or any class of companies to which this Division applies and may, by notice published in the *Gazette*, revoke such a notice or vary it in such manner as he thinks fit.”.

Amendment of section 176

14. Section 176 of the principal Act is amended by inserting after subsection (10) the following subsections:

“(10A) The Court may grant a restraining order under subsection (10) to a company for a period of not more than ninety days or such longer period as the Court may for good reason allow if and only if—

- (a) it is satisfied that there is a proposal for a scheme of compromise or arrangement between the company and its creditors or any class of creditors representing at least one-half in value of all the creditors;
- (b) the restraining order is necessary to enable the company and its creditors to formalise the scheme of compromise or arrangement for the approval of the creditors or members pursuant to subsection (1);
- (c) a statement in the prescribed form as to the affairs of the company made up to a date not more than three days before the application is lodged together with the application; and
- (d) it approves the person nominated by a majority of the creditors in the application by the company under subsection (10) to act as a director or if that person is not already a director, notwithstanding the provisions of this Act or the memorandum and articles of the company, appoints the person to act as a director.

(10B) The person approved or appointed by the Court to act as a director of the company under subsection (10A) shall have a right of access at all reasonable times to the accounting and other records (including registers) of the company, and

is entitled to require from any officer of the company such information and explanation as he may require for the purposes of his duty.

(10c) Any disposition of the property of the company, including things in action and any acquisition of property by the company, other than those made in the ordinary course of business, made after the grant of the restraining order by the Court shall, unless the Court otherwise orders, be void.

(10D) Where a company disposes or acquires any property, other than in the ordinary course of its business, without leave of the Court, every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for five years or one million ringgit or both.

(10E) Where an order is made under subsection (10), every company in relation to which the order is made shall, within seven days—

- (a) lodge an office copy of the order with the Registrar; and
- (b) publish a notice of the order in a daily newspaper circulating generally throughout Malaysia,

and every company which makes default in complying with this subsection and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: One hundred thousand ringgit.”.

Amendment of section 365

15. Section 365 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

“(1A) A company is allowed to declare dividends (after making deductions for income tax, if any) for a financial year only up to an amount—

- (a) not exceeding the after-tax profit of that financial year; or

(b) not exceeding the average dividends declared in respect of the two financial years immediately preceding that financial year,

whichever is the greater.

(1B) Any after-tax profit not declared as dividends for any financial year commencing on or after 1 July 1997 may be accumulated and paid out as dividends in any financial year subsequent to that financial year.

(1C) Subsections (1A) and (1B) shall not apply to—

- (a) subsidiaries of any holding company;
- (b) private companies which are wholly-owned by Malaysians; and
- (c) a company whose financial year commenced before 1 July 1997.

(1D) The Minister of Finance may exempt any company from the provisions of subsection (1A).”; and

(b) in subsection (2) by inserting after the words “not profits” the words “or are profits not permitted or exempted under subsection (1A), (1B), (1C) or (1D)”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Companies Act 1965 (“Act 125”), primarily to ensure greater transparency in shareholding in companies.

2. *Clause 1* of the Bill contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.

3. Section 67A of Act 125 was inserted to enable companies to buy back their shares. However, the existing provisions require the shares to be subsequently cancelled. The amendment proposed in *clause 2* of the Bill seeks to provide for an alternative to such cancellation. Under the proposed amendment, the company may opt to retain the shares in treasury. The amendment proposed to section 67A also seeks to remove the provision permitting a company to provide financial assistance to any person for the purpose of purchasing its shares.

4. *Clause 3* of the Bill seeks to amend section 68 of Act 125 to increase from five years to ten years the period during which a person may take up unissued shares of a public company upon being granted the option to do so by the company.
5. *Clause 4* of the Bill seeks to introduce a new section 68A into Act 125. The new section requires a company to keep a register of options granted to persons to take up unissued shares in the company. Particulars of such persons must be entered in the register within 14 days after the grant of the option.
6. *Clause 5* of the Bill seeks to amend section 69A of Act 125 to increase the maximum fine for non-compliance with the disclosure requirements in that section. The proposed fine is one million ringgit instead of the existing fine of fifty thousand ringgit.
7. *Clause 6* of the Bill seeks to amend section 69D of Act 125 to redefine what is meant by a substantial shareholder. Under the existing provision, a shareholder is a substantial shareholder if he holds not less than 5 percent of the shares of a company. The amendment proposed seeks to reduce that limit to 2 percent.
8. *Clauses 7, 8 and 9* of the Bill seeks to amend sections 69E, 69F and 69G of Act 125 to reduce from 14 days to 7 days the period during which a person who becomes a substantial shareholder or ceases to be a substantial shareholder of a company, or whose interests in the company have changed, must notify the company.
9. *Clause 10* of the Bill seeks to amend section 69M of Act 125 to increase the maximum fine for non-compliance with disclosure requirements in sections 69E, 69F, 69G and 69J from five thousand ringgit to one million ringgit. It also seeks to increase the penalty for a continuing offence from five hundred ringgit to fifty thousand ringgit for each day.
10. *Clause 11* of the Bill seeks to amend section 69O of Act 125 to increase the maximum fine which can be imposed on a member of a company for failing to comply with a notice by the company requiring him to disclose his beneficial interest in the voting shares of the company. The proposed amendment seeks to increase the maximum fine from five thousand ringgit to one million ringgit.
Clause 11 also seeks to empower the Kuala Lumpur Stock Exchange and the Securities Commission to direct a company to use its power under section 69O to require a member of the company to disclose his interest in the shares of that company.
11. *Clause 12* of the Bill seeks to introduce a new section 69P into Act 125. The new provision seeks to deem nominee companies and others acting as bare trustees to be substantial shareholders if they hold more than two per cent of all the voting shares of a company. Consequently, the disclosure requirements under sections 69E, 69F and 69G would apply to them.

12. *Clause 13* of the Bill seeks to introduce a new Division 6A into Part IV of Act 125. The proposed new Division contains 6 sections, namely, sections 107A, 107B, 107C, 107D, 107E and 107F.

Section 107A contains the definitions of terms used in the new Division.

Section 107B seeks to recognize a person who has deposited his securities in a company with a central depository ("depositor") as a member of the company. It also seeks to recognize the record of depositors kept by a central depository as a register of members. Thus, the register of members maintained by a company would only contain the name and details of the central depository or its nominee company as the sole member of the company so long as the securities of the company are deposited with the central depository.

Section 107C seeks to make it compulsory for transfers of securities of a company deposited with a central depository to be transacted by way of book entries only, to be effected by the central depository. The company would no longer be able to register and effect such transfer.

Section 107D seeks to ensure that the record of depositors is not subject to rectification by the Court. However, the Court would have the power to grant remedies to aggrieved parties.

Section 107E contains provisions intended to protect a central depository and its record of depositors from any proceeding in relation to the disposal of the property of a company after the commencement of the winding up of the company. Section 223 of Act 125, which declares that any disposal of property made within 6 months from the date of commencement of the winding up of a company is void, is made inapplicable to the disposition of property made by way of book entry by the central depository. However, the Court is empowered to award damages or to make other orders except an order for the rectification of the record of depositors

Section 107F seeks to empower the Minister to grant exemptions from the provisions of the new Division.

13. *Clause 14* seeks to amend section 176 of Act 125 to ensure that creditors are aware of an application made under subsection (10) and to ascertain that restraining orders under that subsection are only granted under specific conditions to avoid any abuse.

14. *Clause 15* seeks to amend section 365 of Act 125 to only allow dividends to be paid in respect of a financial year only up to an amount not exceeding the after-tax profit of that financial year or the average of the dividends declared for the two years preceding that financial year. This provision will not apply to subsidiaries of holding companies, private companies which are wholly-owned by Malaysians and a company whose financial year commenced before 1 July 1997.

FINANCIAL IMPLICATIONS

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

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