

LAWS OF MALAYSIA

REPRINT

Act 28

KOOTU FUNDS (PROHIBITION) ACT 1971

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LAWS OF MALAYSIA

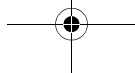
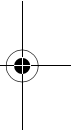
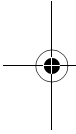
Act 28

KOOTU FUNDS (PROHIBITION) ACT 1971

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LAWS OF MALAYSIA**Act 28****KOOTU FUNDS (PROHIBITION) ACT 1971**

An Act to prohibit the registration or licensing of businesses which promote or are designed to promote kootu funds and the registration of companies which have as their object or as one of their objects the promotion of schemes or arrangements variously known as *kootus*, *cheetus*, *chit funds*, *hweis*, *tontines* or otherwise as well as to make it unlawful for any person to carry on the business of promoting such schemes or arrangements and to provide for matters incidental thereto.

[*Throughout Malaysia—30 April 1971*]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Kootu Funds (Prohibition) Act 1971.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“company” means a company as defined in the Companies Act 1965 [*Act 125*], and includes a corporation as defined in the said Act;

“kootu fund” means a scheme or arrangement variously known as a *kootu*, *cheetu*, *chit fund*, *hwei*, *tontine* or otherwise whereby the participants subscribe periodically or otherwise to a common fund and such common fund is put up for sale or payment to the participants by auction, tender, bid, ballot or otherwise and includes any scheme or arrangement which with variations partakes of the nature of a *kootu*, *cheetu*, *chit fund*, *hwei* or *tontine*;

“Minister” means, except in sections 4, 5 and 6, the Minister for the time being in charge of domestic trade and consumer affairs;

“to promote” includes to manage, form, conduct or otherwise to organize, and also includes aiding, assisting or taking any part in such promotion.

(2) The term “kootu funds” wherever used in this Act includes the term “a kootu fund”.

(3) Any reference in this Act to the winding up of a company includes, in the case of a foreign company, a reference to the winding up of the affairs of the foreign company so far as the assets of the foreign company within Malaysia are concerned.

Unlawful to carry on business of promoting kootu funds

3. It shall be unlawful for any person to carry on the business of promoting kootu funds and any person who carries on such business shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Registration of a business which promotes kootu funds prohibited in the States of Peninsular Malaysia

4. (1) There shall not be registered under the Registration of Businesses Act 1956 [*Act 197*] of the States of Peninsular Malaysia (hereinafter in this section referred to as “the Act”) any business which promotes or is designed to promote kootu funds.

(2) No person shall obtain registration under the Act of any business which promotes or is designed to promote kootu funds.

(3) No person who carries on a business which is registered under the Act shall carry on the business of promoting kootu funds.

(4) Any associate of a business which, on the date of coming into force of this Act, is registered under the Act and which promotes or is designed to promote kootu funds shall forthwith cease to do such business and shall forthwith inform the Registrar that the business promotes or is designed to promote kootu funds

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and thereupon the Registrar shall forthwith revoke the certificate of registration of such business.

(5) The Registrar shall forthwith revoke the certificate of registration of a business if he is satisfied from the particulars of the business submitted under subsection 5(1) of the Act that the business promotes or is designed to promote kootu funds, and inform, in writing, a person responsible that such certificate has been revoked and the reason therefor.

(6) Any associate of a business aggrieved by any decision made by the Registrar under subsection (5) may, within thirty days from the date on which the decision was communicated under subsection (5) to a person responsible, appeal therefrom to the Minister whose decision shall be final; while such appeal is pending it shall not operate as a stay of the revocation of the certificate of registration of the business unless the Minister directs otherwise.

(7) Any person who contravenes subsection (2) or (3) and any associate of a business who fails to comply with subsection (4) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(8) Nothing in this section shall prejudice or be deemed to prejudice any civil claim that any person, including a participant in a kootu fund, may have against any associate of a business of which the certificate of registration is revoked under the provisions of this section or who ceases to do business by reason of the provisions of this section.

(9) No person shall be entitled to any refund of fees as a result of the revocation of any certificate of registration of a business under this section.

(10) For the purposes of this section—

- (a) a Registrar or an inspector may exercise all the powers conferred upon them respectively under the Act in as full and ample a manner as if this section formed a part of the Act; and
- (b) section 2 of the Act shall apply as if this section formed a part of the Act.

Licensing of a business which promotes kootu funds prohibited in Sabah

5. (1) There shall not be licensed under the Trades Licensing Ordinance of Sabah [*Cap. 144*] (hereinafter in this section referred to as “the Ordinance”) any business which promotes or is designed to promote kootu funds.

(2) No person shall obtain a trading licence under the Ordinance in respect of any business which promotes or is designed to promote kootu funds.

(3) No person who carries on a business which is licensed under the Ordinance shall carry on the business of promoting kootu funds.

(4) Any proprietor or partner of a business which, on the date of coming into force of this Act, is licensed under the Ordinance and which promotes or is designed to promote kootu funds shall forthwith cease to do such business and shall forthwith inform the licensing authority that the business promotes or is designed to promote kootu funds and thereupon the licensing authority shall forthwith revoke the trading licence in respect of such business.

(5) The licensing authority shall forthwith revoke the trading licence of a business if it is satisfied from the particulars of the business submitted to the licensing authority under the Ordinance that the business promotes or is designed to promote kootu funds, and inform, in writing, the proprietor or partner of the business that such trading licence has been revoked and the reason therefor.

(6) Any proprietor or partner of a business aggrieved by any decision made by the licensing authority under subsection (5) may, within thirty days from the date on which the decision was communicated under subsection (5), appeal therefrom to the Minister whose decision shall be final; while such appeal is pending it shall not operate as a stay of the revocation of the trading licence of the business unless the Minister directs otherwise.

(7) Any person who contravenes subsection (2) or (3) and any proprietor or partner of a business who fails to comply with subsection (4) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit

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or to imprisonment for a term not exceeding three years or to both.

(8) Nothing in this section shall prejudice or be deemed to prejudice any civil claim that any person, including a participant in a kootu fund, may have against any proprietor or partner of a business the trading licence of which is revoked under the provisions of this section or who ceases to do business by reason of this section.

(9) No person shall be entitled to any refund of fees as a result of the revocation of any trading licence under this section.

(10) For the purposes of this section—

- (a) a licensing authority may exercise all the powers conferred upon it under the Ordinance in as full and ample a manner as if this section formed a part of the Ordinance; and
- (b) section 2 of the Ordinance shall apply as if this section formed a part of the Ordinance.

(11) “Minister” in this section means the Minister referred to in the Ordinance.

Licensing of a business which promotes kootu funds prohibited in Sarawak

6. (1) There shall not be licensed under the Businesses, Professions and Trades Licensing Ordinance of Sarawak [*Cap.* 33] (hereinafter in this section referred to as “the Ordinance”) any business which promotes or is designed to promote kootu funds.

(2) No person shall obtain a trading licence under the Ordinance in respect of any business which promotes or is designed to promote kootu funds.

(3) No person who carries on a business which is licensed under the Ordinance shall carry on the business of promoting kootu funds.

(4) Any proprietor of a business which, on the date of coming into force of this Act, is licensed under the Ordinance and which promotes or is designed to promote kootu funds shall forthwith

cease to do such business and shall forthwith inform the Collector that the business promotes or is designed to promote kootu funds and thereupon the Collector shall forthwith revoke the trading licence in respect of such business.

(5) The Collector shall forthwith revoke the trading licence of a business if he is satisfied from the particulars of the business submitted to the Collector under the Ordinance that the business promotes or is designed to promote kootu funds, and inform, in writing, the proprietor of the business that such trading licence has been revoked and the reason therefor.

(6) Any proprietor of a business aggrieved by any decision made by the Collector under subsection (5) may, within thirty days from the date on which the decision was communicated under subsection (5), appeal therefrom to the Minister whose decision shall be final; while such appeal is pending it shall not operate as a stay of the revocation of the trading licence of the business unless the Minister directs otherwise.

(7) Any person who contravenes subsection (2) or (3) and any proprietor of a business who fails to comply with subsection (4) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(8) Nothing in this section shall prejudice or be deemed to prejudice any civil claim that any person, including a participant in a kootu fund, may have against any proprietor of a business the trading licence of which is revoked under this section or who ceases to do business by reason of this section.

(9) No person shall be entitled to any refund of tax as a result of the revocation of any trading licence under this section.

(10) For the purposes of this section—

- (a) a Collector may exercise all the powers conferred upon him under the Ordinance in as full and ample a manner as if this section formed a part of the Ordinance; and
- (b) section 2 of the Ordinance shall apply as if this section formed a part of the Ordinance.

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(11) “Minister” in this section means the Minister referred to in the Ordinance.

Registration of a company which promotes kootu funds prohibited

7. There shall not be registered under the Companies Act 1965 any company which has as its objects or as one of its objects the promotion of kootu funds.

Registered company which promotes kootu funds to cease business

8. (1) Upon the coming into force of this Act, a registered company which has its objects or as one of its objects the promotion of kootu funds (hereinafter in this section and in section 9 referred to as “such company”) shall forthwith cease to carry on the business of promoting kootu funds.

(2) Every such company shall either—

- (a) within ninety days from 18 February 1971 take the necessary steps under the Companies Act 1965 to have its memorandum of association and (if any) articles of association altered so that they do not provide for it to carry on the business of promoting kootu funds; or
- (b) within ninety days from 18 February 1971 or within one month of the expiry of the total period for which permission may have been granted under subsection (3), whichever is the longer, either—
 - (i) resolve by special resolution that it be wound up voluntarily, under paragraph 254(1)(b) of the Companies Act 1965; or
 - (ii) resolve by special resolution that it be wound up by the Court and accordingly present a petition to the Court under paragraph 217(1)(a) of the Companies Act 1965 for an order that it be wound up.

(3) Notwithstanding subsection (1) and notwithstanding anything done under paragraph (2)(a) such company may, within ninety days from 18 February 1971, apply to the Registrar for

permission to continue to operate such of its kootu funds, as are in operation on the date of coming into force of this Act till their respective operation has been completed, and the Registrar may grant or refuse such permission; if he grants such permission he shall specify the period for which it is granted and such period shall not exceed twelve months; and he may, on application by such company, and in his absolute discretion, grant, from time to time, extensions of such period but so that the aggregate of such extensions does not exceed twelve months.

(4) For the purposes of subsection (3) the Registrar may, from time to time, give such directions to such company and make such enquiries from it as he deems expedient or necessary.

(5) Where permission is granted under subsection (3) the Registrar may, from time to time, impose such terms and conditions as he deems expedient or necessary.

(6) The Registrar may, at any time, withdraw or modify any permission granted under subsection (3) or any term or condition imposed under subsection (5).

(7) If such company is aggrieved by—

- (a) any decision made by the Registrar under subsection (3) or (6); or
- (b) any direction given by the Registrar under subsection (4); or
- (c) any term or condition imposed by the Registrar under subsection (5),

such company may, within thirty days from the date on which any such decision, direction, term or condition was communicated to such company, appeal therefrom to the Minister whose decision shall be final.

(8) If default is made in complying with subsection (1) such company and every officer of such company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both:

Provided that such company shall not be liable for such offence in respect of such of its kootu funds as are in operation on the date

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of coming into force of this Act, from the time that an application by such company under subsection (3) is received by the Registrar and until the time that a decision thereon is made by the Registrar, and, thereafter, for so long as any permission granted by the Registrar under subsection (3) is in force:

And provided further that such permission shall be deemed to be not in force if such company commits a breach of any term or condition imposed by the Registrar under subsection (5).

(9) "Registrar" in this section means the Registrar of Companies and does not include any Regional Deputy or Assistant Registrar of Companies.

Winding up on application by Minister

9. (1) If such company fails to take action under subsection 8(2) or if, having taken such action, it fails to obtain the required alteration of its memorandum of association and (if any) articles of association or complete its voluntary winding up or obtain the order of the Court that it be wound up, as the case may be, within a reasonable time, the Minister—

- (a) may cause to be made such investigation of the affairs of such company and in such manner as he deems appropriate; and
- (b) shall present a petition to the Court—
 - (i) for the winding up of such company; or
 - (ii) in the case of a foreign company, for the winding up of the affairs of such company so far as the assets of such company within Malaysia are concerned,

under section 205 of the Companies Act 1965, and such company shall, for the purpose of the said section, be deemed to be a declared company in respect of which a report has been made by an inspector, as referred to in the said section 205, and the petition shall be dealt with by the Court under the Companies Act 1965, with such adaptations as may be necessary, as a petition of the Minister under the said section 205 in respect of a company which is referred to in the said section 205 as a declared company in respect of which a report has been made by an inspector.

(2) For the purpose of any proceedings under the Companies Act 1965, for the winding up of such company, the rules relating to the winding up of companies shall be applicable with such modifications as the Court in its discretion deems just and either expedient or necessary:

Provided that if the Minister submits to the Rules Committee proposals for making special provision under section 372 of the Companies Act 1965, in relation to such companies, the Committee may by rules under that section give effect to the proposals either as submitted or subject to such modifications as the Committee thinks fit.

(3) The proposals under the proviso to subsection (2), and the rules made by virtue thereof, may provide for modifying or excluding, in relation to such companies, the provisions of Part X of the Companies Act 1965, requiring the holding of meetings or otherwise relating to the procedure in a winding up.

(4) The expenses of the winding up in consequence of a petition under subsection (1) (including the remuneration of the liquidator) shall, in so far as they cannot be met out of the assets of the company be defrayed by the Minister; and the Minister may make advances towards the payment of such expenses, or make a contribution thereto to the exoneration (so far as the contribution extends) of the assets of the company.

(5) The funds specified in the Second Schedule to the Financial Procedure Act 1957 [*Act 61*], shall (without prejudice to subsection 10(4) of that Act) include a fund to be known as the Kootu Fund Companies Liquidation Fund, for meeting the expenditure of the Minister under this section, and the said subsection 10(3) shall apply to moneys received by the Minister in repayment of advances made by him under this section as it applies to the moneys mentioned in the said subsection 10(3).

Criminal liability

10. (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was a director, general manager, manager, secretary or other officer of the company concerned in the management of the company in the Federation or who was purporting to act in any such capacity, he as well as the company shall be deemed to be

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guilty of that offence and shall be liable to be proceeded against and punished accordingly:

Provided that it shall be a defence for such person, if he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and to all other circumstances.

(2) For the purpose of this section “company” includes—

- (i) any body corporate;
- (ii) a firm or other association of individuals;
- (iii) a natural and individual person registered or licensed under any written law in force in Malaysia relating to the registration or licensing of businesses.

(3) Where the agent or servant of a person (such person being hereinafter in this section called “the principal”) does anything or omits to do anything (which if done or omitted to be done by the principal would constitute an offence under this Act) the principal shall, notwithstanding that he has no knowledge of the offence, be deemed guilty of the offence and be liable to punishment for the offence:

Provided that it shall be a defence for the principal, if he proves—

- (a) that the act or omission complained of was not within the ordinary scope of the employment of the agent or servant; and
- (b) that the principal did not otherwise or subsequently ratify such act or omission.

(4) Where the agent or servant of the principal does anything or omits to do anything (which if done or omitted to be done by the principal would constitute an offence under this Act) such agent or servant shall also be guilty of that offence.

(5) This section shall be in addition to and not in derogation from any other provisions of this Act.

Rules

11. The Minister may make rules for carrying into effect the objects and purposes of this Act.

This Act to prevail

12. The provisions of this Act shall be without prejudice to the provisions of the Registration of Businesses Act 1956 of the States of Peninsular Malaysia or the Trades Licensing Ordinance of Sabah or the Businesses, Professions and Trades Licensing Ordinance of Sarawak or the Companies Act 1965 but where there is a conflict between any of the said Ordinances or the said Companies Act and this Act the provisions of this Act shall prevail.

Repeal

13. The Emergency (Essential Powers) Ordinance No. 84, 1971 [*P.U.(A)69/1971*] is hereby repealed.

LAWS OF MALAYSIA

Act 28

KOOTU FUNDS (PROHIBITION) ACT 1971

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975

LAWS OF MALAYSIA

Act 28

KOOTU FUNDS (PROHIBITION) ACT 1971

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
3	Act 160	29-08-1975
4	Act 160	29-08-1975
5	Act 160	29-08-1975
6	Act 160	29-08-1975
8	Act 160	29-08-1975
