

**D.R. 45/97**

**Naskhah Sahih—Bahasa Inggeris**

**RANG UNDANG-UNDANG**

*b e r n a m a*

Suatu Akta untuk meminda Akta Syarikat 1965.

[ ]

MAKA INILAH DIPERBUAT UNDANG-UNDANG oleh Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Rakyat yang bersidang dalam Parlimen, dan dengan kuasa daripadanya, seperti berikut:

**1.** (1) Akta ini bolehlah dinamakan Akta Syarikat (Pindaan) (No. 2) 1997. Tajuk ringkas dan mula berkuatkuasa.

(2) Akta ini hendaklah mula berkuatkuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*, dan Menteri boleh menetapkan tarikh yang berlainan bagi peruntukan yang berlainan dalam Akta ini.

**2.** Akta Syarikat 1965, yang disebut "Akta ibu" dalam Akta ini, adalah dipinda dengan memasukkan selepas seksyen 11 seksyen yang berikut: Seksyen baru 11A. Akta 125.

" Electronic filing of documents. 11A. (1) The Registrar may provide a service for the electronic filing or lodging of documents required by this Act to be filed or lodged with the Registrar.

(2) A person who intends to use the service provided under subsection (1) shall become a

subscriber to the service by paying the prescribed fee and by complying with such terms and conditions as may be determined by the Registrar.

(3) Only a subscriber to the service provided under subsection (1) may electronically file or lodge documents with the Registrar.

(4) A document electronically filed or lodged under this section shall be deemed to have satisfied the requirement for filing or lodgement if the document is communicated or transmitted to the Registrar in such manner as may be prescribed by regulations or approved by the Registrar.

(5) The Registrar may, by order published in the *Gazette*, prescribe the documents that may be electronically filed or lodged.

(6) A document that is required to be stamped, signed or sealed shall, if it is to be electronically filed or lodged, be certified or authenticated in such manner as may be prescribed by regulations or approved by the Registrar.

Evidentiary value of copies of electronically filed documents certified by Registrar.

(7) A copy of or an extract from any document electronically filed or lodged with the Registrar under subsection (1) supplied or issued by the Registrar and certified to be a true copy thereof or extract therefrom under the hand and seal of the Registrar shall be admissible in evidence in any proceedings as of equal validity as the original document.

(8) Where a document is electronically filed or lodged with the Registrar, the Registrar or his authorised agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or

however arising appearing in any document obtained by any person under the service referred to in subsection (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Registrar or of his authorised agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service."

3. Seksyen 16 Akta ibu adalah dipinda—

Pindaan  
seksyen 16.

- (a) dengan menggantikan subseksyen (2) dengan subseksyen yang berikut:

"(2) The person named in the articles as the first secretary of the company shall lodge with the Registrar a declaration in the prescribed form stating that all or any of the requirements of this Act have been complied with and containing such information as may be prescribed, and the Registrar may accept such a declaration as sufficient evidence of compliance."; dan

- (b) dengan memasukkan selepas subseksyen (7) subseksyen yang berikut:

"(8) Notwithstanding anything to the contrary in this Act or any rule of law, the Registrar shall refuse to register the memorandum of a proposed company if he is satisfied that—

- (a) the proposed company is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; or
- (b) it would be prejudicial to national security or public interest for the proposed company to be registered."

Pindaan  
seksyen 139.

**4. Seksyen 139 Akta ibu adalah dipinda—**

- (a) dengan memasukkan selepas subseksyen (1B) subseksyen yang berikut:

"(1c) Notwithstanding subsection (1B), where none of the directors of the company can be communicated with at the last-known residential address, the secretary may, notwithstanding section 141(6), lodge with the Registrar a notice in the prescribed form notifying the Registrar of that fact and of his intention to vacate the office of secretary.

(1D) Where the secretary has lodged a notice in accordance with subsection (1c), the secretary shall cease to be the secretary of the company on the expiry of one month from the date of the notice.

(1E) Nothing in subsections (1c) and (1D) shall relieve the secretary from liability for any act or omission done before the secretary vacated that office."; dan

- (b) dengan memasukkan selepas subseksyen (5) subseksyen yang berikut:

"(6) Every person shall, before he is appointed a secretary of a company, make a declaration in the prescribed form that he is not in contravention of sections 139A and 139c and that he consents to act as a secretary of the company."

Seksyen baru  
166A.

**5. Akta ibu adalah dipinda dengan memasukkan sebelum seksyen 167 dalam Penggal 1 Bahagian VI seksyen yang berikut:**

" Compliance with approved accounting standards. Act 558. 166A. (1) In this Part unless the contrary intention appears, "approved accounting standards" shall have the meaning assigned thereto in section 2 of the Financial Reporting Act 1997.

(2) The approved accounting standards shall apply to the accounts of a company or the consolidated accounts of a holding company if, at the time when the accounts or consolidated accounts are made out, the approved accounting standards—

- (a) apply in relation to the financial year of the company or the holding company to which the accounts or consolidated accounts relate; and
- (b) are relevant to those accounts or consolidated accounts.

(3) Without prejudice to the generality of the provisions of this Division, the directors of a company shall ensure that the accounts of the company and, if the company is a holding company for which consolidated accounts are required, the consolidated accounts of the company, laid before the company at its annual general meeting are made out in accordance with the applicable approved accounting standards.

(4) Notwithstanding subsection (3), the directors of a company or holding company shall not be required to ensure that the accounts or consolidated accounts, as the case may be, are made out in accordance with a particular approved accounting standard if they are of the opinion that making out the accounts or consolidated accounts in accordance with the approved accounting standard would not give a true and fair view of the matters required by section 169 to be dealt with in the accounts or consolidated accounts or a true and fair view of the results of the business and the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated accounts.

(5) Where the accounts or consolidated accounts of a company are not made out in accordance with a particular approved accounting standard under subsection (4), the directors of the company shall—

- (a) disclose by way of a note on the accounts their reason for not making out the accounts or consolidated accounts in accordance with the approved accounting standard; and
- (b) give particulars in the note of the quantified financial effect on the accounts or consolidated accounts if the relevant approved accounting standard was complied with.

(6) Notwithstanding section 169(14), where any conflict or inconsistency arises between the provisions of an applicable approved accounting standard and a provision in the Ninth Schedule in their respective applications to the accounts or consolidated accounts of a company, the provisions of the applicable approved accounting standard shall prevail."

Pindaan  
seksyen 169.

**6.** Seksyen 169 Akta ibu adalah dipinda dengan menggantikan subseksyen (15) dengan subseksyen yang berikut:

"(15) The directors of a company shall cause to be attached to every balance sheet and profit and loss account laid before the company in general meeting (including any consolidated balance sheet and consolidated profit and loss account of a holding company) a statement made in accordance with a resolution of the directors and signed by at least two directors stating whether, in the opinion of the directors—

- (a) the profit and loss account, and where applicable the consolidated profit and loss account, is or

are drawn up so as to give a true and fair view of the results of the business of the company and, if applicable, of all the companies the accounts of which are dealt with in the consolidated profit and loss account for the period covered by the account or accounts;

- (b) the balance sheet, and where applicable the consolidated balance sheet, is or are drawn up so as to give a true and fair view of the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated balance sheet as at the end of that period; and
- (c) the accounts, and where applicable the consolidated accounts, have been made out in accordance with the applicable approved accounting standards."

7. Subseksyen 174(2) Akta ibu adalah dipinda—

Pindaan  
seksyen 174.

(a) dalam perenggan (a)—

- (i) dengan memotong perkataan "and" di hujung subperenggan (i);
- (ii) dengan memasukkan perkataan "and" di hujung subperenggan (ii); dan
- (iii) dengan memasukkan selepas subperenggan (ii) subperenggan yang berikut:

"(iii) in accordance with the applicable approved accounting standards;"  
dan

(b) dengan memasukkan selepas perenggan (a) perenggan yang berikut:

"(aa) if in his opinion the accounts, and where applicable the consolidated accounts, have not been drawn up in

accordance with a particular applicable approved accounting standard—

- (i) whether in his opinion the accounts or consolidated accounts, as the case may be, would, if drawn up in accordance with that approved accounting standard, have given a true and fair view of the matters required by section 169 to be dealt with in the accounts or consolidated accounts;
- (ii) if in his opinion the accounts or consolidated accounts, as the case may be, would not, if so drawn up, have given a true and fair view of those matters, his reasons for holding that opinion;
- (iii) if the directors have given the particulars of the quantified financial effect under section 166A(5), his opinion concerning the particulars; and
- (iv) in a case to which neither subparagraph (ii) nor (iii) applies, particulars of the quantified financial effect on the accounts or consolidated accounts of the failure to so draw up the accounts or consolidated accounts, as the case may be;".

- 9.** Seksyen 195 Akta ibu adalah dipinda dengan menggantikan perkataan "proclamation" dengan perkataan "order". Pindaan seksyen 195.
- 10.** Subseksyen 217(1) Akta ibu adalah dipinda— Pindaan seksyen 217.
- (a) dengan menggantikan koma di hujung perenggan (f) dan (g) dengan koma bernoktah; dan
- (b) dengan memasukkan selepas perenggan (g) perenggan yang berikut:
- "(h) the Registrar on the ground specified in section 218(1)(m) or (n),".
- 11.** Subseksyen 218(1) Akta ibu adalah dipinda— Pindaan seksyen 218.
- (a) dengan memotong perkataan "or" di hujung perenggan (k);
- (b) dengan menggantikan noktah di hujung perenggan (l) dengan koma bernoktah; dan
- (c) dengan memasukkan selepas perenggan (l) perenggan yang berikut:
- "(m) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; or
- (n) the company is being used for any purpose prejudicial to national security or public interest.".
- 12.** Seksyen 319 Akta ibu adalah dipinda dengan menggantikan perkataan "proclamation" di mana-mana jua ia terdapat dengan perkataan "order". Pindaan seksyen 319.
- 13.** Perenggan 324(6) Akta ibu adalah dipinda dengan menggantikan perkataan "proclamation" dengan perkataan "order". Pindaan seksyen 324.

## HURAIAN

Rang Undang-Undang ini bertujuan meminda Akta Syarikat 1965 ("Akta").

2. *Fasal 1* memperkatakan tajuk ringkas dan tarikh mula berkuatkuasa Akta yang dicadangkan.

3. *Fasal 2* bertujuan memasukkan seksyen baru 11A untuk membolehkan dokumen yang dikehendaki di bawah Akta difailkan atau diserahkan secara elektronik dengan Pendaftar.

4. *Fasal 3* bertujuan meminda subseksyen 16(2) Akta untuk menghendaki suatu akuan pematuhan yang dibuat oleh setiausaha pertama syarikat diserahkan dengan Pendaftar bagi maksud memperbadankan sesuatu syarikat. Ia juga bertujuan memasukkan subseksyen baru 16(8) untuk memberi Pendaftar kuasa untuk enggan mendaftarkan memorandum syarikat yang dicadangkan jika dia berpuas hati bahawa syarikat yang dicadangkan itu berkemungkinan digunakan bagi maksud yang menyalahi undang-undang atau apa-apa maksud yang memudaratkan atau tak selaras dengan keamanan, kebajikan, keselamatan, ketenteraman awam, ketertiban atau kemoralan atau bahawa syarikat yang dicadangkan itu akan bermudarat kepada keselamatan negara atau kepentingan awam.

5. *Fasal 4* bertujuan meminda seksyen 139 Akta untuk membolehkan setiausaha syarikat mengosongkan jawatannya jika tiada seorang pun pengarah boleh dihubungi dan untuk memasukkan kehendak bagi persetujuan seseorang sebelum dia dilantik sebagai setiausaha.

6. *Fasal 5* bertujuan memasukkan seksyen baru 166A. Seksyen baru 166A menghendaki akaun sesuatu syarikat dan akaun disatukan sesuatu syarikat pegangan dibuat mengikut piawaian perakaunan diluluskan yang terpakai dengan beberapa pengecualian.

7. *Fasal 6* bertujuan meminda seksyen 169 Akta untuk menghendaki suatu pernyataan dibuat mengikut ketetapan pengarah dan ditandatangani oleh sekurang-kurangnya dua orang pengarah yang menyatakan sama ada akaun atau akaun disatukan syarikat telah dibuat untuk memberikan pandangan yang benar dan berpatutan mengenai perniagaan dan hal-ehwal syarikat itu dan sama ada akaun atau akaun disatukan itu mematuhi piawaian perakaunan diluluskan yang terpakai.

8. *Fasal 7* bertujuan meminda subseksyen 174(2) Akta untuk menghendaki juruaudit menyatakan dalam laporannya sama ada akaun atau akaun disatukan syarikat telah dibuat dengan sewajarnya mengikut piawaian perakaunan diluluskan yang terpakai.

9. *Fasal 8, 9, 12 dan 13* masing-masing bertujuan meminda seksyen 194, 195 dan 319 serta perenggan 324(b) Akta supaya perisytiharan atau penentuan di bawah peruntukan itu dapat dibuat melalui perintah dan tidak melalui pemasyhuran.

10. *Fasal 10* bertujuan meminda subseksyen 217(1) Akta untuk membolehkan Pendaftar mengemukakan petisyen kepada Mahkamah untuk menggulungkan sesuatu syarikat atas alasan yang dinyatakan di bawah perenggan 218(1)(m) atau (n) Akta.

11. *Fasal 11* bertujuan meminda subseksyen 218(1) Akta untuk mengadakan alasan tambahan bagi Mahkamah menggulung secara wajib sesuatu syarikat jika syarikat itu digunakan bagi maksud yang menyalahi undang-undang atau apa-apa maksud yang memudaratkan atau tak selaras dengan keamanan, kebajikan, keselamatan, ketenteraman awam, ketertiban atau kemoralan atau apa-apa maksud yang memudaratkan keselamatan negara atau kepentingan awam.

*IMPLIKASI KEWANGAN*

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan. [PN. (U<sup>2</sup>) 2002.]