

D.R. 23/98

Naskhah Sahih—Bahasa Kebangsaan

RANG UNDANG-UNDANG

bernama

Suatu Akta untuk meminda Akta Syarikat 1965.

[]

DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Syarikat (Pindaan) (No.2) 1998.

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

Pindaan seksyen 67A

2. Seksyen 67A Akta Syarikat 1965 [*Akta 125*], yang disebut "Akta ibu" dalam Akta ini, dipinda—

(a) dalam subseksyen (1), dengan memotong perkataan "or give financial assistance to any person for the purpose of purchasing its shares";

(b) dalam subseksyen (2)—

(i) dalam perenggan (a), dengan menggantikan perkataan "or the giving of financial assistance" dengan perkataan "and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased";

(ii) dalam perenggan (b), dengan memasukkan selepas perkataan "quoted" perkataan "and in accordance with the relevant rules of the Stock Exchange"; dan

(iii) dalam perenggan (c), dengan memotong perkataan "or the giving of financial assistance";

(c) dengan menggantikan subseksyen (3) dengan subseksyen yang berikut:

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

(d) dengan memasukkan selepas subseksyen (3) subseksyen yang berikut:

"(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."; dan

(e) dalam subseksyen (5), dengan menggantikan perkataan "(3)" dengan perkataan "(3E)".

Pindaan seksyen 68

3. Subseksyen 68(1) Akta ibu dipinda dengan menggantikan perkataan "five" dengan perkataan "ten".

Seksyen baru 68A

4. Akta ibu dipinda dengan memasukkan selepas seksyen 68 seksyen yang berikut:

"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:

(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."

Pindaan seksyen 69A

5. Subseksyen 69A(3) Akta ibu dipinda dengan menggantikan perkataan "fifty thousand" dengan perkataan "one million".

Pindaan seksyen 69D

6. Seksyen 69D Akta ibu dipinda dengan menggantikan perkataan "five" di mana-mana juga terdapat dengan perkataan "two".

Pindaan seksyen 69E

7. Perenggan 69E(2)(b) Akta ibu dipinda dengan menggantikan perkataan "fourteen" dengan perkataan "seven".

Pindaan seksyen 69F

8. Subseksyen 69F(2) Akta ibu dipinda dengan menggantikan perkataan "fourteen" dengan perkataan "seven".

Pindaan seksyen 69G

9. Subseksyen 69G(2) Akta ibu dipinda dengan menggantikan perkataan "fourteen" dengan perkataan "seven".

Pindaan seksyen 69M

10. Seksyen 69M Akta ibu dipinda—

- (a) dengan menggantikan perkataan "Five thousand" dengan perkataan "One million"; dan
- (b) dengan menggantikan perkataan "Five hundred" dengan perkataan "Fifty thousand".

Pindaan seksyen 69o

11. Seksyen 69o Akta ibu dipinda—

- (a) dalam subseksyen (6), dengan menggantikan perkataan "five thousand" dengan perkataan "one million"; dan
- (b) dengan memasukkan selepas subseksyen (7) subseksyen yang berikut:

"(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."

Seksyen baru 69p

12. Akta ibu dipinda dengan memasukkan selepas seksyen 69o seksyen yang berikut:

"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."

Pecahan baru 6A

13. Akta ibu dipinda dengan memasukkan selepas seksyen 107 Pecahan yang berikut:

"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 membe

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 in 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 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 6:

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."

Pindaan seksyen 176

14. Seksyen 176 Akta ibu dipinda dengan memasukkan selepas subseksyen (10) subseksyen yang berikut:

"(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."

Pindaan seksyen 365

15. Seksyen 365 Akta ibu dipinda—

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

"(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)."; dan

(b) dalam subseksyen (2) dengan memasukkan selepas perkataan "not profits" perkataan "or are profits not permitted or exempted under subsection (1A), (1B), (1c) or (1D)".

HURAIAN

Rang Undang-Undang ini bertujuan untuk meminda Akta Syarikat 1965 ("Akta 125"), dengan tujuan utama untuk memastikan wujudnya ketelusan yang lebih luas dalam pemegangan syer dalam syarikat.

2. *Fasal 1* Rang Undang-Undang ini mengandungi tajuk ringkas dan kuasa Menteri untuk menetapkan tarikh permulaan kuat kuasa Akta yang dicadangkan.

3. Seksyen 67A Akta 125 telah dimasukkan untuk membolehkan syarikat membeli balik syer mereka. Bagaimanapun, peruntukan yang sedia ada menghendaki supaya syer itu kemudiannya dibatalkan. Pindaan yang dicadangkan dalam *fasal 2* Rang Undang-Undang ini bertujuan untuk mengadakan suatu pilihan lain kepada pembatalan itu. Di bawah pindaan yang dicadangkan, syarikat itu boleh memilih untuk mengekalkan syer itu dalam perbendaharaan. Pindaan yang dicadangkan dalam seksyen 67A juga bertujuan untuk menghapuskan peruntukan yang membenarkan sesuatu syarikat memberikan bantuan kewangan kepada mana-mana orang bagi maksud membeli syernya.

4. *Fasal 3* Rang Undang-Undang ini bertujuan untuk meminda seksyen 68 Akta 125 untuk menambah tempoh seseorang boleh membeli syer belum terbit sesuatu syarikat awam apabila diberi opsyen untuk berbuat demikian oleh syarikat itu daripada lima tahun kepada sepuluh tahun.

5. *Fasal 4* Rang Undang-Undang ini bertujuan untuk memasukkan seksyen baru 68A ke dalam Akta 125. Seksyen yang baru menghendaki sesuatu syarikat supaya menyimpan suatu daftar opsyen yang diberikan kepada orang-orang untuk membeli syer belum terbit dalam syarikat itu. Butir-butir orang itu mesti dicatatkan dalam daftar itu dalam masa 14 hari selepas pemberian opsyen itu.

6. *Fasal 5* Rang Undang-Undang ini bertujuan untuk meminda seksyen 69A Akta 125 untuk meningkatkan denda maksimum bagi ketidakpatuhan kehendak penzahiran dalam seksyen itu. Denda yang dicadangkan ialah satu juta ringgit bagi menggantikan denda lima puluh ribu ringgit yang sedia ada.

7. *Fasal 6* Rang Undang-Undang ini bertujuan untuk meminda seksyen 69D Akta 125 untuk mentakrifkan semula apakah yang dimaksudkan dengan pemegang syer substansial. Di bawah peruntukan sedia ada, seseorang pemegang syer menjadi pemegang syer substansial sekiranya beliau memegang tidak kurang daripada 5 peratus syer sesuatu syarikat. Pindaan yang dicadangkan bertujuan untuk mengurangkan had itu menjadi 2 peratus.

8. *Fasal 7, 8 dan 9* Rang Undang-Undang ini bertujuan untuk meminda seksyen 69E, 69F dan 69G Akta 125 untuk mengurangkan, daripada 14 hari kepada 7 hari, tempoh seseorang yang menjadi pemegang syer substansial atau tidak lagi menjadi pemegang syer substansial sesuatu syarikat, atau yang kepentingannya dalam syarikat itu sudah berubah, mesti memberitahu syarikat itu.

9. *Fasal W* Rang Undang-Undang ini bertujuan untuk meminda seksyen 69M Akta 125 untuk meningkatkan denda maksimum bagi ketidakpatuhan kehendak penzahiran dalam seksyen 69e, 69F, 69G dan 69j daripada lima ribu ringgit kepada satu juta ringgit. *Fasal* ini juga bertujuan untuk meningkatkan penalti bagi kesalahan berterusan daripada lima ratus ringgit kepada lima puluh ribu ringgit sehari.

10. *Fasal 11* Rang Undang-Undang ini bertujuan untuk meminda seksyen 69o Akta 125 untuk meningkatkan denda maksimum yang boleh dikenakan ke atas seseorang anggota syarikat kerana tidak mematuhi notis oleh syarikat itu yang menghendakinya supaya menzahirkan kepentingan benefisialnya dalam syer undi syarikat itu. Pindaan yang dicadangkan bertujuan untuk meningkatkan denda maksimum daripada lima ribu ringgit kepada satu juta ringgit.

Fasal 11 juga bertujuan untuk memberi Bursa Saham Kuala Lumpur dan Suruhanjaya Sekuriti kuasa untuk mengarahkan sesuatu syarikat supaya menggunakan kuasanya di bawah seksyen 69o untuk menghendaki seseorang anggota syarikat itu supaya menzahirkan kepentingannya dalam syer syarikat itu.

11. *Fasal 12* Rang Undang-Undang ini bertujuan untuk memasukkan seksyen baru 69P ke dalam Akta 125. Peruntukan yang baru itu bertujuan untuk menyifatkan syarikat penama dan yang lain yang bertindak sebagai pemegang amanah *bare trust* sebagai pemegang syer substansial jika mereka memegang lebih daripada dua peratus daripada semua syer undi sesuatu syarikat. Oleh yang demikian, kehendak penzahiran di bawah seksyen 69E, 69F dan 69G akan terpakai bagi syarikat-syarikat itu.

12. *Fasal 13* Rang Undang-Undang ini bertujuan untuk memasukkan Pecahan baru 6A ke dalam Bahagian IV Akta 125. Pecahan baru yang dicadangkan itu mengandungi 6 seksyen, iaitu seksyen 107A, 107e, 107c, 107D, 107E dan 107F.

Seksyen 107A mengandungi takrif istilah yang digunakan dalam Pecahan baru itu.

Seksyen 107B bertujuan untuk mengiktiraf seseorang yang telah mendepositkan sekuritinya dalam sesuatu syarikat dengan sesuatu depositori pusat ("pendeposit") sebagai anggota syarikat itu. Seksyen itu juga bertujuan mengiktiraf rekod pendeposit yang disimpan oleh sesuatu depositori pusat sebagai daftar anggota. Dengan yang demikian, daftar anggota yang disenggarakan oleh sesuatu syarikat akan hanya mengandungi nama dan butir-butir tentang depositori pusat itu atau syarikat penamanya sebagai satu-satunya anggota syarikat itu selagi sekuriti syarikat itu didepositkan dengan depositori pusat itu.

Seksyen 107c bertujuan untuk mewajibkan pemindahan sekuriti sesuatu syarikat yang didepositkan dengan sesuatu depositori pusat diurusniagakan dengan cara catatan buku sahaja, yang hendaklah dilaksanakan oleh depositori pusat itu. Syarikat itu tidak lagi boleh mendaftarkan dan melaksanakan pemindahan itu.

Seksyen 107D bertujuan untuk memastikan bahawa rekod pendeposit tidak tertakluk kepada pembetulan oleh Mahkamah. Bagaimanapun, Mahkamah akan mempunyai kuasa untuk memberikan remedi kepada pihak-pihak yang terkilan.

Seksyen 107E mengandungi peruntukan yang dimaksudkan untuk melindungi sesuatu depositori pusat dan rekod pendepositnya daripada apa-apa prosiding berhubung dengan pelupusan harta sesuatu syarikat selepas penggulungan syarikat itu bermula. Seksyen 223 Akta 125, yang mengisytiharkan bahawa apa-apa pelupusan harta yang dibuat dalam masa 6 bulan dari tarikh permulaan penggulungan sesuatu syarikat adalah tidak sah, dijadikan tidak terpakai bagi pelupusan harta yang dibuat dengan cara catatan buku oleh depositori pusat. Bagaimanapun, Mahkamah diberi kuasa untuk mengawardkan ganti rugi atau membuat perintah lain kecuali perintah bagi pembetulan rekod pendeposit.

Seksyen 107F bertujuan untuk memberi Menteri kuasa untuk memberikan pengecualian daripada peruntukan Pecahan baru itu.

13. *Fasal 14* bertujuan untuk meminda seksyen 176 Akta 125 untuk memastikan bahawa pemiutang tahu tentang permohonan yang dibuat di bawah subseksyen (10) dan untuk menentukan bahawa perintah penahanan di bawah subseksyen itu hanya diberikan di bawah keadaan tertentu sahaja untuk mengelakkan apa-apa penyalahgunaan peruntukan itu.

14. *Fasal 15* bertujuan untuk meminda seksyen 365 Akta 125 untuk membenarkan dividen dibayar berkenaan dengan sesuatu tahun kewangan hanya setakat amaun yang tidak melebihi untung selepas cukai bagi tahun kewangan itu atau purata dividen yang diisytiharkan bagi dua tahun kewangan sebelum tahun kewangan itu. Peruntukan ini tidak akan terpakai bagi subsidiari sesuatu syarikat pemegang, syarikat persendirian yang dipunyai sepenuhnya oleh pemegang syer Malaysia dan syarikat yang tahun kewangannya bermula sebelum 1 Julai 1997.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan.

[PN.(LP)2100.]