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Five Noteworthy Changes to the Companies Act

Parliament has introduced some highly anticipated amendments to the Companies Act 2016 (**2016 Act**).^[1] The rationale behind the Amendment Act is to provide clarification in respect of certain provisions of the 2016 Act, and to further facilitate the effective and structured enforcement of such provisions.^[2] In addition, the Amendment Act was also aimed at ensuring the obligations under the 2016 Act can be fully complied with and implemented by all companies and their officers.^[3]

Execution of documents

Section 66 of the 2016 Act provides for the manner of execution of documents by a company, which can be done either by way of affixing of a common seal; or by way of signature, by at least two authorised officers of the company.^[4] The Amendment Act introduces a new subsection 66(6) which limits the scope of application of section 66.

Pursuant to the new subsection 66(6), it is clear that the requirement for the execution of documents in the manner as stated in subsection 66(1) is limited to documents that are required to be executed in such manner by any written law, resolution, agreement or constitution. The result of this change is that any document which does not fall within the definition of “document” in subsection 66(6) need not comply with the formalities required under subsection 66(1).

Redemption of preference shares out of capital

In addressing the confusion faced by lawyers and accountants alike, the Amendment Act has introduced amendments to subsections 72(4) and (5), clarifying that only a redemption of preference shares out of the profits of a company would require a transfer of a sum equal to the amount of the shares redeemed into the share capital of the company. This amendment has also made it clear that the requirement for the transfer of an equivalent sum of the shares redeemed into the share capital account of the company does not apply to the redemption of preference shares out of the share capital of the company.^[5]

Remuneration of auditors

Subsection 340(1) sets out the relevant matters that must be

addressed at every AGM of public companies, such as, among others, the laying of audited financial statements. The Amendment Act replaces the requirement to transact the ordinary business of “*the appointment and the fixing of the fee of directors*” at an AGM of a public company with the requirement to carry out “*the appointment and the fixing of the remuneration of auditors*” at the AGM.^[6]

Dismissal of application for judicial management order

Section 409 essentially allows the court to dismiss an application for judicial management if a receiver or receiver and manager over the assets of the company has been appointed, **and** the making of the order is opposed by a secured creditor. The Amendment Act has loosened up the aforementioned two-pronged test and has replaced the word “and” with “or”.

Therefore, the court’s power to dismiss an application is now more flexible, as the court need only be satisfied that either one of the requirements under section 409 has been met. The amendment introduced to this section is intended to strengthen the protection of secured creditors under the corporate rescue mechanism.^[7]

Security for costs

The 2016 Act had removed the provision on the requirement for security for costs, which was previously stipulated in section 351 of the repealed Companies Act 1965. The Amendment Act has restored such provision via the new section 580A. Akin to the previous section 351 of the 1965 Act, section 580A essentially provides that where a company is the plaintiff in any action or other proceedings, and if it appears that there is reasonable belief that the company will be unable to pay the costs of the defendant under the proceedings, the court may order the plaintiff company to provide sufficient security for costs.

The Amendment Act, being the first amendment to the 2016 Act since its coming into force on 31 January 2017, is certainly a welcomed development by Parliament in addressing some of the ambiguities under the 2016 Act.

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[1] The Companies (Amendment) Act 2019 was passed by the Dewan Rakyat on 10 July 2019 and by the Dewan Negara on 31 July 2019, as published on the official website of the Parliament of Malaysia. The Amendment Act will be gazetted and come into force on a date to be appointed by the Minister of Domestic Trade and Consumer Affairs. Please see [link](#).

[2] See, generally, the FAQ on the Companies (Amendment) Bill 2019 published by the Companies Commission of Malaysia, available [here](#).

[3] See, generally, the FAQ on the Companies (Amendment) Bill 2019 published by the Companies Commission of Malaysia, available [here](#).

[4] Section 66(1) and (2) of the Companies Act 2016

[5] The redemption of preference shares out of the capital of the company shall only be redeemed subject to the solvency statement obligation pursuant to sections 72 (6) and 113 of the Companies Act 2016

[6] Section 230 of the Companies Act 2016 provides that the fees, and any benefits payable to the directors of a public company, or of a listed company and its subsidiaries, shall be approved at a general meeting.

[7] See, generally, the FAQ on the Companies (Amendment) Bill 2019 published by the Companies Commission of Malaysia, available [here](#).