

Client Alert

July 2019

Companies (Amendment) Bill 2019: Five Key Amendments to the Companies Act 2016

Background

The Companies (Amendment) Bill 2019 ("**Bill**") was recently passed at the Dewan Rakyat on 10 July 2019 and will soon be tabled before the Dewan Negara for its approval.

The five key amendments being introduced to the Companies Act 2016 ("**Act**") under the Bill are as follows.

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1. Execution Formalities on Specific Documents Only

Section 66 of the Act provides for the formalities of executing documents by a company, i.e:

- (a) by way of the affixing of a common seal; or
- (b) signature of at least 2 authorised officers (one of whom must be a director).

Through a new Section 66(6), the Bill clarifies that the formalities above only apply to documents which are required to be executed by any written law, resolution, agreement or constitution.

Contracts, letters, invoices, notices and similar documents to be issued by a company are therefore not be subjected to the stricter execution formalities of Section 66 and can be executed by any employee empowered to do so within the organisation.

2. Redemption of Preference Shares

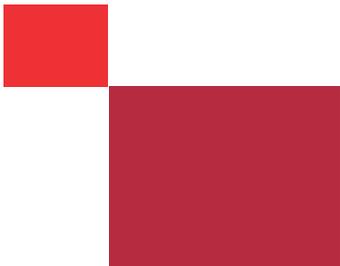
In addition to enabling the redemption of preference shares ("**PS**") out of profits and fresh issue of shares, Section 72(4)(c) of the Act allowed a company to redeem PS out of capital. The amendments to Section 72(4) and (5) pursuant to the Bill clarifies that a redemption of PS out of capital will not be subject to Section 72(5) and will only be subject to the solvency statement obligation.

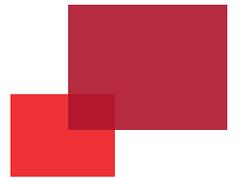
The requirement under Section 72(5) to transfer a sum equal to the amount of shares redeemed into the share capital account of the company will only apply where the redemption of PS is made out of profits.

3. Appointment and Remuneration of Auditors at AGMs

At present, Section 340 is silent on the need for the appointment and remuneration of auditors to be tabled at an annual general meeting of a public company ("**AGM**") despite the Act providing among others that:

- (a) an auditor shall be appointed by ordinary resolution at an AGM (*Section 271(4)(a)*); and





(b) the remuneration of an auditor shall be fixed by shareholders (*Section 274(1)(a)*).

The Bill seeks to remove this ambiguity and makes clear that the appointment of auditors and their remuneration must be one of the businesses to be tabled at the AGM of a public company for shareholder approval.

4. Dismissals of Applications for Judicial Management Order

The Act had introduced a judicial management mechanism which will allow a company, its directors or a creditor, to apply to the High Court to place the management of the company in the hands of a qualified insolvency practitioner known as a judicial manager (i.e. a judicial management order). The role of the judicial manager is to prepare and table a restructuring plan for creditor approval and, once approved, to oversee its implementation.

At present, the High Court is empowered to dismiss an application made by a company for a judicial management order where:

- (a) a receiver or receiver and manager has been or will be appointed; and
- (b) the making of the order is opposed by a secured creditor.

Moving forward, it will be easier for the High Court to refuse a grant of a judicial management order as the Bill enables an application to be dismissed where only one of the two criteria above is satisfied. As such, in line with policy objectives of providing protection to secured creditors, the lodgment by a secured creditor of an objection to the High Court may be sufficient to derail a company's application for a judicial management order.

5. Companies to Provide Sufficient Security for Costs

The Bill also seeks to re-introduce a previous provision under the Companies Act 1965 ("**Old Act**") which was omitted when the Act was promulgated.

To prevent frivolous claims and abuse of process by parties seeking to initiate legal proceedings and consistent with Section 351 of the Old Act, the Bill will empower the High Court to require a company initiating legal proceedings as a plaintiff ("**Plaintiff Company**") to provide sufficient security for all costs and to stay proceedings until such security is given.

Conclusion

The Bill represents the first substantial amendment to the Act since its coming into force on 31 January 2017. While brief, the revisions being proposed in the Bill goes a long way to remove the ambiguity surrounding the practical application of certain provisions of the Act (e.g. redemption of PS and formalities to be adhered to when executing certain documents) and will be welcomed by the relevant stakeholders in the business community.

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