

A BILL

intituled

An Act to amend the Offshore Companies Act 1990.

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BE IT ENACTED by the Duli Yang Maha Mulia Sen 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:

1. This Act may be cited as the Offshore Companies (Amendment) Act 1991. hortS title.

2. The Offshore Companies Act 1990, which in this Act is referred to as the "principal Act", is amended by substituting for section 6 the following: Amendment of section 6. Act 441.

"Prohibition on shareholding in offshore company. Act 89.

Act 276.

Act 3J2.

Act 372.

6. No resident, other than—

(a) a domestic or foreign company granted a licence or registered under the—

(i) Insurance Act 1963;

(ii) Islamic Banking Act 1983;

(iii) Takaful Act 1984; or

(iv) Banking and Financial Institutions Act 1989; or

(b) a trust company,

may hold shares, either individually or with another person, in an offshore company, but a trust company which is a domestic company may only hold such shares as trustee or nominee."

Amendment of section 29. 3. Section 29 of the principal Act is amended by substituting for the words "and any person" in subsection (2) the words "except by an offshore company or foreign offshore company granted a licence under the Offshore Banking Act 1990 and any person, other than an offshore company or foreign offshore company so granted a licence under that Act,".

Amendment of section 31. 4. Section 31 of the principal Act is amended by substituting for subsection (6) the following:

"(6) In this section, "prescribed company" means—

(a) an offshore company or a foreign offshore company granted a licence under the Offshore Banking Act 1990; or

(b) an offshore company or a foreign offshore company or a trust company which has been declared by the Minister by notice published in the *Gazette* to be a prescribed company for the purposes of this section."

Amendment of section 87. 5. Section 87 of the principal Act is amended by substituting for the full stop at the end of subsection (2) a colon and inserting immediately thereafter the following new proviso:

"Provided that an officer of a domestic or foreign company granted a licence or registered under the Insurance Act 1963, Islamic Banking Act 1983, Takaful Act 1984 or the Banking and Financial Institutions Act 1989 made available for the appointment by such domestic or foreign company, as the case may be, may act or be appointed as a resident director of an offshore company in which such domestic or foreign company holds shares."

Amendment of section 109. 6. Section 109 of the principal Act is amended—

(a) by substituting for the word "The" in subsection (4) the words "Subject to section 113A, the"; and

- (b) by inserting, immediately after the words "in subsection (4)" in subsection (5), the words "or the company's unaudited accounts, as the case may be,".

7. Section 111 of the principal Act is amended by inserting, immediately after the words "audited accounts" in lines three and four of subsection (1), the words "or unaudited accounts, as the case may be," and "or unaudited accounts" respectively.

Amendment
of section 111.

8. Section 112 of the principal Act is amended—

Amendment
of section 112.

- (a) by inserting, immediately after the word "accounts", the words "or unaudited accounts, as the case may be,";
- (b) by inserting, immediately after the word "thereon", the words "(if applicable)"; and
- (c) by substituting for the word "fourteen" the word "seven".

9. The principal Act is amended by inserting, immediately after section 113, the following new section

New
section 113A.

113A!

"Auditor not required in certain circumstances.

Act 443.

Act 444.

113A. An offshore company shall not be required to appoint an auditor so long as—

- (a) it is not a company licensed under the Offshore Banking Act 1990 or the Offshore Insurance Act 1990;
- (b) the company or an officer, director, agent or any person on behalf of the company does not—
- (i) issue an invitation or distribute forms of application to the public or to any member of the public to subscribe for shares or debentures in the company; or
- (ii) issue an invitation to the public or to any member of the public to deposit money with, or lend money to, the company; and

- (c) the members of the company so resolve at a meeting of members of the company that such an appointment need not be made in respect of each financial year."

New sections 150, 151 and 152.

10. The principal Act is amended by inserting, immediately after section 149, the following new sections 150, 151 and 152:

"Power of exemption. 150. The Minister may, on the recommendation of the Registrar, on an application in writing, exempt any offshore company or foreign offshore company or class of offshore companies or foreign offshore companies from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

Additional fee. 151. (1) An offshore company or foreign offshore company carrying on an offshore business activity which is an offshore trading activity as defined in Labuan Offshore Business Act 445. Activity Tax Act 1990 may, in addition to any other fee payable under this Act, pay a fee of twenty thousand ringgit to the Registrar.

(2) Such fee shall be paid not later than the 31st day of March of a calendar year.

Non-application of specified written laws. 152. (1) The Yang di-Pertuan Agong may, by order published in the *Gazette*, provide that any written law, or part thereof, specified in the order, shall not apply in relation to an offshore company, a foreign offshore company, a trust company, or a person who holds a valid licence granted under either section 6 (2) of the Offshore Banking Act 1990 or section 9 (1) of the Offshore Insurance Act 1990, or shall apply thereto with such modifications as may be set out in the order.

Act 443.

Act 444.

(2) The modifications made to a written law by an order made under subsection (1) shall be deemed to be an integral part of such written law for the purposes of the order.

(3) An order under subsection (1) may be made to have retrospective effect from such date as may be specified in the order.

(4) **In** this section "modification" includes amendment, adaptation, alteration, variation, addition, deletion, substitution, or exclusion."

EXPLANATORY STATEMENT

This Bill seeks to amend the Offshore Companies Act 1990,

2. *Clause 2* seeks to amend section 6 to provide for Malaysian banks and insurance companies to hold shares in offshore companies without the need to specify the shareholding structure.

3. *Clause 3* seeks to amend section 29 to allow licensed offshore banks to borrow or lend money to Malaysian residents.

4. *Clause 4* seeks to amend section 31 to declare all offshore banks as prescribed companies from the onset.

5. *Clause 5* seeks to amend section 87 to allow Malaysian-owned offshore banks and offshore insurance companies to appoint resident directors who are not officers of trust companies.

6. *Clauses 6, 7 and 8* seek to amend sections 109, 111 and 112 respectively, consequential to the introduction of a new section 113A which grants exemptions in the appointment of auditors under certain circumstances.

7. *Clause 8* also seeks to amend section 112 by requiring a copy of the audited accounts to be circulated to members at least seven days before a meeting of the members instead of the current requirement of fourteen days.

8. *Clause 9* seeks to introduce a new section 113A which grants exemptions in the appointment of auditors by an offshore company under certain circumstances.

9. *Clause 10* seeks to introduce new sections 150, 151 and 152. Section 150 empowers the Minister on the recommendation of the Registrar of Companies to give exemption to any offshore company or foreign offshore company from the requirement to comply with any of the provisions of this Act. Section 151 exempts an offshore

company or a foreign offshore company from the requirement to pay tax on its profit which is chargeable to tax, if that offshore company or foreign offshore company has paid the specified fee to the Registrar of Companies not later than the 31st March of a calendar year. Section 152 empowers the Yang di-Pertuan Agong to declare that a certain specified law or a part thereof shall not be applicable to an offshore company, a foreign offshore company, a trust company or a person licensed as an offshore bank or offshore insurance company.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure. fPN. (U²) 1665.]