

A BILL

i n t i t u l e d

An Act to amend the Labuan Companies Act 1990.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Labuan Companies (Amendment) Act 2022.

(2) Subsection 4(b) is deemed to have come into operation on 1 January 2019.

General amendments

2. The Labuan Companies Act 1990 [*Act 441*], which is referred to as the “principal Act” in this Act, is amended—

(a) by substituting for the words “shall be guilty of an offence against this Act” wherever appearing the words “commits an offence under this Act”; and

- (b) in the English language text, by substituting for the words “shall be guilty of an offence under this Act” wherever appearing the words “commits an offence under this Act”.

Amendment of section 2

3. Section 2 of the principal Act is amended—

- (a) in the definition of “domestic company”, by substituting for the words “Companies Act 1965 [Act 125]” the words “Companies Act 2016 [Act 777]”;
- (b) in the English language text, in the definition of “foreign offshore company”, by substituting for the words ‘“foreign offshore company”’ the words ‘“foreign Labuan company”’; and
- (c) in the definition of “resident”, by substituting for the words “pursuant to section 43 of the Exchange Control Act 1953 [Act 17]” the words “pursuant to paragraph 214(6)(a) of the Financial Services Act 2013 [Act 758] and paragraph 225(6)(a) of the Islamic Financial Services Act 2013 [Act 759]”.

Amendment of section 7

4. Section 7 of the principal Act is amended—

- (a) in subsection (3)—
 - (i) by substituting for the words “Division 5 of Part IV of the Companies Act 1965” the words “the relevant provisions of the Interest Schemes Act 2016 [Act 778]”; and
 - (ii) by substituting for the words “of the Division” the words “of the Interest Schemes Act 2016”; and
- (b) by deleting subsections (4), (5) and (6).

Amendment of section 8

5. Section 8 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(6A) If default is made in complying with this section, the Labuan company, foreign Labuan company and every officer of the company who is in default commits an offence under this Act.

Penalty: Five hundred thousand ringgit or imprisonment for one year or both.”.

Amendment of section 9A

6. Subsection 9A(2) of the principal Act is amended by inserting after the words “A Labuan trust company” the words “or any other person approved by the Authority”.

Amendment of section 10

7. Section 10 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: One hundred thousand ringgit.”.

Amendment of section 11

8. Section 11 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: One hundred thousand ringgit.”.

Amendment of section 12

9. Section 12 of the principal Act is amended—

(a) in subsection (1), by inserting after the words “Subject to such conditions” the words “and payment of the prescribed fee”; and

(b) by inserting after subsection (4) the following subsection:

“(4A) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: Fifty thousand ringgit or imprisonment for a term not exceeding three years or both.”.

Amendment of section 13

10. Subsection 13(9) of the principal Act is amended—

(a) in subparagraph (a)(i), by substituting for the word “six” the word “seven”;

(b) in subparagraph (a)(iii), by substituting for the word “fifteen” the word “seven”; and

(c) in paragraph (b), by substituting for the words “fifteen years” the words “seven years and six months”.

Amendment of section 22

11. Subsection 22(3) of the principal Act is amended by substituting for the word “Ten” the word “Fifty”.

Amendment of section 25

12. Subsection 25(3) of the principal Act is amended by inserting after the words “Ten thousand ringgit” the words “and default penalty of five hundred ringgit”.

Amendment of section 26

13. Section 26 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) If default is made in complying with this section, the Labuan company or every officer of the company which is in default commits an offence under this Act.

Penalty: One hundred thousand ringgit.”.

New section 46A

14. The principal Act is amended by inserting after section 46 the following section:

“Prohibition to issue bearer share or bearer share warrants

46A. (1) A Labuan company shall not—

- (a) issue a bearer share or bearer share warrants;
- (b) convert a share into a bearer share or bearer share warrants into share warrants; or
- (c) exchange a share for a bearer share.

(2) Any purported issuance, conversion or exchange of such bearer share, bearer share warrants, share or share warrants under subsection (1) is void.

(3) A provision in a Labuan company’s memorandum or articles which purports to enable the company to issue, convert or exchange any of the bearer share, bearer share warrants, share or share warrants is void.

(4) This section shall apply to a foreign Labuan company.

(5) If default is made in complying with this section, the Labuan company, foreign Labuan company and every officer of the company who is in default commits an offence under this Act.”.

Amendment of section 53

15. Section 53 of the principal Act is amended—

(a) by inserting after subsection (9B) the following subsection:

“(9BA) If default is made in complying with subsection (9B), the director of the Labuan company who is in default commits an offence under this Act.

Penalty: Fifty thousand ringgit or imprisonment for a term not exceeding three years or both.”; and

(b) in subsection (10), by substituting for the words “Imprisonment for three years or ten thousand ringgit or both” the words “Three million ringgit or imprisonment for a term not exceeding five years or both.”.

Amendment of section 54

16. Section 54 of the principal Act is amended by inserting after subsection (3) the following penalty provision:

“Penalty: Five hundred thousand ringgit.”.

Amendment of section 55

17. Section 55 of the principal Act is amended—

(a) in subsection (3C), by inserting after the words “certified copy of the solvency declaration” the words “and notice of such redemption of share in the prescribed form”; and

(b) by inserting after subsection (3C) the following subsection:

“(4) If default is made in complying with subsection (3C), the director of the Labuan company who is in default commits an offence under this Act.

Penalty: Fifty thousand ringgit or imprisonment for a term not exceeding three years or both.”.

Amendment of section 58

18. Section 58 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) If default is made in complying with subsection (1), the Labuan company which is in default commits an offence under this Act.

Penalty: Twenty thousand ringgit. Default penalty.”; and

(b) in subsection (6), by substituting for the word “Ten” the word “Twenty”.

Amendment of section 69

19. Section 69 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after the renumbered subsection (1) the following subsection:

“(2) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: Three million ringgit or imprisonment for a term not exceeding five years or both.”.

Amendment of section 70

20. Section 70 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after the renumbered subsection (1) the following subsection:

“(2) If default is made in complying with this section, the Labuan company, foreign Labuan company or agent of the company who is in default commits an offence under this Act.

Penalty: Three million ringgit or imprisonment for a term not exceeding five years or both.”.

Amendment of section 71

21. Section 71 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: One million ringgit or imprisonment for a term not exceeding three years or both.”.

Amendment of section 72

22. Section 72 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) If default is made in complying with this section, the Labuan company and every officer of the company who is in default commits an offence under this Act.

Penalty: Fifty thousand ringgit or imprisonment for a term not exceeding three years or both.”.

Amendment of section 73

23. Section 73 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Subsection (1) shall not apply to sections 69, 70, 71 and 72.”.

Amendment of section 78

24. Paragraph 78(2)(c) of the principal Act is amended by inserting before the words “the nominal value” the words “for a foreign Labuan company.”.

Amendment of section 80

25. Section 80 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) A Labuan company shall within thirty days notify the Authority in the prescribed form of any transfer of shares or debentures or any change of the information submitted under subsection (1).”.

Amendment of section 83

26. Section 83 of the principal Act is amended—

- (a) in subsection (2), by substituting for the words “Ten thousand ringgit” the words “Fifty thousand ringgit and default penalty of five hundred ringgit”; and
- (b) in subsection (5), by substituting for the word “Ten” the word “Fifty”.

Amendment of section 84

27. Subsection 84(2) of the principal Act is amended by substituting for the word “Ten” the word “Fifty”.

New section 84A

28. The principal Act is amended by inserting after section 84 the following section:

“Assignment and variation of charge

84A. (1) If after a charge on property of a Labuan company has been created and lodged pursuant to section 84 and if a person other than the original charge holder becomes the

new holder of the charge or any variation to the particulars of the charge, the company shall, within thirty days and upon payment of a prescribed fee, lodge with the Authority a notice stating the assignment or variation and the notice shall contain other information as may be determined by the Authority.

(2) If default is made in complying with this section, the Labuan company and every officer of the company who is in default commits an offence under this Act.

Penalty: Fifty thousand ringgit. Default penalty.”.

Amendment of section 85

29. Section 85 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “a Labuan trust company” the words “, or any other office approved by the Authority”; and
- (b) in subsection (5), by substituting for the word “Ten” the word “Fifty”.

Amendment of section 86

30. Section 86 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “Penalty: Ten thousand ringgit. Default penalty.”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) If default is made in complying with subsection (1), the Labuan company and every officer of the company who is in default commits an offence under this Act.

Penalty: Fifty thousand ringgit. Default penalty.”; and

- (c) in subsection (4), by substituting for the word “Ten” the word “Fifty”.

Amendment of section 87

31. Section 87 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “at least one director who may be a resident director” the words “one or more directors at least one of whom shall be a resident director”;

(b) by substituting for subsection (2) the following subsection:

“(2) A resident director of a Labuan company under subsection (1) shall be—

(a) a trust officer of a Labuan trust company approved by the Authority under the Labuan Financial Services and Securities Act 2010 made available by the Labuan trust company to be appointed as a resident director; or

(b) any natural person who has attained the age of eighteen, who is otherwise of full legal capacity, fulfills such criteria or requirement as may be determined by the Authority and has consented in writing to be appointed as a resident director.”;

(c) by substituting for subsection (5) the following subsection:

“(5) A trust officer or a natural person appointed as a resident director pursuant to paragraph (2)(a) or (2)(b), as the case may be, may retire or resign subject to the terms of the agreement between the Labuan trust company and the Labuan company of which he was appointed as resident director.”;

(d) by deleting subsection (5A);

(e) by inserting after subsection (9) the following penalty provision:

“Penalty: Three million ringgit or imprisonment for a term not exceeding five years or both.”; and

(f) by substituting for subsection (10) the following subsection:

“(10) The fees payable for the appointment as a resident director shall be paid—

- (a) in the case of the trust officer appointed as a resident director of Labuan company pursuant to paragraph 2(a), to the Labuan trust company which made him available for the appointment; and
- (b) in the case of the natural person appointed as resident director of Labuan company pursuant to paragraph 2(b), directly to the person.”.

Substitution of section 90

32. The principal Act is amended by substituting for section 90 the following section:

“Persons disqualified from being a director

90. (1) A person shall not be appointed as a director or hold office or take part or be in any way directly or indirectly concerned with or in the management of a Labuan company, if the person—

- (a) has been convicted of any offence in connection with the formation or management of a corporation or company;
- (b) has been convicted of any offence involving fraud, bribery or dishonesty;
- (c) is an undischarged bankrupt or insolvent; or
- (d) is deemed unfit by the Authority.

(2) The Labuan company shall ensure that no person acting or nominated to act as a director or hold office or take part or be in any way directly or indirectly concerned with or in the management of a Labuan company is a disqualified person under subsection (1).

(3) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: One million ringgit or imprisonment for a term not exceeding five years or both.”.

Amendment of section 91

33. Section 91 of the principal Act is amended by inserting after subsection (10) the following subsection:

“(11) If default is made in complying with this section, the director of the company who is in default commits an offence under this Act.

Penalty: Three million ringgit or imprisonment for a term not exceeding five years or both.”.

Amendment of section 92

34. Section 92 of the principal Act is amended—

(a) by substituting for subsection (11) the following subsection:

“(11) An officer of a Labuan company who contravenes this section shall be liable to the company for any profits made by him and for any damage suffered by the company as a result of such contravention.”;

(b) by inserting after subsection (12) the following penalty provision:

“Penalty: Five hundred thousand ringgit or imprisonment for a term not exceeding five years or both.”; and

(c) by inserting after subsection (12) the following subsection:

“(12A) If default is made in complying with subsection (3), the director of the Labuan company who is in default commits an offence under this Act.

Penalty: Three million ringgit or imprisonment for a term not exceeding five years or both.”.

Amendment of section 93

35. Section 93 of the principal Act is amended—

(a) in subsection (2)—

- (i) by substituting for the words “an officer” the words “a trust officer”;
- (ii) by substituting for the words “the Labuan Financial Services Authority Act 1996” the words “the Labuan Financial Services and Securities Act 2010”; and
- (iii) by substituting for the words “or a Labuan company, or a domestic company wholly owned by the Labuan trust company,” the words “or a Labuan company or a domestic company, wholly owned by the Labuan trust company and approved by the Authority,”;

(b) in subsection (2c), by substituting for the words “the provisions of section 151 shall apply” the words “the company is deemed to be struck off the register”; and

(c) by substituting for subsection (6) the following subsection:

“(6) The salary of the resident secretary of a Labuan company payable by a Labuan company shall be paid directly to the Labuan trust company which made him available for the appointment.”.

Amendment of section 94

36. Subsection 94(6) of the principal Act is amended by substituting for the word “Ten” the word “Fifty”.

Amendment of section 94A

37. Section 94A of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “**directors and**”;
- (b) by deleting the words “resident director or”; and
- (c) by substituting for the words “shall be guilty of that offence” the words “commits an offence under this Act”.

Amendment of section 105

38. Subsection 105(3) of the principal Act is amended by substituting for the word “Ten” the word “Fifty”.

New sections 108A, 108B, 108C, 108D, 108E, 108F, 108G and 108H

39. The principal Act is amended by inserting after section 108 the following sections:

“Beneficial ownership of Labuan company

108A. In this Act, “beneficial ownership” means a natural person who owns or controls a Labuan company or foreign Labuan company, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in the Labuan company or foreign Labuan company, or who exercises effective control and influence in the Labuan company or foreign Labuan company as may be determined by the Authority.

Power of company to require disclosure of beneficial ownership information

108B. (1) A Labuan company or foreign Labuan company shall take reasonable steps to find out and identify the beneficial owner of the Labuan company or foreign Labuan company, as the case may be.

(2) Any Labuan company or foreign Labuan company may, by notice in writing, require any member of the Labuan company or foreign Labuan company whom the Labuan company or foreign Labuan company knows or has reasonable grounds to believe that he is a beneficial owner in relation to the Labuan company or foreign Labuan company—

- (a) to state whether he is a beneficial owner of the Labuan company or foreign Labuan company;
- (b) to state whether he knows or has reasonable grounds to believe that any other person is a beneficial owner of the Labuan company or foreign Labuan company or is likely to have that knowledge and to give such particulars of that person that are within his knowledge; and
- (c) to provide such other information within such reasonable time as specified in the notice.

(3) Where a Labuan company or foreign Labuan company is informed or knows or has reasonable grounds to believe, that any other person is a beneficial owner of the Labuan company or foreign Labuan company, or is likely to have that knowledge, the Labuan company or foreign Labuan company may by notice in writing require that other person—

- (a) to state whether he is a beneficial owner of the Labuan company or foreign Labuan company;
- (b) to state whether he knows or has reasonable grounds to believe that any other person is a beneficial owner of the Labuan company or foreign Labuan company, or is likely to have that knowledge and to give such particulars of that other person that are within his knowledge; and
- (c) to provide such other information within such reasonable time as specified in the notice.

(4) Any Labuan company or foreign Labuan company may, by notice in writing, require any member of the Labuan company or foreign Labuan company to inform the Labuan company or foreign Labuan company, within a reasonable time, as is specified in the notice, whether ownership or control of such member in the Labuan company or foreign Labuan company is subjected to an agreement or arrangement under which another person is entitled to control the member's exercise of his interest or right and if so, to give particulars of the agreement or arrangement and the parties to the agreement or arrangement.

(5) A resident secretary of a Labuan company or foreign Labuan company shall ensure that the Labuan company or foreign Labuan company complies with the obligations under this section.

(6) If default is made in complying with this section, the Labuan company, foreign Labuan company and every officer of the company who is in default commits an offence under this Act.

Duty to lodge information with the Authority

108c. (1) The particulars of beneficial ownership obtained under section 108B shall be lodged by the Labuan company, foreign Labuan company or the resident secretary with the Authority as part of the annual return lodge pursuant to section 109 or 129.

(2) The Authority may, by notice in writing, direct a Labuan company or foreign Labuan company to invoke its powers under this section and to immediately provide the Authority with the information obtained under section 108B.

(3) Any person who submits false or misleading or inaccurate information to the Authority under this section commits an offence under this Act.

Particulars of beneficial ownership

108D. (1) The particulars of beneficial ownership required under subsection 108B(2) or (3) shall be determined by the Authority in a guideline issued under section 108G.

(2) Whenever a Labuan company or foreign Labuan company receives information from a person in accordance with any requirement imposed on such person under section 108B, the Labuan company or foreign Labuan company shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by the company under section 105—

- (a) the fact that a requirement was imposed and the date on which it was imposed; and
- (b) the information received in accordance with the requirement.

(3) If default is made in complying with this section, the Labuan company, foreign Labuan company and every officer of the company who is in default commits an offence under this Act.

Obligation of Labuan company to maintain and keep information up to date

108E. (1) A Labuan company or foreign Labuan company shall maintain and keep the particulars of beneficial ownership in its register of members under section 105 updated from time to time.

(2) A Labuan company or foreign Labuan company shall, within thirty days of any changes to the particulars kept under subsection (1), lodge with the Authority such changes in the form and manner as may be determined by the Authority.

(3) For the purposes of subsection (2), changes occur if—

- (a) a person ceases to be a beneficial owner in relation to the Labuan company or foreign Labuan company;
- (b) any other changes as a result of which prescribed particulars of the beneficial ownership in the register of members are incorrect or incomplete;
- (c) there are any changes to the particulars of the shareholders contained in the register; or
- (d) a person ceases to be, or becomes, a shareholder of the Labuan company or foreign Labuan company.

(4) A resident secretary of a Labuan company or foreign Labuan company shall ensure that the Labuan company or foreign Labuan company complies with the obligations under this section.

(5) If default is made in complying with this section or if the Labuan company or foreign Labuan company submits false or misleading or inaccurate information to the Authority under this section, the Labuan company, foreign Labuan company and every officer of the company who is in default commits an offence under this Act.

Power of Authority to require submission and examination

108F. (1) The Authority may at any time by notice in writing require a Labuan company, foreign Labuan company, a resident secretary or any person the Authority deems appropriate to furnish all the necessary information and particulars of any beneficial owner of the Labuan company or foreign Labuan company and have the information and particulars verified by a statutory declaration.

(2) Any Labuan company, foreign Labuan company, resident secretary or person served with the notice under subsection (1) shall comply with such notice within seven days of the receipt of such notice.

(3) Notwithstanding subsection (1), the Authority may use its power under sections 28B and 28C of the Labuan Financial Services Authority Act 1996 in relation to the particulars of beneficial ownership and information kept by the Labuan company or foreign Labuan company pursuant to this Division.

(4) If default is made in complying with this section, the Labuan company, foreign Labuan company or resident secretary and every officer of the company who is in default commits an offence under this Act.

Penalty: One million ringgit and in the case of a continuing offence, to a further fine of ten thousand ringgit for each day during which the offence continues after conviction.

(5) If default is made in complying with this section, the person who is in default commits an offence under this Act.

Penalty: Imprisonment for a term not exceeding ten years or a fine three million ringgit or both, and in the case of a continuing offence, to a further fine of ten thousand ringgit for each day during which the offence continues after conviction.

Power of Authority to issue Guidelines

108G. The Authority may issue guidelines pursuant to section 4A of the Labuan Financial Services Authority 1996 to clarify any provision of this Division.

Removal of entries from register

108H. An entry relating to a natural person who used to be a beneficial owner may be removed from the register of members under section 105 after the expiration of six years from the date on which the natural person ceases to be a beneficial owner in relation to the Labuan company or foreign Labuan company.”.

Amendment of section 110

40. Section 110 of the principal Act is amended—

(a) by inserting after subsection (3), the following subsection:

“(3A) If default is made in complying with subsection (1), (2) or (3), the director of the Labuan company who is in default commits an offence under this Act.

Penalty: Five hundred thousand ringgit or imprisonment for a term not exceeding five years or both.”; and

(b) in subsection (5), by deleting the words “and sections 112 and 113”.

Amendment of section 111

41. Section 111 of the principal Act is amended—

(a) in subsection (2A), by substituting for the words “Subject to section 113A, a Labuan company” the words “A Labuan company”; and

(b) in subsection (3)—

(i) by substituting for the words “this section” the words “subsection (2) or (2A)”;

(ii) by substituting for the word “Ten” the word “Fifty”.

Amendment of section 112

42. Section 112 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Any director of a Labuan company who fails to take all reasonable steps to secure compliance by the company with the requirements of this section or a resident director who has by his own wilful act been the cause of any default by the company under this section, commits an offence under this Act.

Penalty: Fifty thousand ringgit and default penalty of five hundred ringgit.”.

Amendment of section 113

43. Section 113 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Any director of a Labuan company who fails to take all reasonable steps to secure compliance by the company with the requirements of this section or a resident director who has by his own wilful act been the cause of any default by the company under this section, commits an offence under this Act.”.

Amendment of section 114

44. Section 114 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) A Labuan company shall, within thirty days of any change in the auditor of the company, lodge with the Authority a notice and the notice shall be accompanied with the consent of the new auditor.”.

Amendment of section 120

45. Subsection 120(1) of the principal Act is amended by substituting for the words “Companies Act 1965” the words “Companies Act 2016”.

Amendment of section 123

46. Subsection 123(3) of the principal Act is amended by substituting for the word “Ten” the word “Fifty”.

Amendment of section 127

47. Subsection 127(8) of the principal Act is amended by substituting for the words “XI” the word “X”.

Amendment of section 130

48. Section 130 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**Companies Act 1965**” the words “**Companies Act 2016**”; and

(b) by substituting for the words “Companies Act 1965 and licensed under the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, or the Insurance Act 1963” the words “Companies Act 2016 and licensed under the Financial Services Act 2013 and the Islamic Financial Services Act 2013”.

Amendment of section 130T

49. Section 130T of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Where a Labuan protected cell company makes any allotment of its cell shares, the protected cell company shall, within thirty days, lodge with the Authority the information of such allotment.”.

Amendment of section 131

50. Subsection 131(1) of the principal Act is amended by substituting for the words “Part VIII and Part X of the Companies Act 1965” the words “Subdivision 3 of Division 7 of Part III and Division 1 and Division 2 of Part IV of the Companies Act 2016”.

Substitution of section 132

51. The principal Act is amended by substituting for section 132 the following section:

“Service of documents on companies

132. Any document served under this Act shall be deemed to have been served on a Labuan company or foreign Labuan company if the document—

- (a) is left, or sent by ordinary or registered post to its last known registered office or registered principal place of business of the company; and
- (b) is sent by electronic means to the address or numbers provided by the Labuan company or foreign Labuan company.”.

Amendment of section 142

52. Subsection 142 of the principal Act is amended—

- (a) in subsection (2), by substituting for the word “ten” the word “fifty”; and
- (b) in subsection (4), by substituting for the words “shall be guilty of a further offence against this Act” the words “commits a further offence under this Act”.

Amendment of section 142A

53. Subsection 142A(3) of the principal Act is amended by substituting for the word “ten” the word “fifty”.

Amendment of section 151

54. Section 151 of the principal Act is amended—

- (a) by deleting subsections (3) and (4);

- (b) in subsection (5), by substituting for the words “this section” the words “section 151BB”;
- (c) in subsection (6)—
 - (i) by substituting for the words “this section” the words “section 151BB”; and
 - (ii) by substituting for the words “in the *Gazette*” the words “in accordance with subsection 151BB(4)”; and
- (d) in subsection (7), by substituting for the words “Subsections (2) to (5)” the words “Subsections (2) and (5) and section 151BB”.

New sections 151BA and 155BB

55. The principal Act is amended by inserting after section 151B the following sections:

“Power of Authority to strike off Labuan company

151BA. Notwithstanding any provision in this Act, the Authority may strike a Labuan company off the register, if the Labuan company—

- (a) fails to pay its annual fees or any additional amount in addition to the annual fee within the time specified pursuant to section 151;
- (b) fails to appoint a replacement resident secretary after the resignation of the former resident secretary pursuant to subsection 93(2c);
- (c) contravenes any provision of this Act and any other law relating to Labuan financial services;

- (d) being a licensed entity under the Labuan Financial Services and Securities Act 2010 or Labuan Islamic Financial Services and Securities Act 2010, has its licence, approval or registration surrendered or revoked by the Authority; or
- (e) is not carrying on any business or is not in operation.

Notice of intention to strike off Labuan company

151BB. (1) Before the name of a Labuan company can be struck off the register under section 151BA, the Authority shall send a notice to the Labuan company stating that if an answer showing cause to the contrary is not received the name of the Labuan company shall be struck from the register within thirty days from the date of the notice or any extended period as may be approved by the Authority.

(2) After the expiration of the period specified in the notice under subsection (1) or any extended period, unless the Labuan company has given reasons to the satisfaction of the Authority, the Authority may strike the name of the Labuan company off the register.

(3) The notice under this section shall be deemed to be served on the Labuan company if the notice—

- (a) is left, or sent by ordinary or registered post to its last known registered office or registered principal place of business of the company; or
- (b) is sent by electronic means to the address or numbers provided by the Labuan company.

(4) The Authority may publish in such form and manner a notice of striking a Labuan company off the Register.

(5) For the purposes of paragraph 151BA(d), where after a licence, approval or registration of the Labuan company has been surrendered or revoked by the Authority, if the

company wishes to continue as a Labuan company, the Labuan company shall change its name and memorandum within thirty days after such surrender or revocation of licence, approval or registration, or in the event that such Labuan company intends to continue to use its name and memorandum, the Labuan company may apply to the Authority for approval.

(6) This section shall not apply to striking off under subsection 93(2C).”.

Amendment of section 151c

56. Section 151c of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (b), by deleting the word “or”;
- (ii) in paragraph (c), by substituting for the full stop at the end of the paragraph the words “; or”; and
- (iii) by inserting after paragraph (c) the following paragraph:

“(d) incur any new liability.”; and

(b) in subsection (3)—

- (i) by deleting paragraph (a); and
- (ii) in paragraph (c)—
 - (A) by substituting for the words “Part VIII and Part X” the words “Subdivision 3 of Division 7 of Part III and Division 1 and Division 2 of Part IV”; and
 - (B) by substituting for the words “Companies Act 1965” the words “Companies Act 2016”.

Amendment of section 151D

57. Section 151D of the principal Act is amended—

(a) by renumbering the existing section as subsection (1);

(b) in the renumbered subsection (1)—

(i) by inserting after the words “under section 151” the words “or section 151BA”; and

(ii) by substituting for the words “three years” wherever appearing the words “one year and six months”; and

(c) by inserting after subsection (1) as renumbered the following subsection:

“(2) Where a Labuan company has been dissolved pursuant to subsection (1), the Court may, at any time within six years after the date of dissolution, on an application of any person who appears to the Court to have *locus standi* and legitimate interest in the Labuan company, if the Court is satisfied that at the time of the dissolution of the Labuan company, the company has not discharged all of its debts and liabilities or that it is for the name of the Labuan company to be restored, make an order upon such terms declaring the dissolution to be void, and such proceedings may be taken as if the company has not been dissolved and the Court may by order give such directions and make such provision.”.

Amendment of section 151E

58. Section 151E of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The Authority may issue a letter of confirmation under its seal, upon a request by any Labuan trust company, approved liquidator, receiver and manager, other person

having written permission of the officer of the company, member, debenture holder, director or liquidator of the Labuan trust company or any person who can demonstrate to the Authority that he has a good reason for doing so, provided that—

- (a) the name of the Labuan company is in the register;
- (b) the Labuan company has paid all fees and penalties due and payable; and
- (c) the prescribed fee has been paid.”.

Amendment of section 152

59. Subsection 152(1A) of the principal Act is amended by substituting for the words “Companies Act 1965” the words “Companies Act 2016”.

Amendment of section 153

60. Section 153 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “Exchange Control Act 1953 [Act 17] and” the words “Financial Services Act 2013, Islamic Financial Services Act 2013 and”;
- (b) in subsection (2), by substituting for the words “Exchange Control Act 1953 and” the words “Financial Services Act 2013, Islamic Financial Services Act 2013 and”; and
- (c) in subsection (3), by substituting for the words “Exchange Control Act 1953” wherever appearing the words “Financial Services Act 2013, Islamic Financial Services Act 2013”.

Savings and transitional provisions

61. (1) If a Labuan company has appointed a resident director pursuant to paragraphs 87(2)(a), (b) and (c) of the principal Act, the Labuan company shall comply with subsection 87(2) of the principal Act, as amended by subsection 31(b) of this Act, within the period of six months from the date of coming into operation of this Act or any extended period approved by the Authority.

(2) All Labuan trust companies must comply with the requirements of subsection 93(2) of the principal Act within the period of six months from the date of coming into operation of this Act or any extended period approved by the Authority.

(3) Any inquiry, trial or proceedings done, taken or commenced under the principal Act before the commencement of this Act shall be continued and concluded under and in accordance with the principal Act as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Labuan Companies Act 1990 (“Act 441”). The main purpose of the amendment is to improve procedures relating to the qualification of a director, ascertaining beneficial ownership and striking off a Labuan company and to increase the penalty for offences under Act 441.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act. *Subclause 1(3)* provides that *subclause 4(b)* to be operated retrospectively due to commitment made in year 2017 to comply with the requirement of the international taxation standard. The retrospective operation of the deletion of subsections 7(4), (5) and (6) of Act 441 will not cause any financial implication and no person will be held liable for any penalty.

3. *Clause 3* seeks to amend the definitions of “domestic company” and “resident”.

4. *Clause 4* seeks to amend section 7 of Act 441. *Subclause 4(b)* seeks to delete subsections 7(4), 7(5) and 7(6) to abolish provisions that prohibit the Labuan company from dealing with residents and in ringgit. This amendment is consistent with the requirement of the international taxation standard that prohibits harmful tax practices.

5. *Clauses 5, 7, 8, 9, 13, 15, 18, 19, 20, 21, 22, 30, 33, 34, 40, 41, 42 and 43* seek to amend sections 8, 10, 11, 12, 26, 53, 58, 69, 70, 71, 72, 86, 91, 92, 110, 111, 112 and 113 of Act 441 respectively to provide for offence and penalty provisions.

6. *Clause 6* seeks to amend subsection 9A(2) of Act 441 to provide that the Authority may approve any other person to lodge statutory forms by way of electronic means to the Authority.

7. *Clause 10* seeks to amend section 13 of Act 441 to provide for a standard period for the Authority to retain documents relating to a Labuan company and foreign Labuan company with the period provided under the Companies Act 2016 [Act 777].

8. *Clause 11* seeks to amend subsection 22(3) of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit.

9. *Clause 12* seeks to amend subsection 25(3) of Act 441 to provide for a default penalty.

10. *Clause 14* seeks to introduce new section 46A into Act 441 to provide that a Labuan company shall not issue any bearer share or bearer share warrant, convert a share into a bearer share or bearer share warrant into share warrant or exchange a share for a bearer share, to foster transparency on the ownership of shares of the Labuan company and minimizing the possibility of misuse by the Labuan company.

11. *Clause 16* seeks to amend section 54 of Act 441 to provide for a specific penalty provision.

12. *Clause 17* seeks to amend section 55 of Act 441.

Subclause 17(a) seeks to provide that for redemption of shares, a Labuan company must lodge with the Authority, together with the copy of solvency declaration, a notice of the redemption of share.

Subclause 17(b) seeks to provide for the offence and penalty provisions.

13. *Clause 24* seeks to amend section 78 of Act 441 to provide that for a share certificate of a foreign Labuan company, the company must provide information regarding the nominal value and the extent to which the shares are paid up.

14. *Clause 25* seeks to introduce new subsection 80(1A) into Act 441 to provide that a Labuan company must notify the Authority within thirty days on any transfer or changes of shares and debentures of the Labuan company under subsection 80(1).

15. *Clause 26* seeks to amend section 83 of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit and default penalty of five hundred ringgit.

16. *Clause 27* seeks to amend section 84 of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit

17. *Clause 28* seeks to introduce new section 84A into Act 441 to provide for the requirement for a Labuan company to notify the Authority on the assignment or variation of charges by lodging the respective forms with the Authority and failure to comply with this section is an offence.

18. *Clause 29* seeks to amend section 85 of Act 441 to provide that the Authority may approve any other office as the principal office of the Labuan company.

19. *Clause 31* seeks to amend section 87 of Act 441.

Subclause 31(b) seeks to provide that a trust officer of a Labuan trust company approved by the Authority or any natural person who has attained the age of eighteen may be appointed as a resident director of a Labuan company.

Subclause 31(e) seeks to provide for a specific penalty for the non-compliance of subsection 87(9) of Act 441.

Subclause 31(f) seeks to provide that the fees payable to the resident director appointed under subsection 87(2) must be paid, for the trust officer, to the Labuan company which made him available for the appointment and for the natural person, to the person appointed.

20. *Clause 32* seeks to amend section 90 of Act 441 to provide for qualifications of a person to be appointed as a director or hold office or take part in the management of the company. Failure to comply with this section is an offence and upon conviction, the person can be fined one million ringgit or imprisoned for five years or both.

21. *Clause 35* seeks to amend section 93 of Act 441 to provide that if the Labuan company fails to appoint a replacement for its resident secretary within thirty days, the company is deemed to be struck off the register of the Labuan company.

22. *Clause 36* seeks to amend section 94 of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit.

23. *Clause 38* seeks to amend section 105 of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit.

24. *Clause 39* seeks to introduce new sections 108A, 108B, 108C, 108D, 108E, 108F, 108G and 108H into Act 441.

The proposed section 108A seeks to introduce the definition of “beneficial ownership”.

The proposed section 108B seeks to provide that a Labuan company or foreign Labuan company shall take reasonable steps to find out and identify the beneficial owner of the Labuan company or foreign Labuan company.

The proposed section 108C seeks to provide that a Labuan company, foreign Labuan company or resident secretary shall lodge the particulars of the beneficial ownership obtained under the proposed section 108B with the Authority. This *clause* also seek to provide that the Authority may direct a Labuan company or foreign Labuan company to provide the Authority with the information obtained by a Labuan company or foreign Labuan company under the proposed section 108B.

The proposed section 108D seeks to provide that the Authority shall determine the particulars of beneficial ownership required under the proposed subsection 108B(2) or (3) by way of a guideline issued under the proposed section 108G.

The proposed section 108E seeks to provide that a Labuan company or foreign Labuan Company shall maintain and keep the particulars of beneficial ownership in its register of members. This *clause* also seek to provide that a resident secretary of Labuan company or foreign Labuan company shall ensure that such companies complies with this proposed section.

The proposed section 108F seeks to provide that the Authority may by notice in writing require a Labuan company or foreign Labuan company to furnish to the Authority all the necessary information and particulars in relation to beneficial owner.

The proposed section 108G seeks to provide that the Authority may issue guidelines for the purpose of providing clarity on any provision of this Division.

The proposed section 108H seeks to provide that the removal of an entry relating to a natural person as a beneficial owner, shall be made only after the expiration of six years from the date on which the natural person ceases to be a beneficial owner.

25. *Clause 44* seeks to amend section 114 of Act 441 to provide that if there is any changes to the auditor of the company, the Labuan company shall lodge a notice of such changes with the Authority within thirty days from the date of changes.

26. *Clause 46* seeks to amend section 123 of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit.

27. *Clause 49* seeks to amend section 130T of Act 441 to provide that when a Labuan protected cell company makes any allotment, the company must notify the Authority within thirty days of such allotment.

28. *Clause 51* seeks to substitute section 132 of Act 441 to provide for provisions relating to service of documents either by post or electronic means.

29. *Clause 52* seeks to amend section 142 of Act 441 to increase the fine from ten thousand ringgit to fifty thousand ringgit.

30. *Clause 53* seeks to amend section 142A of Act 441 to provide for the increase of the total amount of administrative penalty from ten thousand ringgit to fifty thousand ringgit.

31. *Clause 55* seeks to introduce new sections 151BA and 151BB.

The proposed section 151BA seeks to provide for the power of Authority to strike a Labuan company off the register.

The proposed section 151BB seeks to provide that before a name of the Labuan company can be struck off the register, the Authority must send a notice to the Labuan company and the notice may also be published in such form and manner as the Authority may determine. This proposed section is not applicable to the Labuan company that has been struck off due to the failure to appoint a replacement for its resident secretary.

32. *Clause 56* seeks to amend section 151C of Act 441 to provide that if the name of the Labuan company has been struck off, the company must not incur any new liability.

33. *Clause 57* seeks to amend section 151D of Act 441 to provide that if a person is able to prove to the Court that he has *locus standi* and legitimate interest in the Labuan company that has been dissolved, in which at the time of the dissolution the Labuan company has not discharged all of its debts or liabilities towards the applicant, the Court may make an order that the Labuan company be restored into the register thus providing such person with a legal avenue to claim his outstanding debt from the Labuan company.

34. *Clause 58* seeks to amend section 151E of Act 441 to provide that the Authority may issue a letter of confirmation under its seal to any Labuan trust company, approved liquidator, receiver and manager, any person having written permission of the officer of the company, member, debenture holder, director, liquidator, or any person who can demonstrate to the Authority that he has a good reason to request for the letter of confirmation.

35. *Clause 61* seeks to provide for savings and transitional provisions.

36. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3195]