

DIALOG TAHUNAN SSM 2021

ISU	Soalan/Pandangan Peserta	Maklumbalas SSM
<p>Isu-isu berkaitan pegangan saham</p>	<p>Boleh kah syarikat sendirian berhad membeli balik sahamnya sendiri dari pemegang saham jika terdapat dua atau lebih pemegang saham di mana kesan selepas membeli balik menyebabkan hanya tinggal satu pemegang saham?</p>	<p>Secara amnya, menurut seksyen 22 dan 123 AS 2016, syarikat tidak dibenarkan membeli saham syarikat pemegangannya atau sahamnya sendiri melainkan melalui:</p> <ul style="list-style-type: none"> (a) penebusan saham keutamaan menurut seksyen 72 AS 2016; (b) pembatalan saham menurut seksyen 116 dan 117 AS 2016; (c) pembelian balik saham oleh syarikat awam menurut seksyen 127 AS 2016; atau (d) remedi yang diperintahkan oleh Mahkamah di bawah seksyen 346 AS 2016. <p>Bagi tujuan seksyen 72, 116, 117 dan 127 AS 2016, selain daripada tertakluk kepada perlembagaan, syarikat hendaklah memenuhi ujian kesolvenan di bawah seksyen 112 AS 2016.</p> <p>Berhubung bilangan pemegang saham, seksyen 9 AS 2016 menetapkan bahawa syarikat persendirian boleh mempunyai satu atau lebih ahli (pemegang saham).</p>
	<p>A way to remove a minority shareholder that does not benefit the company and cause problems in company's institution?</p>	<p>The only way for a person to cease being a shareholder of a company is by transferring (sell) his/her shares to another person.</p> <p>Transfer of shares is a process of voluntary disposition of legal title of the shares between two parties or more through the execution of proper instruments. Hence, any transfer without consideration shall be void.</p> <p>Unlike shareholders of a public company, shareholders of a private company are unable to sell their shares on an open market.</p> <p>Nevertheless, shareholders are under no compulsion to sell their shares. Unless, there is specific provision in the constitution or the shareholders' agreement provides for such arrangement.</p> <p>While it is difficult for members or directors to ask minority shareholders to leave a company, negotiation should always be the best solution. Among others, by way of offering a fair value for the minority shareholders.</p>

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	<p>Transfer of share upon the death of minority shareholder (when the number of shareholding is too small)?</p>	<p>However, members and directors of a company are reminded with section 346 of the CA 2016 that provides protections for minority shareholders against oppressive acts.</p> <p>Ownership of the shares will remain with the shareholders until transferred or transmitted to another person.</p> <p>In the event of death of a shareholder, shares owned by the deceased may be transmitted to another person either in accordance to a Will or an order of the Court.</p> <p>Unless, the company has included a provision in the shareholders' agreement providing that, upon the death of the shareholders, the share of the deceased will be transferred to a particular member or be made available for purchase by other members.</p> <p>Therefore, companies should consider having specific provisions in the constitution or shareholders' agreement to deal with the death of a shareholder.</p> <p>Section 109 of the CA 2016 applies if the rights to shares is transmitted to a person by operation of law and the person notifies the company in writing of his wishes to be registered as a shareholder of the company in respect of the shares.</p> <p>Further, section 109 of the CA 2016 provides for the registration process of a person as a shareholder of the company in the event of a transmission of shares.</p> <p>Pursuant to section 109 of the CA 2016, the person must provide together with his notification sufficient documents proving the transmission. The company must register the person as a shareholder within 60 days from receiving the notification</p> <p>While the process for transmission of shares under the respective laws may be complex, CA 2016 has provided a simple procedure for registration of transmission of shares once the transmission is complete.</p>

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	<p>Boleh ke penubuhan syarikat dibuat melalui saham selain cash.</p>	<p>Di bawah sistem MyCOID, syarikat boleh memperuntukan saham secara <i>cash</i> atau <i>other than cash</i> melalui module <i>Incorporation</i> di bawah tab <i>Member</i>, maklumat saham disusun menurut S14(3)(h) AS 2016 iaitu:</p> <ul style="list-style-type: none"> <i>i. Details of class</i> <i>ii. Number of shares to be taken by a member</i> <p>Semasa penubuhan, pemohon hanya boleh memilih saham <i>ordinary</i> kerana pilihan bagi <i>preference shares</i> jelas dinyatakan di bawah S69 (yang berlaku selepas syarikat ditubuhkan) dan S72 (1) AS 2016 iaitu – <i>subject to its constitution</i>. Ini bermakna syarikat perlu ditubuhkan terlebih dan mempunyai <i>constitution</i> untuk menyatakan jenis saham syarikat.</p> <p>Seperti contoh tab member di bawah:</p> <div data-bbox="1146 769 1587 972" style="border: 1px solid black; padding: 5px;"> <p>* Price per share (RM) <input type="text" value="1.0000"/> <small>Provide one value of shares only</small></p> <p>* Number of share <input type="text" value="1,250"/></p> <p>* Class of share <input type="text" value="Ordinary"/> ▼</p> </div>
	<p>Bagi serahsimpan dokumen yg telah di buat melalui sistem (sect.76) setelah mendapat kelulusan melalui sistem kena hantar pula manual ke ssm.cadangan supaya ssm selaraskan untuk serahsimpan hanyalah melalui online sahaja dan tidak perlu untuk hantar ke kaunter ssm pula</p>	<p>Buat masa ini, serah simpan di bawah seksyen 76 (Notice of approval for allotment of shares or grant of rights) hendaklah diserahkan simpan melalui serahan kaunter. Jika serahan dimajukan bersama-sama seksyen 78 melalui system MYCOID kemaskini tidak akan diambil kira.</p>