



COMPANIES ACT 2016: PRACTICE NOTE NO. 1/2017

**CLARIFICATION ON THE UTILIZATION OF CREDIT
STANDING IN THE SHARE PREMIUM ACCOUNTS AND THE
CAPITAL REDEMPTION RESERVES UNDER SECTION 618**

This Practice Note is issued pursuant to section 20C of the Companies Commission of Malaysia Act 2001.

OBJECTIVE

1. This Practice Note serves to clarify the parameters for the utilization of credit standing in the share premium accounts and the capital redemption reserves for the purposes of subsections 618(3) and (4) of the Companies Act 2016.

BACKGROUND

2. The Companies Act 2016 abolishes the concept of nominal value in shares. Effectively, this policy will also render the share premium account and capital redemption reserves of a company

to be no longer relevant. Instead the amount standing in the share premium account and the capital redemption reserves will be recognized as part of the company's share capital.

3. In view of the abolition of the nominal value concept, section 618 of the Companies Act 2016 provides transitional provisions to address issues relating to the share premium accounts and capital redemption reserves and related matters.

4. In particular, subsections 618(3) and (4) of the Companies Act 2016 provides specific circumstances for which the credit standing in the share premium accounts and the capital redemption reserves of a company could be utilized.

5. Subsection 618(3) states—

(3) Notwithstanding subsection (2), a company may, within twenty four months upon the commencement of section 74, use the amount standing to the credit of its share premium account to—

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before the commencement of section 74;*
- (b) write off—*
 - (i) the preliminary expenses of the company incurred before the commencement of section 74; or*
 - (ii) expenses incurred, or commissions or brokerages paid or discounts allowed, before or upon the commencement of section 74, for any*

duty, fee or tax payable on or in connection with any issue of shares of the company;

- (c) pay up, under an agreement made before the commencement of section 74, shares which were unissued before that date and which are to be issued upon that date to members of the company as fully paid bonus shares;*
- (d) pay up in whole or in part the balance unpaid on shares issued before the commencement of section 74 to members of the company; or*
- (e) pay dividends declared before the commencement of section 74, if such dividends are satisfied by the issue of shares to members of the company.*

6. Subsection 618(4) states—

(4) Notwithstanding subsection (2), a company may, within twenty four months upon the commencement of section 74, use the amount standing to the credit of its capital redemption reserve account to pay up shares which were unissued before that date and which are to be issued to members of the company as fully paid bonus shares.

7. The policy intent governing these provisions is to enable companies to utilize the credit standing in the share premium account and capital redemption reserves to pay up shares which were unissued before the commencement of the Companies Act 2016 and which are to be issued to members as fully paid up bonus shares.

8. However, one of the critical issues faced by companies in utilizing share premium account and capital redemption reserves is to ascertain the parameters of paragraph 618(3)(c) and subsection 618(4) regarding the issuance of bonus shares in terms of references to the agreement and timeline for such utilisation.

UTILIZATION OF CREDIT STANDING IN THE SHARE PREMIUM ACCOUNT PURSUANT TO PARAGRAPH 618(3)(C) AND SUBSECTION 618(4) OF THE COMPANIES ACT 2016

9. The following parameters shall be applicable in utilizing the credit standing in share premium accounts for the purposes of paragraph 618(3)(c):

- (a) prior agreement referred to in the said paragraph may include any power of the board of directors to recommend the issuance of bonus shares in the Constitution (Memorandum & Articles of Association) of the company; or otherwise in any written agreement made or resolution passed by the company; and
- (b) the right to use the credit standing in the share premium account must be exercised within 24 months after the commencement of the Companies Act 2016 irrespective of whether the decision to pay up any unissued shares as fully paid bonus shares is made before or after the commencement of the Companies Act 2016.

10. Similarly, the right to use the credit standing in the capital redemption reserves under subsection 68(4) must also be exercised within 24 months after the commencement of the Companies Act 2016 irrespective of the decision to do so is made before or after the commencement of the Companies Act 2016.

REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA
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