

NO PAR VALUE REGIME

The Companies Act 2016 (“2016 Act”) aims to align the existing Companies Act 1965 (“1965 Act”) with the international corporate landscape.

It appears that the 1965 Act would undergo radical overhaul, and considered desirable for many in the corporate community. One of the key changes includes the abolition of the par value regime.

Present structure

Under the 1965 Actⁱ, share capital of companies incorporated in Malaysia must ascribe to a par value or nominal value. This means that each share has a minimum price at which the shares can be issued. The par value does not indicate the real worth of a share or the company, and neither will it accord any protection to the shareholders. It is largely thought to be misleading and create unnecessary accounting complexities. Companies are further required to declare the maximum amount of share capital that may be issued (i.e. authorised share capital). The excess of the issue price of the share over its par value is designated as “share premium”. This share premium has to be operated under a different account from the capital account and each account is subject to differing use and restrictions.

Many countries have moved towards the “no-par value” regime including Australia, New Zealand and Singapore.

New Structure

Once the 2016 Act comes into forceⁱⁱ, it will migrate towards the no par value requirement. Consequentially, related

COMPANIES ACT 2016

Under the 2016 Act there is no minimum share price. The price of the shares will be determined by:



Current market value
of the company

—
The business
circumstances

—
The capital that the
company is seeking to raise

concepts to the par value regime such as the existence of share premium accounts, capital redemption reserve or authorised capital, will no longer exist. All moneys or proceeds of the shares will be credited to the share capital account. In effect, this would simplify the company’s accounts and corporate governance procedure and at the same time provide companies greater flexibility in structuring share capital.

Essentially, there is no difference between a share with par value and one without. Both represent a share being a fraction of the equity; where par value shares has a fixed face value attached to it, shares without par value does not. This does not mean the directors could arbitrarily set the issue price as they are duty bound by fiduciary to set the right price in good faith.

This no par value concept applies to both existing and new companies. In order to ensure smooth and effective transition

of the changes, the 2016 Act provides for a 24 months transitional arrangement for existing companiesⁱⁱⁱ, whereby:

- existing companies can utilise the amount standing in the share premium accounts for specific purposes including to pay for dividends, premium on redemption of debentures, unissued shares as a fully paid up bonus shares or balance of any unpaid issued shares as well as writing off preliminary expenses or duty/tax payable in connection with any issuance of shares;
- any amount standing in credit of the company’s share premium account and capital redemption reserve, becomes part of the company’s share capital which cannot be reduced without leave of Court;
- a “deeming provision” relating to authorised share capital and par value of the shares in the company’s Memorandum and Articles of Association shall be regarded as adopted under the 2016 Act (unless otherwise resolved by the company);
- liabilities of a shareholder for calls in respect of money unpaid on shares issued before the new regime, shall not be affected by the shares ceasing to have par value. Such shareholder will remain liable for any unpaid or partial paid shares.

The new no par value framework will simplify company’s accounts and remove the age old misconception that company has reserves and is in a position to pay its debts to creditors when the opposite is true. With the new regime, companies can issue shares at a discount and profit can be capitalised without issuance of new shares.

ⁱ Section 60 of the Companies Act 1965; ⁱⁱ Section 72 of the 2016 Act; ⁱⁱⁱ Section 618 of the 2016 Act