

D.R. 30/2015

COMPANIES BILL 2015

AMENDMENT IN COMMITTEE

**ENGLISH LANGUAGE TEXT**

**Amendment of clause 578**

1. Clause 578 of the Bill is amended in subclause (6) by substituting for the words “a compliance officer” the words “an agent”.

**Amendment of Eighth Schedule**

2. The Eighth Schedule to the Bill is amended in the English text in subparagraph 10(c), by substituting for the words “or one widely circulated Malaysian newspaper in the English language” the words “and one widely circulated newspaper in Malaysia in the English language”.

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EXPLANATORY STATEMENT

1. The amendment to *clause 578* of the Bill seeks to amend subclause (6) to ensure that a notice which states that a foreign company has been dissolved for the Registrar to remove the name of the company from the register has been received from an agent and not a compliance officer. This is due to the fact that an agent is a person who is charged with the responsibility as provided for in *clause 578* of the Bill whereas a compliance officer is only charged with the responsibility as provided for in the Limited Liability Partnerships Act 2012 [Act 743].
2. The amendment to the English text of the Eighth Schedule to the Bill seeks to amend subparagraph 10(c) to ensure the notification of the commencement of a

moratorium is advertised in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language.

# COMPANIES BILL 2015

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## ARRANGEMENT OF CLAUSES

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### PART I

#### PRELIMINARY

*Clause*

1. Short title and commencement
2. Interpretation
3. Definition of “corporation”
4. Definition of “subsidiary and holding company”
5. Definition of “ultimate holding company”
6. Definition of “wholly-owned subsidiary”
7. When corporations deemed to be related to each other
8. Interests in shares

### PART II

#### FORMATION AND ADMINISTRATION OF COMPANIES

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*Types of Companies*

9. Essential requirements of a company
10. Types of companies
11. Private or public company
12. Prohibition on companies limited by guarantee with a share capital
13. Prohibition for unincorporated associations, *etc.*

##### Division 2

*Incorporation and Its Effects*

14. Application for incorporation
15. Registration for incorporation

*Clause*

16. Power to refuse registration of incorporation
17. Certificate of incorporation
18. Effect of incorporation
19. Notice of registration as conclusive evidence
20. Separate legal entity
21. Companies have unlimited capacity

*Division 3**Restriction on Subsidiary Being Member of Its Holding Company*

22. Membership of holding company
23. Subsidiary acting as a participating dealer
24. Protection of third parties in other cases where a subsidiary acts as a dealer in securities

*Division 4**Name of Company*

25. Name of company
26. Availability of name
27. Confirmation of availability and reservation of name
28. Change of name
29. Power of Registrar to direct a change of name
30. Publication of name

*Division 5**Constitution of a Company*

31. Constitution of a company
32. Company may adopt a constitution
33. Effect of constitution
34. Form of constitution
35. Contents of a company's constitution
36. Company may alter or amend constitution

*Clause*

- 37. Court may alter or amend constitution
- 38. A company limited by guarantee shall have a constitution
- 39. Non-application of doctrine of constructive notice

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*Conversion of Company Status*

- 40. Conversion from an unlimited company to a limited company
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*Provisions Applicable to Certain Types of Companies*

- 42. Private companies
- 43. Prohibition of private companies to offer shares or debentures or invite to deposit money
- 44. Offer to the public
- 45. Company limited by guarantee

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- 47. Documents to be kept at registered office
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- 49. Forms of documents and other means for recording of documents
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- 51. Duty to notify of particulars and changes in the register of members
- 52. Index of members of company
- 53. Branch register of members
- 54. Place where register of members and index to be kept
- 55. Inspection and closing of register of members and index
- 56. Power of company to require disclosure of beneficial interest in its voting shares

*Clause*

- 57. Register of directors, managers and secretaries
- 58. Duty to notify of particulars and changes of director, manager and secretary
- 59. Register of directors' shareholdings, *etc.*
- 60. Register of debenture holders and copies of trust deed

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- 62. Official seal for use abroad
- 63. Official seal for share certificates, *etc.*
- 64. Company contracts
- 65. Pre-incorporation contract
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- 70. Nature of shares
- 71. Rights and powers attaching to shares
- 72. Preference shares
- 73. Prohibition to issue bearer's share warrants

*Clause*

- 74. No par value shares
- 75. Exercise of power of directors to allot shares or grant rights
- 76. Allotment of shares or grant of rights with company approval
- 77. Registration of allotment in the register of members
- 78. Return of allotment
- 79. General prohibition of commissions, discounts and allowances
- 80. Permitted commissions
- 81. Differences in calls and payments, *etc.*
- 82. Calls on shares
- 83. Forfeiture of shares
- 84. Power of company to alter its share capital
- 85. Pre-emptive rights to new shares
- 86. Conversion of shares into stock
- 87. Rights and privileges of stockholders
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- 89. Classes of shares
- 90. Description of shares of different classes
- 91. Variation of class rights
- 92. Notifying shareholders of variation
- 93. Disallowance or confirmation of variation by Court
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- 95. Notifying Registrar of variation
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- 116. Reduction of share capital by Court
- 117. Reduction of share capital by private or public company
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- 120. Power of Court in relation to objection by creditor
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*Assistance by a Company in the Purchase of Its Own Shares*

*Clause*

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- 124. Consequences of failing to comply with this Subdivision
- 125. General exceptions
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- 140. References to operation of interests in shares
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- 143. Registrar may extend time for giving notice under this Subdivision
- 144. Company to keep and maintain register of substantial shareholders
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*The Central Depository System—a Book-Entry or Scripless System for the Transfer of Securities**Clause*

- 146. Interpretation
- 147. Depositor deemed to be member
- 148. Transfer of securities is by way of book entry
- 149. Rectification of record of depositors
- 150. Non-application of section 472 to disposition made by way of book entry
- 151. Exemption from this Subdivision

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*Prospectus*

- 152. Application of Subdivision 9
- 153. Power of Minister to exempt the application of Subdivision 9
- 154. Requirement to register and lodge prospectus
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- 156. Refusal to register a prospectus
- 157. Keeping of documents relating to prospectus
- 158. Invitations to the public to lend money to or to deposit money with a corporation
- 159. Form and contents of prospectus
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- 163. Certain advertisements deemed to be prospectuses
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- 167. Civil liability for misstatement in prospectus
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- 170. Stop order

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*Clause*

- 171. Application of Subdivision 10
- 172. Specific performance of contracts
- 173. Perpetual debentures
- 174. Power to re-issue redeemed debentures
- 175. Deposit of debentures to secure advances
- 176. Qualifications of trustee for debenture holders
- 177. Duties of trustee
- 178. Retirement of trustee
- 179. Contents of trust deed
- 180. Power of Court in relation to certain irredeemable debentures
- 181. Power of trustee to apply to Court for directions, *etc.*
- 182. Obligations of borrowing corporation
- 183. Obligation of guarantor corporation to furnish information
- 184. Loans and deposits to be immediately refundable on certain events
- 185. Liability of trustee for debenture holders

Subdivision 11

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- 186. Prohibition of allotment unless minimum subscription received
- 187. Application for moneys to be held in trust until allotment
- 188. Restriction on allotment in certain cases
- 189. Requirements as to statements in lieu of prospectus
- 190. Restrictions on commencement of business in certain circumstances
- 191. Restriction on varying contracts referred to in prospectus, *etc.*

Division 2

*Members, Directors and Officers of Companies*

Subdivision 1

*Members*

- 192. Liability of members

*Clause*

- 193. Liability for calls and forfeiture
- 194. Shareholders not bound to acquire additional shares by alteration to constitution
- 195. Members' rights for management review

## Subdivision 2

*Directors*

- 196. Directors of company
- 197. Persons connected with directors
- 198. Persons disqualified from being a director
- 199. Power of Court to disqualify persons from acting as director or promoter
- 200. Power of Registrar to remove name of disqualified director
- 201. Directors' consent required
- 202. Named and subsequent directors
- 203. Appointment of directors of public company to be voted on individually
- 204. Validity of acts of directors and officers
- 205. Retirement of directors
- 206. Removal of directors
- 207. Right to be heard for directors of public company against removal
- 208. Vacation of office of director
- 209. Resignation, vacation or death of sole director or last remaining director

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- 210. Interpretation
- 211. Functions of Board
- 212. Proceedings of Board
- 213. Duties and responsibilities of directors
- 214. Business judgment rule
- 215. Reliance on information provided by others

*Clause*

- 216. Responsibility for actions of delegatee
- 217. Responsibility of a nominee director
- 218. Prohibition against improper use of property, position, *etc.*
- 219. General duty to make disclosure
- 220. Effect of other rules of law on duties of directors
- 221. Disclosure of interest in contracts, proposed contracts, property, offices, *etc.*
- 222. Interested director not to participate or vote
- 223. Approval of company required for disposal by directors of company's undertaking or property
- 224. Loans to director
- 225. Prohibition of loans to persons connected with directors
- 226. Prohibition of tax free payments to directors
- 227. Payment to directors for loss of office, *etc.*
- 228. Transactions with directors, substantial shareholders or connected persons
- 229. Exception to section 228
- 230. Approvals for fees of directors
- 231. Directors' service contracts
- 232. Copy of contracts to be available for inspection
- 233. Right of member to inspect and request copy
- 234. Contract with sole member who is also a director

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- 235. Requirement for a secretary
- 236. Appointment of a secretary
- 237. Resignation of a secretary
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- 240. Office of secretary shall not be left vacant
- 241. Requirement to register with Registrar
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- 244. Compliance with approved accounting standards
- 245. Accounts to be kept
- 246. System of internal control
- 247. Accounting periods of companies within same group
- 248. Directors shall prepare financial statements
- 249. General requirements for financial statements
- 250. Subsidiaries to be included in consolidated financial statements
- 251. Financial statements to be approved by the Board
- 252. Directors shall prepare directors' report
- 253. Contents of directors' report
- 254. Form and contents of directors' report and financial statement of a banking corporation, *etc.*
- 255. Relief from requirements as to form and contents of financial statements and directors' report
- 256. Power of Registrar to require a statement of valuation of assets
- 257. Duty to circulate copies of financial statements and reports
- 258. Time allowed for sending out copies of financial statements and reports
- 259. Duty to lodge financial statements and reports with the Registrar
- 260. Duty to lodge certificate relating to exempt private company
- 261. Auditor's statements

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*Auditors*

- 262. Definition of "outgoing auditor"
- 263. Company auditors to be approved by Minister charged with responsibility for finance
- 264. Company auditors
- 265. Registration of firms of auditors
- 266. Powers and duties of auditors

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*Provisions Relating to Auditor of Private Company*

*Clause*

- 267. Appointment of auditors of private company
- 268. Power of Registrar to appoint auditors of private company
- 269. Term of office of auditors of private company
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- 274. Fixing of auditor's remuneration
- 275. Obligation to furnish particulars of payment made to auditors
- 276. Resolution to remove auditor from office
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- 278. Notice to Registrar of resolution to remove auditor from office
- 279. Procedure to appoint auditor by written resolution
- 280. Procedure to appoint auditor at a meeting of members
- 281. Resignation of auditor
- 282. Notice of resignation of auditor to Registrar
- 283. Rights of resigning auditor of a public company
- 284. Duty to inform upon cessation of office
- 285. Attendance of auditors at general meetings where financial statements are laid
- 286. Auditor and other person to enjoy qualified privilege in certain circumstances
- 287. Duties of auditors to trustee for debenture holders

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- 288. Provisions indemnifying directors or officers
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- 290. Passing a resolution
- 291. Ordinary resolutions
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- 293. General rules on voting
- 294. Votes by proxy
- 295. Votes of joint holders of shares
- 296. Right to object to a person's entitlement to vote

## Subdivision 2

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- 297. Written resolutions of private companies
- 298. Eligibility of members to receive written resolution
- 299. Circulation date
- 300. Manner in which a written resolution to be circulated
- 301. Circulation of written resolutions proposed by directors
- 302. Members' power to require circulation of written resolution
- 303. Circulation of written resolution proposed by members
- 304. Expenses of circulation
- 305. Application not to circulate a member's written resolution
- 306. Procedure for signifying agreement to written resolution
- 307. Period for agreeing to written resolution
- 308. Sending of documents relating to written resolutions by electronic means



Subdivision 3

*Passing Resolutions at Meetings of Members*

*Clause*

- 309. Resolutions at meetings of members
- 310. Power to convene meetings of members
- 311. Power to require directors to convene meetings of members
- 312. Directors' duty to call meetings required by members
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- 317. Contents of notices of meetings of members
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- 319. Manner in which notice to be given
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- 322. Resolution requiring special notice
- 323. Power of members to require circulation of statements
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- 326. Sending documents relating to a meeting by electronic means

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- 328. Quorum at meetings
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- 330. Declaration by chairperson on a show of hands
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- 350. Powers of the Court
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*Clause*

- 352. Registration of charges
- 353. Types of charges require registration
- 354. Registration of charges created over property outside Malaysia
- 355. Registration of charges in series of debentures
- 356. Duty of company to register charges existing on property acquired
- 357. Register of charges to be kept by Registrar
- 358. Endorsement of certificate of registration on debentures
- 359. Assignment and variation of charge
- 360. Satisfaction and release of property from charge
- 361. Extension of time and rectification of register of charges
- 362. Company to keep instruments of charges and register of charges
- 363. Documents made out of Malaysia
- 364. Application of this Subdivision to foreign company

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- 366. Power of Court to order compromise or arrangement with creditors and members
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- 370. Reconstruction and amalgamation of companies
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*Clause*

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- 375. Appointment of receiver or receiver and manager under instrument
- 376. Appointment of receiver or receiver and manager by Court
- 377. Notice of appointment of receiver or receiver and manager
- 378. Vacancy in office of receiver or receiver and manager
- 379. Notice of cessation of office
- 380. Statement relating to appointment of receiver or receiver and manager
- 381. Liability of receiver or receiver and manager
- 382. Liability for contract
- 383. Power of receiver or receiver and manager
- 384. Application to Court for directions
- 385. Appointment of liquidator as receiver or receiver and manager in cases of winding up
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- 388. Provisions as to information if receiver or receiver and manager appointed
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- 390. Submission of statement of affairs
- 391. Lodging of accounts of receiver or receiver and manager
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- 406. Duration of judicial management order and its extension
- 407. Nomination of judicial manager
- 408. Notice of application for judicial management order
- 409. Dismissal of application for judicial management order
- 410. Effect of application for a judicial management order
- 411. Effect of judicial management order
- 412. Notification that a company is under judicial management order
- 413. Vacancy in appointment of judicial manager
- 414. General powers and duties of judicial manager
- 415. Power to deal with charged property, *etc.*
- 416. Agency and liability for contracts
- 417. Vacation of office and release
- 418. Information to be given by and to judicial manager
- 419. Company's statement of affairs
- 420. Statement of proposals
- 421. Consideration of proposals by creditors' meeting
- 422. Committee of creditors
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*Clause*

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- 444. Distinction between "members" and "creditors" voluntary winding up

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*Clause*

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*Clause*

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- 467. Commencement of winding up by the Court
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- 483. Custody and vesting of company's property
- 484. Submission of statement of affairs of company
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*Clause*

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- 500. Claims of creditors and distribution of assets
- 501. Inspection of books and papers by creditors and contributories
- 502. Power to summon persons connected with company
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- 504. Power to arrest absconding contributory
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- 510. Control of Court over liquidators
- 511. Delivery of property to liquidator
- 512. Powers of Official Receiver where no committee of inspection
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- 514. Liquidator's accounts
- 515. Liquidator to make good defaults
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- 517. Appeal against decision of liquidator
- 518. Books and papers of company
- 519. Expenses of winding up where assets insufficient

*Clause*

- 520. Resolutions passed at adjourned meetings of creditors and contributories
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NINTH SCHEDULE

TENTH SCHEDULE

ELEVENTH SCHEDULE

TWELFTH SCHEDULE

THIRTEENTH SCHEDULE

# A BILL

## *i n t i t u l e d*

An Act to provide for the registration, administration and dissolution of companies and corporations and to provide for related matters.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

### PART I

#### PRELIMINARY

#### **Short title and commencement**

1. (1) This Act may be cited as the Companies Act 2015.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

#### **Interpretation**

2. (1) In this Act, unless the context otherwise requires—

“accounting records”, in relation to a corporation, includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are prepared;

“annual general meeting”, in relation to a public company, means a meeting of the company required to be held by section 340;

“annual return” means the return required to be lodged under section 68, and includes any document accompanying the return;

“approved company auditor” means a person who has been approved under section 263 as an auditor and whose approval has not been revoked;

“approved liquidator” means a person who has been approved under section 433 as a liquidator and whose approval has not been revoked;

“banking corporation” means a licensed bank, licensed investment bank, licensed Islamic bank and licensed international Islamic bank;

“beneficial owner” means the ultimate owner of the shares and does not include a nominee of any description;

“Board”, in relation to a company, means—

(a) directors of the company who number not less than the required quorum acting as a board of directors; or

(b) if the company has only one director, that director;

“books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;

“borrowing corporation” means a corporation that is or will be under a liability, whether or not such liability is present or future, to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation in accordance with the provisions of Subdivision 10 of Division 1 of Part III;

“branch register” means—

(a) in relation to a company—

(i) a branch register of members of the company kept under section 53; or



- (ii) a branch register of debenture holders kept under section 60,

as the case may require; and

- (b) in relation to a foreign company, a branch register of members of the company kept under section 568;

“Central Bank of Malaysia” means the Bank as defined in section 3 of the Central Bank of Malaysia Act 2009 [*Act 701*];

“certified”, in relation to a copy of a document, means certified in the manner determined by the Registrar to be a true copy of the document and, in relation to a translation of a document, means certified in the manner determined by the Registrar to be a correct translation of the document into the national language or into the English language, as the case requires;

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

“Commission” means the Companies Commission of Malaysia established under the Companies Commission of Malaysia Act 2001 [*Act 614*];

“company” means a company incorporated under this Act or under any corresponding previous written law;

“company having a share capital” includes an unlimited company with a share capital;

“constitution” means a document referred to in section 34;

“contributory”, in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

“corresponding previous written law” means any written law relating to companies which has been at any time in force in any part of Malaysia and which corresponds with any provision of this Act;

“Court” means the High Court or a judge of the High Court;

“creditors’ voluntary winding up” means a winding up under Subdivision 5 of Division 1 of Part IV;

“debenture” includes debenture stock, bonds, sukuk, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not;

“director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act and an alternate or substitute director;

“Director General of Inland Revenue Board” means the Director General of Inland Revenue as provided in section 134 of the Income Tax Act 1967 [*Act 53*];

“Division” means a Division of a Part of this Act and a reference to a specified Division is a reference to that Division of the Part of this Act in which the reference occurs;

“document” has the meaning assigned to it in the Evidence Act 1950 [*Act 56*];

“equity share” means any share which is not a preference share;

“exempt private company” means a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than twenty members none of whom is a corporation;

“expert” includes engineer, valuer, accountant and any other person whose profession or reputation gives authority to a statement made by him;

“financial statements” has the same meaning as set out in the approved accounting standards issued or approved by the Malaysian Accounting Standards Board under the Financial Reporting Act 1997 [*Act 558*];

“financial year” means the period in respect of which any financial statements of a corporation is made up whether that period is a year or not;

“foreign company” means—

- (a) a company, corporation, society, association or other body incorporated outside Malaysia; or
- (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia;

“guarantor corporation”, in relation to a borrowing corporation, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the borrowing corporation in response to an invitation to the public to subscribe for or purchase debentures of the borrowing corporation;

“interest” includes returns or compensation as recognized under Shariah principles;

“insolvency practitioner” means a person who is an approved liquidator, other than the Official Receiver;

“licensed business” has the meaning assigned to it in the Financial Services Act 2013 [*Act 758*] or Islamic Financial Services Act 2013 [*Act 759*], as the case may be;

“licensed institution” means a licensed bank, licensed investment bank, licensed Islamic bank, licensed international Islamic bank, licensed insurer, licensed takaful operator and licensed international takaful operator;

“liquidator” includes the Official Receiver when acting as the liquidator of a corporation;

“lodged” means lodged or filed under this Act or any corresponding previous written law;

“manager”, in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

“member” means—

- (a) in the case of a company limited by shares, a person whose name is entered in the register of members as the holder for the time being of one or more shares in the company; or
- (b) in the case of a company limited by guarantee, a person whose name is entered in the register of members;

“members’ voluntary winding up” means a winding up under Subdivision 4 of Division 1 of Part IV, where a declaration has been made and lodged under section 443;

“minimum subscription”—

- (a) in relation to any shares of an unlisted recreational club which are offered to the public for subscription, means the amount stated in the prospectus relating to the offer as stated in the First Schedule;
- (b) in relation to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, shares made under the Capital Markets and Services Act 2007 [*Act 671*], means the amount stated in the prospectus relating to the issue, offer or invitation in accordance with the requirements of the Securities Commission relating to contents of prospectuses,

as the minimum amount which in the opinion of the directors must be raised by the issue of the shares so offered;

“Minister” means the Minister charged with the responsibility for companies;

“office copy”, in relation to any Court order or other Court document, means a copy authenticated under the hand or seal of the Registrar of the Court or other proper officer of the Court;

“officer” in relation to a corporation, includes—

- (a) any director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding up,

but does not include—

- (i) any receiver who is not also a manager;
- (ii) any receiver and manager appointed by the Court;  
or
- (iii) any liquidator appointed by the Court or by the creditors;

“Official Receiver” means the Director General of Insolvency, Deputy Director General of Insolvency, Directors of Insolvency, Deputy Directors of Insolvency, Senior Assistant Directors of Insolvency, Assistant Directors of Insolvency, Insolvency officers and any other officer appointed under the Bankruptcy Act 1967 [*Act 360*];

“preference share” means a share by whatever name called, which does not entitle the holder to the right to vote on a resolution or to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise;

“prescribed” means prescribed by the Minister under this Act;

“principal register”, in relation to a company, means the register of members of the company kept under section 50;

“printed” includes typewritten or lithographed or reproduced by any mechanical means;

“private company” means—

- (a) any company which immediately prior to the commencement of this Act was a private company under the corresponding previous written law;
- (b) any company incorporated as a private company under this Act; or
- (c) any company converted into a private company under section 41,

being a company which has not ceased to be a private company under section 42;

“profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;

“promoter”, in relation to a prospectus issued by or in connection with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of any relevant portion of the prospectus; but does not include any person by reason only of his acting in a professional capacity;

“property” in relation to a corporation, includes land, money, goods, choses in action, things in action, goodwill, and every valuable thing, whether corporal or incorporeal, movable or immovable, and whether situated in Malaysia or elsewhere and also includes obligations, servitudes, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to the property;

“prospectus” means any prospectus, notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a corporation or proposed corporation and, in relation to any prospectus registered under the Capital Markets and Services Act 2007, means a prospectus as defined in that Act;

“public company” means a company other than a private company;

“registered” means registered under this Act or any previous written law relating to companies;

“Registrar” means the Registrar designated under subsection 20A(1) of the Companies Commission of Malaysia Act 2001 [*Act 614*];

“regulations” means regulations under this Act;

“related corporation”, in relation to a corporation, means a corporation which is deemed to be related to the first-mentioned corporation by virtue of section 7;

“rules” means any rules made by the Rules Committee under section 616;

“securities” has the meaning assigned to it in the Capital Markets and Services Act 2007;

“Securities Commission” means the Securities Commission established under section 3 of the Securities Commission Act 1993 [*Act 498*];

“service address”, in relation to a director, means an address, electronic or otherwise, provided to the company to which any communication may be sent;

“share” means issued share capital of a corporation and includes stock except where a distinction between stock and shares is expressed or implied;

“stock exchange” has the meaning assigned to it in the Capital Markets and Services Act 2007;

“substantial shareholder” means the person referred to in subsection 136(2);

“substantial shareholding” has the meaning assigned to it in section 136;

“this Act” includes any subsidiary legislation made under this Act;

“unit”, in relation to a share, debenture or other interest, means any right or interest therein, by whatever term called;

“unlisted recreational club” has the meaning assigned to it in the Capital Markets and Services Act 2007;

“voting share”, in relation to a body corporate, means an issued share of the body corporate—

(a) to which there is attached a right to vote in all circumstances;  
or

(b) not being a share to which a right to vote is limited only to one or more of the following circumstances:

(i) during a period in which a dividend, or part of a dividend, in respect of the share is in arrears;

(ii) upon a proposal to reduce the share capital of the body corporate;

(iii) upon a proposal affecting the rights attached to the share;

(iv) upon a proposal to wind up the body corporate;

(v) upon a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;

(vi) during the winding up of the body corporate.

(2) A person shall not be regarded as a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(3) A statement included in a prospectus or statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included.



(4) A statement shall be deemed to be included in a prospectus or statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face of or by reference incorporated in or issued with the prospectus or statement in lieu of prospectus.

(5) Any invitation to the public to deposit money with or to lend money to a corporation shall be deemed to be an invitation to subscribe for or purchase debentures of the corporation and any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture, but an invitation to the public by a prescribed corporation as defined in subsection 158(8) shall not be deemed to be an invitation to the public to deposit money with or to lend money to the corporation for the purpose of the Interest Schemes Act 2015 [*Act ...*];

(6) Any reference in this Act to offering shares or debentures to the public shall, unless the context otherwise requires, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; but a *bona fide* offer or invitation with respect to shares or debentures shall not be deemed to be an offer to the public if it is—

- (a) an offer or invitation to enter into an underwriting agreement;
- (b) made to a person whose ordinary business it is to buy or sell shares or debentures whether as principal or agent;
- (c) made to existing members or debenture holders of a corporation and relates to shares in or debentures of that corporation and is not an offer to which section 239 of the Capital Markets and Services Act 2007 applies; or
- (d) made to existing members of a company within the meaning of section 457 and relates to shares in the corporation within the meaning of that section.

(7) Unless the context otherwise requires, any reference in this Act to a person being or becoming bankrupt or to a person assigning his estate for the benefit of his creditors or making an arrangement with his creditors under any written law relating to bankruptcy or to a person being an undischarged bankrupt or to any status, condition, act, matter or thing under or in relation to the law of bankruptcy shall be construed as including a reference to a person being or becoming bankrupt or insolvent or to a person making any such assignment or arrangement or to a person being an undischarged bankrupt or insolvent or to the corresponding status, condition, act, matter or thing, as the case requires, under any written law relating to bankruptcy or insolvency.

### **Definition of “corporation”**

3. Any reference to “corporation” in this Act means any body corporate formed or incorporated or existing in Malaysia or outside Malaysia and includes any foreign company, limited liability partnership and foreign limited liability partnership but does not include—

- (a) any body corporate that is incorporated in Malaysia and is by notice of the Minister published in the *Gazette*, declared to be a public authority or an instrumentality or agency of the Government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;
- (b) any corporation sole;
- (c) any society registered under any written law relating to co-operative societies; or
- (d) any trade union registered under any written law as a trade union.

### **Definition of “subsidiary and holding company”**

4. (1) Subject to subsection (3), a corporation shall be deemed to be a subsidiary of another corporation, but only if—

- (a) the other corporation—
  - (i) controls the composition of the board of directors of the corporation;

- (ii) controls more than half of the voting power of the corporation; or

- (iii) holds more than half of the issued share capital of the corporation, excluding any part of the share capital which consists of preference shares; or

- (b) the corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purposes of subparagraph (1)(a)(i), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation can appoint or remove all or a majority of the directors and for the purposes of this provision, the holding company shall be deemed to have the power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation—

- (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—

- (i) by any person as a nominee for that other corporation, except where that other corporation is concerned only in a fiduciary capacity; or

- (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that company or corporation is a subsidiary.

### **Definition of “ultimate holding company”**

**5.** A corporation shall be deemed to be the ultimate holding company of another corporation if—

- (a) the other corporation is a subsidiary of the corporation; and
- (b) the corporation is not itself a subsidiary of any corporation.

### **Definition of “wholly-owned subsidiary”**

**6.** A corporation is a “wholly-owned subsidiary” of another corporation if it has no members except—

- (a) that other corporation or its nominee; or
- (b) a wholly-owned subsidiary of that other corporation or its nominee.

**When corporations deemed to be related to each other**

7. A corporation is deemed to be related to each other if—

- (a) it is the holding company of another corporation;
- (b) it is a subsidiary of another corporation; or
- (c) it is a subsidiary of the holding company of another corporation.

**Interests in shares**

8. (1) This section shall have effect for the purposes of sections 56, 59, Subdivision 7 of Division 1 of Part III and section 219 respectively.

(2) Where any property held in trust consists of or includes shares in which a person knows or has reasonable grounds for believing that he has an interest in the shares, he shall be deemed to have such interest.

(3) A right does not constitute an interest in a share where—

- (a) the right is being issued or offered to the public for subscription or purchase of interest under the Interest Schemes Act 2015;
- (b) the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased;
- (c) such a right is held by the management company and was issued for the purpose of an offer to the public under the Interest Schemes Act 2015; or
- (d) such a right is a right which has been prescribed, after consultation with the Minister charged with the responsibilities for finance, as not being an interest in a share.

(4) A person shall be deemed to have an interest in a share where a body corporate has an interest in a share and—

- (a) the body corporate is, or its directors are accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to that share;
- (b) that person has a controlling interest in the body corporate; or
- (c) that person or his associates, or that person and his associates are entitled to exercise or control the exercise of not less than twenty per centum of the votes attached to the voting shares in the body corporate.

(5) For the purposes of paragraph (4)(c), a person is an associate of another person if the person is—

- (a) a corporation which is a related corporation;
- (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed, or is under an obligation, whether formal or informal, to act in relation to the share referred to in subsection (4);
- (c) a person who is accustomed, or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share;
- (d) a body corporate which is, or the directors of which are, accustomed or under an obligation whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share; or
- (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is accustomed or under an obligation whether formal or informal, to act in relation to that share.

(6) A person shall be deemed to have an interest in a share in any one or more of the following circumstances where he—

- (a) has entered into a contract to purchase a share;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has the right to acquire a share or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (d) is entitled, otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members, to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder.

(7) A person shall be deemed to have an interest in a share if that share is held jointly with another person.

(8) For the purpose of determining whether a person has an interest in a share it is immaterial that the interest cannot be related to a particular share.

(9) For the purposes of this section, an interest in a share shall be disregarded as an interest if it is—

- (a) an interest of a person who holds the share as bare trustee;
- (b) an interest of a person whose ordinary business includes the lending of money or the giving of financing if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money or the giving of financing;
- (c) an interest of a person being an interest held by him by reason of his holding a prescribed office; and

- (d) a prescribed interest being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(10) An interest in a share shall not be disregarded by reason only of—

- (a) its remoteness;
- (b) the manner in which it arose;
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made subject to restraint or restriction; or
- (d) the fact that it is held by, or in the name of, a central depository or its nominee company under the Securities Industry (Central Depositories) Act 1991 [*Act 453*].

## PART II

### FORMATION AND ADMINISTRATION OF COMPANIES

#### Division 1

#### *Types of Companies*

#### **Essential requirements of a company**

**9.** A company shall have—

- (a) a name;
- (b) one or more members, having limited or unlimited liability for the obligations of the company;
- (c) in the case of a company limited by shares, one or more shares; and
- (d) one or more directors.



### **Types of companies**

**10.** (1) A company may be incorporated as—

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company.

(2) A company is limited by shares if the liability of its members is limited to the amount, if any, unpaid on shares held by the members.

(3) A company is limited by guarantee if the liability of its members is limited to such amount as the members undertake to contribute in the event of its being wound up.

(4) A company is an unlimited company if there is no limit on the liability of its members.

### **Private or public company**

**11.** (1) A company limited by shares shall either be a private company or a public company.

(2) A company limited by guarantee shall be a public company.

(3) An unlimited company shall either be a private company or a public company.

### **Prohibition on companies limited by guarantee with a share capital**

**12.** No company shall be formed as, or become, a company limited by guarantee with a share capital.

### **Prohibition for unincorporated associations, etc.**

**13.** No association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business for profit, unless it is incorporated as a company under this Act, or is formed under any other written laws.

## Division 2

*Incorporation and Its Effects***Application for incorporation**

**14.** (1) A person who desires to form a company shall apply for incorporation to the Registrar.

(2) A company shall not be formed for any unlawful purpose.

(3) The application for incorporation under this section shall include a statement by every person who desires to form a company containing the following particulars:

- (a) the name of the proposed company;
- (b) the status of whether the company is private or public;
- (c) the nature of business of the proposed company;
- (d) the proposed address of the registered office of the proposed company;
- (e) the name, identification, nationality and the ordinary place of residence of every person who is to be a member of the company and, where any of these persons is a body corporate, the corporate name, place of incorporation, registration number and the registered office of the body corporate;
- (f) the name, identification, nationality and the principal place of residence of every person who is to be a director;
- (g) the name, identification, nationality and the principal place of residence of the secretary, if any;
- (h) in the case of a company limited by shares, the details of class and number of shares to be taken by a member;
- (i) in the case of a company limited by guarantee, the amount up to which the member undertakes to contribute to the assets of the company in the event of its being wound up; and
- (j) any other information that the Registrar may require.

(4) The application for incorporation shall be accompanied by a statement from each promoter or director confirming—

- (a) his consent to act as a promoter or to his appointment as a director, as the case may be; and
- (b) that he is not disqualified under this Act to act as a promoter or a director, as the case may be.

### **Registration for incorporation**

**15.** If the Registrar is satisfied that the requirements of this Act as to the application for incorporation are complied with and upon payment of the prescribed fee, the Registrar shall—

- (a) enter the particulars of the company in the register;
- (b) assign a registration number to the company as its company registration number; and
- (c) issue a notice of registration in the form and manner as the Registrar may determine.

### **Power to refuse registration of incorporation**

**16.** (1) Without prejudice to the powers of the Registrar under section 15, the Registrar shall not register an application unless he is satisfied that all the requirements of this Act in respect of the registration and any matter relating to the registration has been complied with.

(2) The Registrar shall refuse to register the application of a proposed company where he is satisfied that the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public order, morality or security of Malaysia.

### **Certificate of incorporation**

**17.** Upon an application by a company and on payment of a prescribed fee, the Registrar may issue to the company a certificate of incorporation in the form and manner as the Registrar may determine.

**Effect of incorporation**

**18.** (1) Upon the date of incorporation specified in the notice of registration issued under section 15, there shall be a company by the name and registration number as stated in the principal register kept by the Registrar for this purpose.

(2) Every person whose name is stated as a member in the application for incorporation and on the incorporation of the company shall be entered as members in the register of members, together with such other persons who may become members of the company from time to time, are a body corporate by the name stated in the notice of registration.

(3) In the case of a company having a share capital, every person whose name is stated in the application for incorporation becomes the shareholder as specified in the application.

(4) The details of the registered office of the company are as stated in, or in connection with, the application for registration.

(5) The person named in the statement as a director or a secretary, if any, shall be deemed to have been appointed to that office.

**Notice of registration as conclusive evidence**

**19.** The notice of registration is conclusive evidence that the requirements of this Act in respect of registration and matters precedent and incidental to such registration have been complied with and that the company is duly registered under this Act.

**Separate legal entity**

**20.** A company incorporated under this Act is a body corporate and shall—

(a) have legal personality separate from that of its members;  
and

(b) continue in existence until it is removed from the register.

**Companies have unlimited capacity**

**21.** (1) A company shall be capable of exercising all the functions of a body corporate and have the full capacity to carry on or undertake any business or activity including—

- (a) to sue and be sued;
- (b) to acquire, own, hold, develop or dispose of any property;  
and
- (c) to do any act which it may do or, to enter into transactions.

(2) A company shall have the full rights, powers and privileges for the purposes mentioned in subsection (1).

**Division 3***Restriction on Subsidiary Being Member of Its Holding Company***Membership of holding company**

**22.** (1) A corporation shall not be a member of a company which is its holding company and any allotment or transfer of shares in a holding company to its subsidiary shall be void.

(2) Subsection (1) shall not apply where the subsidiary concerned is a personal representative or a trustee, unless the holding company or its subsidiary is beneficially interested under the trust.

(3) For the purposes of subsection (2) and in determining if a holding company or a subsidiary is interested, any interest held by way of security for the purposes of a transaction entered into by the holding company or a subsidiary in the ordinary course of a business which includes the lending of money shall be disregarded.

(4) This section shall not prevent a subsidiary from continuing to be a member if, at the time it becomes a subsidiary, it already holds shares in the holding company.

(5) For the purposes of subsection (4), a subsidiary—

- (a) shall have no right to vote at meetings of the holding company or any class of members of the holding company;  
and

(b) shall, in the case of a subsidiary referred to in subsection (4), dispose of all of its shares in the holding company within twelve months after becoming a subsidiary or such longer period as the Registrar may allow.

(6) Subject to subsection (2), subsections (1), (4) and (5) shall apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections to such a corporation include references to a nominee for it.

(7) This section shall not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if—

(a) the allotment is made by way of capitalization of reserves of the holding company; and

(b) the allotment is made to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.

(8) Where, due to the operation of this section, a subsidiary is prevented from subscribing shares in the holding company which the subsidiary is entitled to subscribe, the holding company may, on behalf of the subsidiary, sell those shares.

(9) In relation to a holding company that is either a company limited by guarantee or an unlimited company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members in whatever form.

### **Subsidiary acting as a participating dealer**

**23.** (1) The prohibition under subsection 22(1), shall not apply where the shares are acquired or held by the subsidiary in the ordinary course of its business as a participating dealer as provided in the guidelines relating to exchange-traded fund issued by the Securities Commission under the Capital Markets and Services Act 2007.

(2) For the purposes of subsection (1), a “participating dealer” refers to a person appointed by the management company of an exchange-traded fund and is responsible for the in-kind creation and redemption of exchange-traded fund units.

**Protection of third parties in other cases where a subsidiary acts as a dealer in securities**

**24.** (1) This section shall apply where—

- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 22; and
- (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company—
  - (i) from the subsidiary; or
  - (ii) from any person who has purportedly acquired the shares after the disposal of shares by the subsidiary.

(2) A transfer of the shares referred to in paragraph (1)(a) to any person shall have the same effect as it would have had if the original acquisition of the shares by the subsidiary had not been in contravention of the prohibition.

Division 4

*Name of Company*

**Name of company**

**25.** (1) The name of a company shall end with the following:

- (a) for a public company, the word “*Berhad*” or the abbreviation “*Bhd.*”;
- (b) for a private company, the word “*Sendirian Berhad*” or the abbreviation “*Sdn. Bhd.*”; or

(c) for an unlimited company, the word “*Sendirian*” or the abbreviation “*Sdn.*”.

(2) A company may have as its name—

(a) an available name; or

(b) any such expression as the Registrar may assign upon its incorporation.

### **Availability of name**

**26.** (1) A name is available if it is not—

(a) undesirable or unacceptable;

(b) identical to an existing company, corporation or business;

(c) identical to a name that is being reserved under this Act;  
or

(d) a name of a kind that the Minister has directed the Registrar not to accept for registration.

(2) The Registrar shall have the power to determine whether a name referred to in paragraph (1)(a), (b) or (c) is undesirable, unacceptable or identical, as the case may be.

(3) The Registrar shall publish in the *Gazette* any direction referred to in paragraph (1)(d).

### **Confirmation of availability and reservation of name**

**27.** (1) A person shall apply to the Registrar to confirm the availability of a proposed name.

(2) If the Registrar is satisfied that the proposed name is a name which is not subject to subsection 26(1), the Registrar shall confirm the availability of the proposed name.



(3) If a person is aggrieved with the decision of the Registrar under subsection (2), he may, within thirty days from the date of the decision of the Registrar, appeal to the Minister whose decision shall be final.

(4) A person may apply to the Registrar for the reservation of a name as—

(a) the name of the proposed company prior to its incorporation;  
or

(b) the name to which a company proposes to change its name under section 28.

(5) Upon being satisfied that the name is not one which may be refused on any ground referred to in subsection 26(1) and upon payment of the prescribed fee, the Registrar may reserve the name for a period of thirty days from the date of lodgement of the application or such longer period as the Registrar may allow.

(6) The confirmation of availability of name or the reservation of name under this section does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or on a change of name.

(7) Subject to this Act, the Registrar shall not be liable for any loss or damage suffered by any person by reason of error or omission of whatever nature or however arising, if such error or omission was made in good faith and in the discharge of duties under this section.

### **Change of name**

**28.** (1) A company may resolve that its name be changed by special resolution.

(2) The company shall notify the Registrar of the change of its name within thirty days from the date the special resolution was passed.

(3) If the Registrar is satisfied that the new name complies with the provisions of this Act and upon payment of a prescribed fee, the Registrar shall—

(a) enter the new name of the company on the register in place of the former name; and

(b) issue a notice of registration of the new name.

(4) A change of name of a company shall take effect from the date the notice of registration of new name has been issued.

(5) A change of name of a company shall not—

(a) affect the rights or obligations of the company; and

(b) render defective any legal proceedings by or against the company.

(6) Any proceedings that might have been continued or commenced by or against a company by its former name may be continued or commenced by or against it, by its new name.

(7) Where the winding up of a company commences within one year after the company has changed its name, the former name as well as the existing name of the company shall appear on all notices and advertisements in relation to the winding up.

(8) The company and every officer who contravene the requirement under this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Power of Registrar to direct a change of name**

**29.** (1) If the Registrar believes on reasonable grounds that a name under which a company is registered should not have been registered, he shall serve a written notice to the company to change its name within sixty days or a longer period as he deems fit.

(2) If a company fails to change its name within the period as stated in the notice issued under subsection (1), the Registrar shall have the power to change the company's name to its company registration number or any such expression as assigned under subsection 25(2) by altering the company's registration details to reflect the change.

(3) The company and every officer who contravene the direction of the Registrar under this section commit an offence.

### **Publication of name**

**30.** (1) A company shall display its registered name and company registration number at—

- (a) its registered office;
- (b) every place where its business is carried on; and
- (c) every place where its books are kept.

(2) A company shall disclose its registered name and company registration number on—

- (a) its business letters, notices and other official publications, including in electronic mediums;
- (b) its websites;
- (c) its bills of exchange, promissory notes, endorsements and order forms;
- (d) cheques purporting to be signed by or on behalf of the company;
- (e) orders invoices and other demands for payment, receipts and letters of credit purporting to be issued or signed by or on behalf of the company; and
- (f) all other forms of its business correspondence and documentation.

(3) The Registrar shall determine the manner a registered name is to be displayed or disclosed by a company.

(4) For the purposes of subsection (2), where a company changed its name under section 28 or 29, the former name of the company shall appear beneath its present registered name for a period of not less than twelve months from the date of the change.

(5) The company and every officer who contravene this section commit an offence.

## Division 5

### *Constitution of a Company*

#### **Constitution of a company**

**31.** (1) A company, other than company limited by guarantee, may or may not have a constitution.

(2) If a company has a constitution, the company, each director and each member of the company shall have the rights, powers, duties and obligations set out in this Act, except to the extent that such rights, powers, duties and obligations are permitted to be modified in accordance with this Act, and are so modified by the constitution of the company.

(3) If a company has no constitution, the company, each director and each member of the company shall have the rights, powers, duties and obligations as set out in this Act.

#### **Company may adopt a constitution**

**32.** (1) A company may adopt a constitution for the company and the adoption shall be by way of special resolution.

(2) The constitution of a company has no effect to the extent that it contravenes or is inconsistent with the provisions of this Act.

(3) Subject to the provisions of this Act, the constitution adopted under subsection (1) shall be binding on the company, its directors and its members.

(4) The company shall lodge the constitution with the Registrar within thirty days from the adoption of a constitution under subsection (1).

(5) The company and every officer who contravene subsection (4) commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Effect of constitution**

**33.** (1) The constitution shall, when adopted, bind the company and the members to the same extent as if the constitution had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.

(2) All money payable by any member to the company under the constitution shall be a debt due from such member to the company.

### **Form of constitution**

**34.** The constitution of a company—

- (a) in the case of a company limited by shares incorporated under this Act, is a document adopted as its constitution under section 32;
- (b) in the case of a company limited by guarantee incorporated under this Act, is a document lodged for registration of the company under section 38; or

- (c) in the case of a company registered under the corresponding previous written law, is the memorandum and articles of association as originally registered or as altered in accordance with the corresponding previous written law,

and includes any alteration or amendment made under section 36 or 37, if any, as the case may be.

### **Contents of a company's constitution**

**35.** (1) Subject to the provisions of this Act, the constitution of a company may contain provisions relating to—

- (a) the objects of the company;
- (b) the capacity, rights, powers or privileges of the company if the provision restricts such capacity, rights, powers or privileges;
- (c) matters contemplated by this Act to be included in the constitution; and
- (d) any other matters as the company wishes to include in its constitution.

(2) For the purposes of paragraph (1)(a), if the constitution sets out the objects of a company—

- (a) the company shall be restricted from carrying on any business or activity that is not within those objects; and
- (b) the company shall have full capacity and powers to achieve such objects, unless the constitution provides otherwise.

### **Company may alter or amend constitution**

**36.** (1) A company having a constitution may, by a special resolution, alter or amend its constitution unless the constitution itself prohibits the alteration or amendment.

(2) Upon the date of the special resolution was passed or a later date as specified in the resolution, any alteration or amendment to the constitution shall bind the company and the members accordingly.

(3) The company shall notify the Registrar of the alteration or amendment of its constitution and lodge a copy of the constitution as altered or amended within thirty days from the date the special resolution was passed.

(4) The company and every officer who contravene subsection (3) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Court may alter or amend constitution**

**37.** (1) The Court may, on the application of a director or member of a company, if it is satisfied that it is not practicable to alter or amend the constitution of the company using the procedure set out in this Act or in the constitution itself, make an order to alter and amend the constitution of a company on such terms and conditions as it thinks fit.

(2) The company shall ensure that an office copy of an order made under subsection (1) together with a copy of the constitution as altered or amended is lodged with the Registrar for registration within thirty days from the date of the order.

(3) The company and every officer who contravene subsection (2) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **A company limited by guarantee shall have a constitution**

**38.** (1) A company limited by guarantee shall have a constitution.

(2) The constitution of a company limited by guarantee shall be signed by the person intending to incorporate such a company and lodged with the Registrar at the time the company is incorporated.

(3) The constitution shall state—

- (a) that the company is a company limited by guarantee;
- (b) the objects of the company;
- (c) the capacity, rights, powers and privileges of the company;
- (d) the number of members with which the company proposed to be incorporated;
- (e) matters contemplated by this Act to be included in the constitution; and
- (f) any other matters as the company wishes to include in its constitution.

(4) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital and shall be void.

(5) Any provision in the constitution of a company limited by guarantee that purports to give any person a right to participate in the divisible profits of the company shall be void.

(6) A constitution lodged with the Registrar under this section shall be binding on the company and its members to the same extent as if it was signed by each member and contained covenants on each member to observe all provisions in the constitution.

### **Non-application of doctrine of constructive notice**

**39.** No person shall be deemed to have notice or knowledge of the contents of the constitution or any other document relating to a company, due to the fact—

- (a) that the constitution or document has been registered by the Registrar; or



- (b) that it is available for inspection at the registered office of the company,

with the exception of documents relating to instrument of charges.

## Division 6

### *Conversion of Company Status*

#### **Conversion from an unlimited company to a limited company**

**40.** (1) Subject to this section, an unlimited company may convert to a limited company by passing a special resolution and shall lodge with the Registrar a notice for conversion and specifying an appropriate alteration to its name.

(2) Upon the lodgement of the notice for conversion, the Registrar shall—

- (a) make such endorsements in or alterations to the register to record the conversion; and
- (b) issue to the company a notice of conversion and cancel the previous notice of registration or certificate of incorporation of the company, as the case may be.

(3) Upon the issuance of the notice of conversion, the Registrar may notify the company in writing that it is being dispensed from lodging any document that had been lodged at the time of its incorporation as an unlimited company or subsequent to it.

(4) The conversion shall take effect on the issue of the notice of conversion under subsection (2) and the constitution, if any, shall thereupon be altered in accordance with the terms of the resolution.

(5) A conversion of a company under this section shall not—

- (a) affect the identity of the company or any rights or obligations of the company; or
- (b) render defective any legal proceedings by or against the company.

(6) Any legal proceedings that could have been continued or commenced by or against the company prior to the conversion may, notwithstanding the conversion, be continued or commenced by or against the company after the conversion.

**Conversion from public companies to private companies or private companies to public companies**

**41.** (1) A public company having a share capital may convert to a private company by passing a special resolution and shall lodge with the Registrar a notice of conversion and specifying an appropriate alteration to its name.

(2) A private company may convert to a public company by a special resolution and shall lodge with the Registrar—

- (a) a notice for conversion and specifying an appropriate alteration to its name;
- (b) a statement in lieu of prospectus; and
- (c) a statutory declaration verifying that paragraph 190(2)(b) has been complied with.

(3) Subject to this Act, upon the lodgement of the notice for conversion, the Registrar shall—

- (a) make such endorsements in or alterations to the register to record the conversion; and
- (b) issue to the company a notice of conversion and cancel the previous notice of registration or certificate of incorporation of the company, as the case may be.

(4) The conversion shall take effect on the issue of the notice of conversion under paragraph (3)(b).

(5) A conversion of a company under this section shall not—

- (a) affect the identity of the company or any rights or obligations of the company; or
- (b) render defective any legal proceedings by or against the company.

(6) Any legal proceedings that could have been continued or commenced by or against the company prior to the conversion may, notwithstanding any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against the company after the conversion.

## Division 7

### *Provisions Applicable to Certain Types of Companies*

#### **Private companies**

**42.** (1) A company limited by shares having not more than fifty shareholders may—

- (a) be registered as a private company;
- (b) change its status into a private company; or
- (c) remain registered as a private company.

(2) A private company shall restrict the transfer of its shares.

(3) For the purposes of subsection (1), in determining the number of shareholders in a private company—

- (a) joint holders of shares shall be considered as one person;  
and
- (b) a shareholder who is or was an employee of the company or its subsidiary when they became a shareholder shall not be counted.

(4) Where a private company—

- (a) ceases to restrict the transfer of its shares;
- (b) ceases to have a share capital; or
- (c) has more than fifty shareholders,

the Registrar shall serve a notice to the company that on such date as specified in the notice, the company ceased to be a private company.

(5) Where, under this section, the Registrar determines that a company has ceased to be a private company—

- (a) the company shall be a public company and shall be deemed to have been a public company on and from the date specified in the notice;
- (b) the company shall, on the date so specified be deemed to have changed its name by the omission from the name of the word “*Sendirian*” or the abbreviation “*Sdn.*”, as the case requires; and
- (c) the company shall, within fourteen days from the date of the notice, lodge with the Registrar—
  - (i) a statement in lieu of prospectus; and
  - (ii) a statutory declaration verifying that paragraph 190(1)(b) has been complied with.

(6) By virtue of a determination made under this section, a company that has become a public company shall not convert to a private company without the leave of the Court.

(7) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit, and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Prohibition of private companies to offer shares or debentures or invite to deposit money**

**43.** (1) A private company limited by shares shall not—

- (a) offer to the public any shares or debentures of the company;
- (b) allot or agree to allot any shares or debentures of the company with a view to offer such securities to the public; or
- (c) invite the public to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest.

(2) Unless the contrary is proved, an allotment or agreement to allot shares or debentures is presumed to such shares or debentures being offered to the public if an offer of the shares or debentures, or any of the shares or debentures, to the public is made—

- (a) within six months after the allotment or agreement to allot; or
- (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the shares or debentures.

(3) A company does not contravene this section if—

- (a) it acts in good faith in accordance with the arrangements under which it is to convert to a public company before the shares or debentures are allotted;
- (b) as part of the terms of the offer it undertakes to convert to a public company within a specified period, and that undertaking is complied with; or
- (c) the offer is made in accordance with the arrangements as prescribed by the Securities Commission to any person on a stock market, derivatives market, exempt stock market or exempt derivatives market that is approved, registered or regulated under the Capital Markets and Services Act 2007.

(4) For the purposes of paragraph (3)(b), the specified period shall be—

- (a) in the case where an offer is made on the same day, a period ending not later than six months after the day on which the offer is made; or
- (b) in the case where an offer is made on different days, a period ending not later than six months after the day on which the offer is first made.

(5) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

**Offer to the public**

**44.** (1) An offer to the public referred to in section 43 includes an offer made in any manner to any section of the public.

(2) An offer is not regarded as an offer to the public if it is—

- (a) not being calculated to result, directly or indirectly, in shares or debentures of the company becoming available to persons other than those receiving the offer; or
- (b) otherwise being a private concern of the person receiving the offer and the person making the offer.

(3) An offer is to be regarded, unless the contrary is proved, as being a private concern between the person receiving the offer and the person making the offer if—

- (a) the offer is made to a person already connected with the company and, where the offer is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of another person already connected with the company; or
- (b) it is an offer to subscribe for securities to be held under an employees' share scheme and, where the offer is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of—

- (i) another person entitled to hold securities under the scheme; or

- (ii) a person already connected with the company.

(4) For the purposes of this section, “person already connected with the company” means—

- (a) an existing member or employee of the company;
- (b) a member of the family of a person who is or was a member or employee of the company;
- (c) an existing debenture holder of the company; or

- (d) a trustee, acting in his capacity as such, of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (c).

### **Company limited by guarantee**

**45.** (1) No company other than a company limited by guarantee shall be formed with the following objects:

- (a) providing recreation or amusement;
- (b) promoting commerce and industry;
- (c) promoting art;
- (d) promoting science;
- (e) promoting religion;
- (f) promoting charity;
- (g) promoting pension or superannuation schemes; or
- (h) promoting any other object useful for the community or country.

(2) A company limited by guarantee shall—

- (a) apply its profits or other income in achieving or promoting its objects;
- (b) prohibit the payment of any dividend to its members; and
- (c) require all the assets that would otherwise be available to its members generally be transferred on its winding up either—
  - (i) to another body with objects similar to its own; or
  - (ii) to another body the objects of which are the promotion of charity and anything incidental or conducive to such objects.

(3) A company limited by guarantee may apply to the Minister for a licence to omit the word “*Berhad*” or the abbreviation “*Bhd.*” from its name.

(4) A company limited by guarantee shall not hold land unless a licence has been obtained from the Minister.

(5) For the purposes of approving licences under this section, the Minister may prescribe regulations or impose any conditions as he thinks fit.

## Division 8

### *Registered Office and Registers*

#### **Registered office and office hours**

**46.** (1) A company shall at all times have a registered office in Malaysia to which all communications and notices may be addressed.

(2) The registered office shall be open and accessible to the public during ordinary business hours.

(3) The Registrar shall be notified of any change in the address of the registered office within fourteen days of such change.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

#### **Documents to be kept at registered office**

**47.** (1) A company shall keep at its registered office—

- (a) notice of registration issued under section 15;
- (b) the constitution of the company, if any;
- (c) certificates given under this Act or corresponding previous written law, if any;
- (d) all registers, books, records and documents as required under this Act;



- (e) minutes of all meetings of members and resolutions of members;
- (f) minutes of all meetings and resolutions of the Board and committees of the Board;
- (g) copies of all written communications to all members or all holders of the same class of shares;
- (h) copies of all financial statements and group financial statement;
- (i) the accounting records of the company required under section 245;
- (j) copies of all instruments creating or evidencing charges as required under section 357; and
- (k) such other documents required to be kept by the Registrar.

(2) Any document referred to in subsection (1), other than documents referred to in paragraph (1)(f), may be kept at a place other than at the registered office of a company provided notice to that effect has been given to the Registrar.

(3) The company shall notify the Registrar of any changes to the address of the place referred to in subsections (1) and (2) within fourteen days from the date of such change.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Inspection of documents and records kept by company**

**48.** (1) Any document and record that is to be made available for inspection under this Act, shall be made available for inspection by any person who is entitled to inspect such document and record at the registered office of a company or any other place allowed by this Act.

(2) A company shall provide proper facilities to enable the documents and records to be inspected.

(3) The person who is entitled under this Act to inspect the documents and records referred to in subsection (1) shall be allowed to make copies or take extracts from the documents and records.

### **Forms of documents and other means for recording of documents**

**49.** (1) The documents and records of a company referred to in section 47 shall be—

(a) in a written form; or

(b) in any other form or manner, electronic or otherwise, that allows the documents and information to be easily accessible and reproduced into written form.

(2) A company shall take reasonable precautions to prevent documents and records kept in the form referred to in subsection (1) from being falsified.

(3) If a company discovers that a document or record has been falsified, the company shall immediately inform the Registrar and the Registrar shall have the power to direct the company to—

(a) amend, rectify or vary the document or record; or

(b) take any other actions that the Registrar thinks fit.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

### **Register of members**

**50.** (1) Every company shall keep a register of its members and record in the register—

(a) the names, addresses, number of the identity card issued under the National Registration Act 1959 [Act 78], if any, nationality and the usual place of residence of every

person who is to be a member and, where any of the member is a corporation, the corporate name, place of incorporation, establishment or origin, registration number and registered office of the corporation and any other relevant information and particulars of the members;

- (b) in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by an appropriate number, or by the number of the certificate, if any, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (c) the date at which the name of each person was entered in the register as a member;
- (d) the date at which any person who ceased to be a member during the previous seven years so ceased to be a member; and
- (e) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Notwithstanding subsection (1)—

- (a) where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in paragraph (1)(b);
- (b) a company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(3) The register of members shall be *prima facie* evidence of any matters inserted in the register as required or authorized by this Act.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Duty to notify of particulars and changes in the register of members**

**51.** (1) A company shall notify the Registrar of the changes in the particulars in the register within fourteen days from the date—

- (a) of the change of any shareholder contained in the register;
- (b) after a person ceases to be, or becomes, a shareholder of the company; or
- (c) the information required under section 57 is received by the company or is recorded in the register.

(2) The Registrar shall determine the form, manner and extent of the information to be lodged under subsection (1).

(3) This section is not applicable to a company whose shares are quoted on a stock exchange.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Index of members of company**

**52.** (1) Every company having more than fifty members shall keep an index in a convenient form of the names of the members, unless the register of members is in such a form of an index.

(2) The company shall make any necessary changes in the index if there is any change in the particulars in the register of members within fourteen days from the date of the change.

(3) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily accessible.

(4) This section is not applicable to a company whose shares are quoted on a stock exchange.

(5) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Branch register of members**

**53.** (1) A company having a share capital may cause to be kept a branch register of members which shall be deemed to be part of the company's register of members in any place outside Malaysia.

(2) The company shall lodge with the Registrar—

- (a) a notice of the address of the office where any branch register is kept and of any change in its address; and
- (b) a notice of the discontinuance of the office where the branch register is kept, if it is discontinued,

within thirty days from the opening of the office or of the change or discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is required to be kept.

(4) The company shall transmit a copy of every entry in its branch register to the office at which its principal register is kept within fourteen days from the entry is made and shall cause to be kept a duly updated copy of its branch register at that office.

(5) Subject to this section, with respect to the copy register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register and no transaction with respect to any shares registered in a branch register shall be registered during the continuance of that registration.

(6) Where the company discontinue a branch register, all entries in that register shall be transferred to some other branch register kept by the company in the same place or to the principal register.

(7) If by virtue of the law in force in any other country, any corporation incorporated under that law keeps a branch register of its members in Malaysia, the Minister may by order declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modifications specified in the order, apply accordingly to such branch register.

(8) The company and every officer who contravene this section and every person who, in accordance with paragraph 54(1)(b) has arranged to make up the principal register commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Place where register of members and index to be kept**

**54.** (1) The register of members and index shall be kept at the registered office of the company, but—

- (a) if the register and index are prepared at another office of the company within Malaysia, the register and index may be kept at that other office; or
- (b) if the company arranges with any person to prepare the register and index on its behalf, the register and index may be kept at the office of that person at which the work is done if that office is within Malaysia.

(2) Where, by virtue of paragraph (1)(b), the register of members is kept at the office of that agent, other than the company, and by reason of his default the company contravenes subsection (1) or any requirements of this Act as to the production of the register, the agent shall be liable to the same penalties as if he were an officer of the company, and the power of the Court under section 585 shall extend to the making of orders against the agent and officers and servants of the agent.

(3) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Inspection and closing of register of members and index**

**55.** (1) The register and index shall be open for inspection by any member without charge and to any other person on payment for each inspection of ten ringgit or such lesser sum as the company requires.

(2) Any member or other person may request the company to furnish him with a copy of the register, or of any part the register, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of ten ringgit or such lesser sum as the company requires for every hundred words or fractional part of the register required to be copied and the company shall cause any copy requested by any person to be sent to that person within a period of twenty one days or within such period as the Registrar considers reasonable from the day on which the request is received by the company.

(3) A company may close the register of members or any class of members by giving at least fourteen days' notice to the Registrar.

(4) No part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(5) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Power of company to require disclosure of beneficial interest in its voting shares**

**56.** (1) Any company may, by notice in writing, require any member of the company within such reasonable time as is specified in the notice—

- (a) to inform the company whether the member holds any voting shares in the company as beneficial owner or as trustee; and
- (b) if the member holds the voting shares as trustee, so far as it is possible to do so, to indicate the persons for whom the member holds the voting shares by name and by other particulars sufficient to enable those persons to be identified and the nature of their interest.

(2) Where a company is informed that any other person has an interest in any of the voting shares in a company, the company may by notice in writing require that other person within such reasonable time as is specified in the notice—

- (a) to inform the company whether the person holds an interest as beneficial owner or as trustee; and
- (b) if the person holds the interest as trustee, so far as it is possible to do so, to indicate the persons for whom the person holds the interest by name and by other particulars sufficient to enable them to be identified and the nature of their interest.

(3) Any company may, by notice in writing, require any member of the company to inform the company, within a reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the company held by the member are the subject of an agreement or arrangement under which another person is entitled to control the member's exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to the agreement or arrangement.

(4) Whenever a company receives information from a person in accordance with a requirement imposed on such person under this section with respect to shares held by a member of the company,



the company shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 59—

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information received in accordance with the requirement.

(5) Section 50 applies in relation to the part of the register referred to in subsection (4) as the provisions apply in relation to the remainder of the register and as if references to subsection 50(1) include references to subsection (4).

(6) The Registrar, a stock exchange or the Securities Commission may, by notice in writing, direct a company to invoke its powers under subsections (1) and (2) and to immediately provide it with the information so obtained.

(7) Subject to subsection (8), any person who—

(a) contravenes a notice under this section; or

(b) in purported compliance with such a notice makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

commits an offence.

(8) The company and every officer who contravenes the direction of the Registrar, a stock exchange or the Securities Commission commit an offence.

(9) A person shall not be guilty of an offence under paragraph (7)(a) if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason that is frivolous or vexatious.

**Register of directors, managers and secretaries**

**57.** (1) Every company shall keep at its registered office a register of its directors, managers and secretaries containing, but not limited to, the following particulars:

(a) in respect of a director—

- (i) his name, residential address, service address, date of birth, business occupation and identification; and
- (ii) particulars of any other directorships of public companies or companies which are subsidiaries of public companies held by the director, but it shall not be necessary for the register to contain particulars of directorships held by a director in a company that by virtue of section 7 is deemed to be related to that company;

(b) in respect of a manager and secretary, his full name, identification and residential address, business address, if any, and other occupation.

(2) For the purposes of paragraph (1)(a), if a person is a director in one or more subsidiaries of the same holding company, it shall be sufficient if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word “Group”.

(3) The register shall be open for inspection of any member of the company without charge and of any other person on payment of ten ringgit, or such lesser sum as the company requires, for each inspection.

(4) If there is any change in the particulars of a director, manager or secretary the company shall effect the change in the register within fourteen days from the change.

(5) A certificate of the Registrar stating that from any return lodged with the Registrar under this section it appears that at any time specified in the certificate any person was a director,

manager or secretary of a specified company shall be admissible in evidence in any proceedings and shall be *prima facie* evidence of the facts stated in the certificate.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(7) In this section—

“identification” means, in the case of any person issued with an identity card, the number of the identity card, in the case of a person not issued with an identity card, particulars of passport or such other similar evidence of identification as is available;

“director” includes an alternate, substitute or local director.

### **Duty to notify of particulars and changes of director, manager and secretary**

**58.** (1) A company shall notify the Registrar within fourteen days from the date—

- (a) after its incorporation, the particulars required to be specified under section 57;
- (b) of any change in the name, residential address and other prescribed particulars of any director, manager or secretary or the service address of any director;
- (c) after a person ceases to be, or becomes, a director of the company, the particulars required to be specified in the register required under section 57;
- (d) after a person becomes a manager or secretary of the company, specifying the full name, address and other occupation, if any, of that person; and
- (e) after a person ceases to be a manager or secretary of the company.

(2) The Registrar shall determine the form, manner and extent of the information to be lodged under subsection (1).

(3) Notice of a person having become a director of the company shall—

- (a) contain a statement of the particulars of the new director as set out in paragraph 57(1)(a); and
- (b) be accompanied with a consent to act in that capacity by that person.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Register of directors' shareholdings, *etc.***

**59.** (1) A company shall keep a register showing with respect to each director of the company particulars of—

- (a) shares in the company or in a related corporation being shares in which the director has an interest and the nature and extent of that interest;
- (b) debentures of or participatory interests made available by the company or a related corporation being debentures or participatory interests in which the director has an interest and the nature and extent of that interest;
- (c) rights or options of the director or of the director and other person in respect of the acquisition or disposal of shares in, debentures of or participatory interests made available by the company or a related corporation; and
- (d) contracts to which the director is a party or under which he is entitled to a benefit being contracts under which a person has a right to call for or to make delivery of shares in, debentures of or participatory interests made available by the company or a related corporation.

(2) A company need not disclose in its register any particulars of shares of director's interest in a wholly owned subsidiary of a company which is deemed to be a related corporation under section 7.

(3) A wholly-owned subsidiary company shall be deemed to have complied with this section in relation to its director if the particulars required by this section are shown in the register of the holding company.

(4) A company shall enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director within three days after receiving notice from a director under paragraph 219(1)(a)—

(a) the price or other consideration for the transaction by reason of which an entry is required to be made under this section; and

(b) the date of—

(i) the agreement for the transaction or if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(5) A company shall enter in its register the particulars of the change referred to in the notice under paragraph 219(1)(b) within three days after receiving the notice from the director.

(6) A company is not deemed to have notice of or to be put upon inquiry as to the right of a person to or in relation to, a share in, debenture of or participatory interest made available by the company.

(7) The register shall be open for inspection by a member of the company without charge and by any other person on payment of twenty ringgit or such lesser amount as the company requires.

(8) Any person may request a company to furnish him with a copy of its register or any part of its register on payment of twenty ringgit and the company shall send the copy to that person within twenty one days or such longer period as the Registrar thinks fit from the day on which the request is received by the company.

(9) The Registrar may, at any time in writing, require a company to furnish him with a copy of its register or any part of its register and the company shall furnish the copy within seven days from the day on which the requirement is received by the company.

(10) A public company shall produce its register to all persons attending the meeting at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting.

(11) In this section—

- (a) a reference to a participatory interest is a reference to an interest within the meaning of the Interest Schemes Act 2015;
- (b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest; and
- (c) a reference to a director shall include the spouse of a director who is not a director of the company and a child of a director, including adopted child or stepchild who is not a director of the company and the interest of the spouse or child shall be treated as the interest of the director in the shares or debentures of the company after the relevant facts have come to the director's knowledge.

(12) Section 8, except for subsections (1) and (3), has effect in determining whether a person has an interest in a debenture or participatory interest and in applying those provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.

(13) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years, or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Register of debenture holders and copies of trust deed**

**60.** (1) Every company which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders.

(2) The company shall notify the Registrar of the issuance of debentures in accordance with subsection (1) within fourteen days from the date of issuance.

(3) The register shall, except if duly closed, be open to the inspection of the registered holder of any debentures and of any holder of shares in the company and shall contain particulars of the names and addresses of the debenture holders and the amount of debentures held by the debenture holders.

(4) For the purposes of this section, a register shall be deemed to be duly closed during the periods not exceeding in the aggregate thirty days in any calendar year if it is closed in accordance with the provisions and period specified in the constitution or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures.

(5) The company shall, at the request of every registered holder of debentures and every shareholders in a company, supply a copy of the register of the holders of debentures of the company or any part of the register on payment of five ringgit for every page or part of the register required to be copied but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(6) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the company to a holder of those debentures at his request on payment of ten ringgit for every page or such lesser sum as is fixed by the company, or,

where the copy has to be specially made to meet the request on payment of five ringgit for every page or part of the register required to be copied.

(7) A company which issues debentures may cause to be kept in any place outside Malaysia a branch register of debenture holders which shall be deemed to be part of the company's register of debenture holders and sections 50, 51, 52, 53, 54, 55 and 601 of this Act shall apply with necessary modification in relation to the keeping of a branch register of debenture holders.

(8) The company and every officer who refused an inspection, or refused to forward a copy within thirty days after a request has been made under this section commit an offence.

(9) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

## Division 9

### *Execution of Documents*

#### **Company seals**

**61.** (1) A company may, but does not need to, have a common seal.

(2) A company which has a common seal shall have its name and registration number engraved in legible romanised characters on the seal.

(3) The company and every officer who contravene subsection (2) commit an offence.

(4) An officer of a company, or a person acting on behalf of a company, commits an offence if he uses, or authorizes the use of, a seal purporting to be a seal of the company on which its name is not engraved as required by subsection (2) and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.



**Official seal for use abroad**

**62.** (1) Subject to the conditions or limitations in the constitution, a company that has a common seal may have an official seal for use outside Malaysia.

(2) The official seal shall be an exact copy of the company's common seal, with the addition on its face of the place where it is to be used.

(3) The official seal when duly affixed to a document has the same effect as the company's common seal.

(4) A company having an official seal for use outside Malaysia may in writing under its common seal authorize any person appointed for the purpose to affix the official seal to any deed or other document to which the company is a party.

(5) The person affixing the official seal shall certify in writing on the deed or other document to which the seal is affixed the date and place it is affixed.

**Official seal for share certificates, etc.**

**63.** (1) Subject to the conditions or limitations in the constitution, a company that has a common seal may have an official seal to seal—

(a) securities issued by the company; or

(b) documents creating or evidencing securities so issued.

(2) The official seal—

(a) shall be an exact copy of the company's common seal, with the addition on its face of the word "Securities"; and

(b) when duly affixed to the document has the same effect as the company's common seal.

**Company contracts**

**64.** (1) A contract may be made—

- (a) by a company, in writing under its common seal;
- (b) on behalf of a company, by a person acting under its authority, express or implied; or
- (c) on behalf of a company, orally, by any person acting under its authority, express or implied.

(2) Any formalities required by law in the case of a contract made by an individual shall apply, unless the context otherwise requires, to a contract made by or on behalf of a company.

**Pre-incorporation contract**

**65.** (1) A contract or transaction that purports to be made by or on behalf of a company at a time when the company has not been formed has effect as a contract or transaction made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract or transaction accordingly.

(2) Notwithstanding subsection (1), a contract or transaction referred to in that subsection may be ratified by the company after its incorporation and the company shall be bound by the contract or transaction as if the company had been in existence at the date of the contract or transaction and had been a party to the contract or transaction.

**Execution of documents**

**66.** (1) A document is executed by a company—

- (a) by the affixing of its common seal, subject to the conditions or limitations in the constitution; or
- (b) by signature in accordance with this section.

(2) A document is validly executed by a company if it is signed on behalf of the company—

- (a) by at least two authorized officers, one of whom shall be a director; or
- (b) in the case of a sole director, by that director in the presence of a witness who attests the signature.

(3) A document signed in accordance with subsection (2) shall have the same effect as if the document is executed under the common seal of the company.

(4) A document or proceeding requiring authentication by a company may be signed by an authorized officer and need not be made under the common seal.

(5) For the purposes of this section, “authorized officer” means—

- (a) a director of the company;
- (b) a secretary of the company; or
- (c) any other person,

approved by the Board.

### **Execution of deeds**

**67.** (1) A document is validly executed by a company as a deed if—

- (a) it is duly executed by the company; and
- (b) it is delivered as a deed.

(2) For the purposes of paragraph (1)(b), a document is presumed to be delivered upon it being validly executed under subsection (1), unless a contrary intention is proved.

(3) Notwithstanding subsection (1), a company may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, to execute deeds or other documents on its behalf.

(4) A deed or other document executed by the person referred to in subsection (3) shall have effect as if the deed or document is executed by the company.

## Division 10

### *Annual Return*

#### **Duty to lodge annual return**

**68.** (1) A company shall lodge with the Registrar an annual return for each calendar year not later than thirty days from the anniversary of its incorporation date.

(2) The requirement under subsection (1) is not applicable to a company in the calendar year which it is incorporated.

(3) The annual return of a company shall contain the following particulars:

- (a) the address of its registered office;
- (b) the nature of its business;
- (c) the address of the places where its business is carried on including branch, if any;
- (d) the address at which its register of members is kept, if not kept at the registered office;
- (e) the address at which its financial records are kept, if not kept at the registered office;
- (f) in the case of a company with a share capital, the summary of its shareholding structure, including debentures;
- (g) the total amount of its indebtedness;
- (h) the particulars of directors, managers, secretaries and auditors;

(i) the list of its members; and

(j) such other information that the Registrar may require.

(4) The Registrar shall have the power to determine the form and manner in which the annual return is to be lodged.

(5) The annual return shall be signed by a director or secretary of the company.

(6) If the particulars required under subsection (3) are unchanged from the last preceding annual return, the company shall be allowed to lodge a statement signed by a director or a secretary certifying that there is no change in any of the matters stated from previous years.

(7) A public company which has more than five hundred members and provides reasonable opportunities and facilities for a person to inspect and take copies of its list of members and its particulars of shares transferred need not comply with the requirement under paragraph (3)(i) if it is included in the annual return—

(a) a certificate by the secretary that the company is of a kind to which this subsection applies; and

(b) a list showing the prescribed particulars of the twenty largest holders of each class of equity shares.

(8) The Registrar may strike a company off the register as provided in section 549, if the company fails to lodge an annual return for three or more consecutive years.

(9) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

## PART III

## MANAGEMENT OF COMPANY

## Division 1

*Share and Capital Maintenance*

## Subdivision 1

*Share Capital***Types of shares**

**69.** Subject to the constitution of the company, shares in a company may—

- (a) be issued in different classes;
- (b) be redeemable in accordance with section 72;
- (c) confer preferential rights to distributions of capital or income;
- (d) confer special, limited, or conditional voting rights; or
- (e) not confer voting rights.

**Nature of shares**

**70.** A share or other interest of a member in a company is personal property and transferable in accordance with section 105.

**Rights and powers attaching to shares**

**71.** (1) A share in a company, other than preference shares, confers on the holder—

- (a) the right to attend, participate and speak at a meeting;

- (b) the right to vote on a show of hands on any resolution of the company;
- (c) right to one vote for each share on a poll on any resolution of the company;
- (d) the right to an equal share in the distribution of the surplus assets of the company; or
- (e) the right to an equal share in dividends authorized by the Board.

(2) Notwithstanding paragraph (1)(e), the right to dividends as specified therein may be negated, altered or added to by the constitution of the company or in accordance with the terms on which the share is issued.

### **Preference shares**

**72.** (1) Subject to its constitution, a company having a share capital may issue preference shares.

(2) Subject to this section and if authorized by its constitution, a company may issue preference shares which are liable, or at the option of the company are to be liable, to be redeemed in accordance with the constitution.

(3) The redemption of the preference shares shall not be taken as reducing the amount of share capital of the company.

(4) The shares shall be redeemable only if the shares are fully paid up and the redemption shall be out of—

- (a) profits;
- (b) a fresh issue of shares; or
- (c) capital of the company.

(5) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred into the share capital accounts of the company, a sum equal to the amount of the shares redeemed.

(6) The redemption of shares out of the capital referred to in paragraph (4)(c) shall only be redeemed subject to the following:

- (a) all the directors have made a solvency statement under section 113 in relation to such redemption; and
- (b) the company has lodged a copy of the solvency statement with the Registrar.

(7) The company shall give notice to the Registrar specifying the shares redeemed within fourteen days from the redemption.

### **Prohibition to issue bearer's share warrants**

**73.** (1) No company shall have the power to issue a bearer's share warrant.

(2) A bearer of share warrant shall surrender the warrant for cancellation to have the bearer's name entered in the register of members of the company within twelve months upon the commencement of this Act.

(3) Notwithstanding subsection (2), a bearer of share warrant may apply to the Court for an order to have his name entered in the register of members of the company.

(4) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register of members, the name of a bearer of a share warrant issued without the warrant being surrendered and cancelled.

### **No par value shares**

**74.** All shares issued before or upon the commencement of this Act shall have no par or nominal value.



**Exercise of power of directors to allot shares or grant rights**

**75.** (1) Unless the prior approval by way of resolution by the company has been obtained, the directors of a company shall not exercise any power—

- (a) to allot shares in the company;
- (b) to grant rights to subscribe for shares in the company;
- (c) to convert any security into shares in the company; or
- (d) to allot shares under an agreement or option or offer.

(2) Subsection (1) shall not apply to—

- (a) an allotment of shares, or grant of rights, under an offer made to the members of the company in proportion to the members' shareholdings;
- (b) an allotment of shares, or grant of rights, on a bonus issue of shares to the members of the company in proportion to the members' shareholdings;
- (c) an allotment of shares to a promoter of a company that the promoter has agreed to take; or
- (d) shares which are to be issued as consideration or part consideration for the acquisition of shares or assets by the company and members of the company have been notified of the intention to issue the shares at least fourteen days before the date of issue of the shares.

(3) For the purposes of paragraph (2)(d), members of the company are deemed to have been notified of the intention to issue shares of the company if—

- (a) a copy of the statement explaining the purpose of the intended issue of shares has been sent to every member at his last known address according to the register of members; and

- (b) the copy of the statement has been advertised in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysian in the English language.

(4) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.

(5) Any director who knowingly contravenes, or permits or authorizes the contravention of, or fails to take all reasonable steps to prevent the contravention of this section with respect to any issue of shares commits an offence and shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred.

(6) Notwithstanding the Limitation Act 1953 [Act 254], no proceedings to recover any such loss, damages or costs shall be commenced after the expiration of three years from the date of the issue.

### **Allotment of shares or grant of rights with company approval**

**76.** (1) For the purposes of subsection 75(1), approval may be confined to a particular exercise of that power or may apply to the exercise of that power generally and any such approval may be unconditional or subject to conditions.

(2) An approval made under subsection (1) shall be lodged with the Registrar within fourteen days from the date of the approval.

(3) An approval expires—

- (a) in the case where a company is required to hold an annual general meeting—

- (i) at the conclusion of the annual general meeting held next after the approval was given; or

- (ii) at the expiry of the period within which the next annual general meeting is required to be held after the approval was given,

whichever is the earlier; or

- (b) in the case where the company is not required to hold an annual general meeting, not more than twelve months after the approval was given.

(4) Notwithstanding subsection (3), an approval may be revoked or varied at any time by a resolution of the company.

(5) The directors may allot shares or grant rights after an approval has expired if—

- (a) the shares are allotted, or the rights are granted, under an agreement, option or offer made or granted by the company before the approval expires; and
- (b) the approval allowed the company to make or grant an agreement, option or offer that would or might require shares to be allotted, or rights to be granted, after the approval expires.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Registration of allotment in the register of members**

**77.** (1) A company shall register an allotment of shares in the register of members referred to in section 50 within fourteen days from the date of the allotment.

(2) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Return of allotment**

**78.** (1) A company shall lodge with the Registrar a return of the allotment within fourteen days from an allotment of shares.

(2) The return of the allotment shall include a statement of capital as at the date of the allotment and shall state—

- (a) the number and amount of the shares comprised in the allotment;
- (b) the amount, if any, paid, deemed to be paid, or due and payable on the allotment of each share;
- (c) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and
- (d) the full name and the address of each of the allottees and the number and class of shares allotted to him.

(3) The particulars mentioned in paragraph (2)(d) need not be included in the return of the allotment of a public company to which subsection 68(7) applies which has allotted shares—

- (a) for cash; or
- (b) for a consideration other than cash,

where the number of persons to whom the shares have been allotted exceeds five hundred.

(4) Where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made under a contract in writing, the company shall lodge together with the return the contract evidencing the entitlement of the allottee or a copy of any such contract certified in a manner as may be determined by the Registrar.

(5) If a certified copy of a contract is lodged, the original contract duly stamped shall be produced at the same time to the Registrar if requested by the Registrar.

(6) Where shares are allotted or are deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made—

- (a) under a contract not reduced to writing;
- (b) under the constitution;
- (c) in satisfaction of a dividend declared in favour of, but not payable in cash to the shareholders; or
- (d) upon the application of moneys held by the company in an account or reserve in paying up unissued shares to which the shareholders have become entitled,

the company shall lodge together with the return a statement containing such particulars as may be determined by the Registrar.

(7) Where shares are allotted under a scheme of arrangement approved by the Court under section 366, the company may lodge an office copy of the order of the Court in lieu of the statement referred to in subsection (6) in a manner as may be determined by the Registrar.

(8) Any shares issued to any person without formal allotment for the purpose of incorporation of a company shall be deemed to have been allotted on the date of the incorporation.

(9) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **General prohibition of commissions, discounts and allowances**

**79.** (1) A company shall not apply any of its shares or cash, either directly or indirectly, in payment of any commission, discount or allowance to a person in consideration of the person—

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company; or

- (b) procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for shares in the company.

(2) For the purposes of subsection (1), it is immaterial how the shares or cash are applied, whether by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or being paid out of the nominal purchase money or contract price, or otherwise.

(3) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for each day during which the offence continues after conviction.

### **Permitted commissions**

**80.** (1) Notwithstanding section 79, a company may apply any of its shares or cash, either directly or indirectly, in payment of a commission to a person for the purpose of subscribing or agreeing to subscribe or procuring or agreeing to procure—

- (a) shares of an unlisted recreational club which are offered to the public for subscription or shares other than of an unlisted recreational club which are offered for subscription or purchase in accordance with a prospectus that is registered under the Capital Markets and Services Act 2007; or

- (b) shares not offered under paragraph (a).

(2) The payment of the commission shall—

- (a) be authorized by the constitution of a company; and

- (b) not exceed—

- (i) ten per centum of the price at which the shares are issued; or

- (ii) the amount or rate authorized by the constitution,

whichever is lesser.

(3) The rate of the commission referred to in paragraph (2)(b) and the number of shares which a person has agreed for a commission to subscribe shall be disclosed—

- (a) in the prospectus;
- (b) in the statement in lieu of prospectus;
- (c) in a statement as may be determined by the Registrar signed as like manner as a statement in lieu of prospectus and lodged with the Registrar; or
- (d) in the case where a circular or notice, not being a prospectus, inviting subscription for shares is issued, in the circular or notice.

(4) A vendor to, promoter of, or other person who receives payment in cash or shares from a company may apply any part of the cash or shares received in payment of any commission the payment of which if made directly by the company would be permitted by this section.

(5) For the purposes of this section, commission includes brokerage and the rates referred to in paragraph (2)(b) shall not apply to brokerage.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence for non-compliance under paragraph (3)(c), to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Differences in calls and payments, etc.**

**81.** (1) Unless otherwise provided in the constitution, a company may—

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;

- (b) accept from any shareholder the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

(2) The director may, if he thinks fit, receive from any shareholder willing to advance payment all or any part of the money uncalled and unpaid upon any shares held by the shareholder.

(3) Upon all or any part of the money advanced referred to in subsection (2) is received by the directors from the shareholder become payable, the company may pay interest or return at a rate not exceeding eight per centum per annum as may be agreed upon between the directors and the shareholder paying the sum in advance, unless the company in a general meeting otherwise directs.

### **Calls on shares**

**82.** (1) The directors may make calls upon the shareholders in respect of any money unpaid on the shares of the shareholders and not by the conditions of allotment of shares made payable at fixed date.

(2) A sum which, by the terms of issue of a share, becomes payable on allotment or at any fixed date shall be deemed to be a call duly made and payable on the date on which by the terms of issue the shares becomes payable and in the case of non-payment, all the relevant provisions of this Act as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

(3) Subject to the company's constitution—

- (a) no call shall exceed one-fourth of the issued price of the share or be payable at less than thirty days from the date fixed for the payment of the last preceding call; and



- (b) each member shall, subject to receiving at least fourteen days' notice specifying the date, time and place of payment, pay to the company the amount called on his shares.

(4) A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and such resolution may authorize the call to be paid by instalments.

(5) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of their shares.

(6) If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall not be required to pay any interest or compensation on that sum unless stated in the constitution of the company.

(7) For the purposes of subsection (6), the rate stated in the constitution shall not exceed eight per centum per annum from the day appointed for the payment of the sum to the time of actual payment as the directors may determine.

(8) The directors may waive payment of the interest due wholly or in part from the person referred to in subsection (6).

(9) A call may be revoked or postponed as the directors may determine.

### **Forfeiture of shares**

**83.** (1) If a shareholder fails to pay any call or instalment of a call within the stipulated time, the directors may serve a notice on the shareholder requiring payment of the amount unpaid together with any interest or compensation which may have accrued.

(2) The notice in subsection (1) shall—

- (a) specify a date on or before which the payment is required to be made; and
- (b) state that in the event of non-payment on or before the specified date, the shares in respect of which the call was made is liable to be forfeited.

(3) Upon failure to comply with the notice served under subsection (1), the share in respect of which the notice has been given shall be forfeited by a resolution of the directors unless the payment as required by the notice has been made before such resolution.

(4) For the purposes of subsection (3), the forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

(5) A person whose shares have been forfeited under subsection (3) shall cease to be a member in respect of the forfeited shares.

(6) Notwithstanding subsection (5), the person shall remain liable to pay to the company all money which at the date of forfeiture was payable by him to the company in respect of the shares together with interest or compensation at the rate of eight per centum per annum from the date of the forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest or compensation, and the liability shall cease if and when the company receives payment in full of all such money in respect of the shares.

(7) A statutory declaration in writing by a director or secretary that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts stated in the declaration against all persons claiming to be entitled to the share.

(8) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit.

(9) The company may receive the consideration, if any, given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and such person shall—

(a) be registered as the shareholder; and

(b) not have his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

(10) The forfeiture may be cancelled on such terms as the directors think fit at any time before a sale or disposition of the forfeited shares.

(11) This section shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable to the company at a fixed date, as if the shares had been payable by virtue of a call duly made and notified.

### **Power of company to alter its share capital**

**84.** (1) Unless otherwise provided in the constitution, a company may alter its share capital in any one or more of the following ways by passing a special resolution to—

- (a) consolidate and divide all or any of its share capital, the proportion between the amount paid and the amount, if any, unpaid on each subdivided share shall be the same as it was in the case of the share from which the subdivided share is derived;
- (b) convert all or any of its paid-up shares into stock and may reconvert that stock into paid-up shares; or
- (c) subdivide its shares or any of the shares, whatever is in the subdivision, the proportion between the amount paid and the amount, if any, unpaid on each subdivided share shall be the same as it was in the case of the share from which the subdivided share is derived.

(2) The company shall lodge with the Registrar the notice of any alteration referred to in subsection (1) in the form and manner as may be determined by the Registrar within fourteen days from the date of the alteration.

(3) In the case of the registration of an unlimited company having a share capital as a limited company, the unlimited company may pass a resolution—

- (a) to increase the amount of its share capital subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; or

- (b) to provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

### **Pre-emptive rights to new shares**

**85.** (1) Subject to the constitution, where a company issues shares which rank equally to existing shares as to voting or distribution rights, those shares shall first be offered to the holders of existing shares in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders.

(2) An offer under subsection (1) shall be made to the holders of existing shares in a notice specifying the number of shares offered and the timeframe of the offer within which the offer, if not accepted, is deemed to be declined.

(3) If the offer is not accepted after the expiry of the period specified in the notice under subsection (2), the directors may dispose those shares in such manner as the directors think most beneficial to the company.

### **Conversion of shares into stock**

**86.** (1) Subject to the constitution, a company may by resolution convert any paid-up shares into stock and reconvert any stock into paid-up shares of any number.

(2) The stockholders may transfer the shares or any part of the shares in the same manner as the transfer of shares from which the stock arose may, before the conversion, have been transferred or in the closest manner as the circumstances allow.

(3) The directors may fix the minimum amount of stock transferable and may restrict or forbid the transfer of fractions of that minimum.

(4) For the purposes of this section, any reference in this Act applicable to paid-up shares shall apply to stock, and the words “share” and “shareholder” shall include “stock” and “stockholder” respectively.

**Rights and privileges of stockholders**

**87.** (1) The stockholders shall, according to the amount of the stock held by the stockholders, have the same rights, privileges and advantages with regards to dividends, voting at meetings of the company and other matters as if the stockholders held the shares from which the stock arose.

(2) Notwithstanding subsection (1), no privilege or advantage except participation in the dividends and profits of the company and in the assets on winding up shall be conferred by any such part of stock which would not, if existing shares have conferred that privilege or advantage.

**Rights attached to shares**

**88.** In this Act, a reference to the rights attached to a share in a class of shares in a company is a reference to the rights of the holder of that share as a member of the company.

**Classes of shares**

**89.** (1) For the purposes of this Act, shares are in the same class if the rights attached to the shares are identical in all respects.

(2) Subject to the constitution of a company, the rights attached to shares are not to be regarded as different from those attached to other shares in the same class only because they do not carry the same rights to dividends in the twelve months immediately following the allotment.

**Description of shares of different classes**

**90.** (1) A company that has different classes of shares shall, in its constitution, state prominently the following:

(a) that the company's share capital is divided into different classes of shares; and

(b) the voting rights attached to shares in each class.

(2) If a company has a class of shares of which the holders are not entitled to vote at general meetings of the company—

- (a) the descriptive title of shares in the class shall include the words “non-voting”; and
- (b) the company shall ensure that those words appear legibly on any share certificate, prospectus or directors’ report issued by the company.

(3) Subsection (2) shall not apply to shares that are described as preference shares.

(4) No company shall allot any preference shares or convert any issued shares into preference shares unless provided by the constitution and the constitution shall set out the rights of the shareholders with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(5) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit.

### **Variation of class rights**

**91.** (1) Without prejudice to any other restrictions on the variation of the rights, the rights attached to shares in a class of shares in a company may be varied only—

- (a) in accordance with the constitution for the variation of those rights; or
- (b) if there are no such provisions, with the consent of shareholders in that class given in accordance with this section.

(2) For the purposes of paragraph (1)(b), the consent of the shareholders required for the purposes of this section shall be—

- (a) a written consent representing not less than seventy five per centum of the total voting rights of the shareholders in the class; or

- (b) a special resolution passed by shareholders in the class sanctioning the variation.

(3) A variation of class rights takes effect—

- (a) if no application is made under section 93 for it to be disallowed, at the expiration of the period in which applications may be made under that section; or
- (b) if an application is made within that period, at the time the application is finally determined, unless the variation is disallowed.

(4) If an application is withdrawn before the expiry of the period referred to in subsection 93(2), the variation shall only take effect at the expiry of such period.

(5) The issue by a company of preference shares ranking equally with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the preference shares was authorized by the terms of issue of the existing preference shares or by the constitution of the company in force at the time the existing preference shares were issued.

### **Notifying shareholders of variation**

**92.** (1) If the rights attached to shares in any class of shares in a company are varied, the company shall give written notice of the variation to each shareholder in that class within fourteen days from the date on which the variation is made.

(2) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit.

### **Disallowance or confirmation of variation by Court**

**93.** (1) If the rights attached to shares in any class of shares in a company are varied, the shareholders representing at least ten per centum of the total voting rights in the class may apply to the Court to have the variation disallowed.

(2) An application under subsection (1)—

- (a) shall be made within thirty days from the date on which the variation is made; and
- (b) may be made on behalf of the shareholders by any shareholder appointed in writing by all shareholders in that class.

(3) The Court shall, upon hearing of the application made under subsection (1), make the following order:

- (a) if the Court is satisfied that the variation would unfairly prejudice the shareholders represented by the applicant, disallow the variation; or
- (b) if the Court is satisfied that the variation would not unfairly prejudice the shareholders, confirm the variation.

### **Delivery of order of Court to Registrar**

**94.** (1) The company shall lodge a copy of the order made under subsection 93(3) with the Registrar within fourteen days from the making of the order by the Court.

(2) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Notifying Registrar of variation**

**95.** (1) If the rights attached to shares in any class of shares in a company are varied, the company shall lodge with the Registrar, within thirty days from the date on which the variation takes effect—

- (a) a copy of the resolution or other document that authorized the variation; and



- (b) a notice as may be determined by the Registrar including a statement of capital, as at the date on which the variation takes effect.

(2) Paragraph (1)(a) does not apply if the company is required to lodge a copy of the resolution or other document with the Registrar under another provision of this Act.

(3) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Variation includes abrogation**

**96.** (1) A reference to a variation of class rights under this Division or the company's constitution includes an abrogation of those rights.

(2) This section shall not operate so as to limit or derogate from the rights of shareholders in that class to obtain relief under any remedy in cases of oppression.

## **Subdivision 2**

### *Share Certificate, Title, Transfer and Transmission*

### **Issuance of share certificate**

**97.** (1) A company shall not be required to issue a share certificate unless an application by a shareholder for a certificate relating to the shareholder's shares in a company has been received or otherwise provided by its constitution.

(2) Any share certificate issued by a company shall be issued in accordance with this Subdivision.

**Application for issuance of share certificate**

**98.** (1) A company shall, within sixty days from receipt of an application under subsection 97(1), send a share certificate to the shareholder stating—

- (a) the name of the company;
- (b) the class of shares held by that person; and
- (c) the number of shares held by that person.

(2) Notwithstanding section 104, where a share certificate has been issued, a transfer of shares to which it relates shall not be registered by the company unless the form of transfer is accompanied with the share certificate relating to the share or by evidence as to its loss or destruction and, if required, any amount as set out under section 104.

(3) Subject to subsection (1), where shares to which a share certificate relates are to be transferred and the share certificate is sent to the company to enable the registration of the transfer, the share certificate shall be cancelled and no further share certificate shall be issued except at the request of the transferee.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

**Delivery of share certificate**

**99.** (1) If a company fails to deliver share certificate in accordance with section 98, a person entitled to the share certificate may serve a notice on the company requiring the company to deliver the certificate to the person within fourteen days from the service of such notice.

(2) If a company contravenes subsection (1), the person may apply to the Court for an order directing the company and any officer of the company to deliver the certificate to the person within the period specified in the order.

(3) The order may provide that all costs of and incidental to the application are to be borne by the company or by any officer who fails to deliver the certificate to the person within the period specified in the order.

### **Numbering of shares**

**100.** (1) Where a company issues share certificates, each share shall be distinguished by an appropriate number, except as provided by subsection (2) or (3).

(2) If—

- (a) all the issued shares in a company are fully paid up and rank equally for all purposes; or
- (b) all the issued shares of a particular class in a company are fully paid up and rank equally for all purposes,

none of those shares is required to have a distinguishing number as long as it remains fully paid up and ranks equally for all purposes with all shares of the same class issued and fully paid up.

(3) If new shares are issued by a company on the terms that, within a period not exceeding twelve months, the new shares will rank equally for all purposes with all the existing shares or with all the existing shares of a particular class, in the company, neither the new shares nor the existing shares are required to have distinguishing numbers as long as all of the shares are fully paid up and rank equally for all purposes.

### **Registration of members constitute as evidence of legal title**

**101.** (1) In absence of evidence to the contrary, the entry of the name of a person in the register of members as shareholder is *prima facie* evidence that legal title to the share is vested in that person.

(2) Subject to section 147, a company may treat the registered shareholder as the only person entitled to—

- (a) exercise the right to vote attaching to the share;

- (b) receive notices;
- (c) receive a distribution in respect of the share, if any; and
- (d) exercise the other rights and powers attaching to the share.

### **Duty of secretary to enter issuance and transfer of shares in the register of members**

**102.** (1) The secretary shall cause the register of members to be properly kept and maintained regularly and all the particulars on issuance and transfer of shares are entered into the register.

(2) A secretary who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Rectification**

**103.** (1) If the name of a person is wrongly entered in, or omitted from, the register of members, the person aggrieved may apply to the Court for—

- (a) rectification of the register of members;
- (b) compensation for loss sustained; or
- (c) both rectification and compensation.

(2) On an application under this section, the Court may order—

- (a) the rectification of the register of members by the company;
- (b) the payment of compensation by the company or an officer who has caused the error or omission for any loss sustained; or
- (c) the rectification and payment of compensation.

**Loss or destruction of certificates**

**104.** (1) Where a certificate or other document of title to shares or debentures is lost or destroyed, the company shall, on payment of a fee not exceeding fifty ringgit, issue a duplicate certificate or document to the owner on his application.

(2) Where the value of the debentures represented by the certificate or document is greater than five hundred ringgit, the directors of the company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant—

- (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of fourteen days after the publication of the advertisement to apply to the company for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current market value of the debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things.

**Requirement for instrument of transfer**

**105.** (1) Subject to other written laws, any shareholder or debenture holder may transfer all or any of his shares or debentures in the company by a duly executed and stamped instrument of transfer and shall lodge the transfer with the company.

(2) Subsection (1) shall not apply to a transfer of securities in a company that has been removed from the official list of a stock exchange from the central depository as defined in section 146 to the persons named in the record of depositors referred to in subsection 147(1), provided that such transfer is effected in accordance with the rules of the central depository as defined in section 146.

(3) For the purpose of effecting the transfer of shares or debentures, the company shall enter the name of the transferee in the register of members or register of debenture holders in accordance with this section.

(4) Subsection (1) shall not affect any power of a company to register a person as a shareholder or debenture holder to whom the right to shares or debentures has been transmitted by operation of law.

(5) For the purposes of this section, “instrument of transfer” includes a written application for transmission of a share, debenture or other interest to a personal representative.

### **Registration of transfer or refusal of registration**

**106.** (1) A company shall enter or cause to be entered the name of the transferee in the register of members as shareholder within thirty days from the receipt of the instrument of transfer under subsection 105(1) unless—

- (a) this Act or the constitution of the company expressly permits the directors to refuse or delay registration for the reasons stated;
- (b) the directors passed a resolution to refuse or delay the registration of the transfer within thirty days from the receipt of the instrument of transfer and the resolution sets out in full the reasons for refusing or delaying the registration; and
- (c) the notice of the resolution, and in the case of a public company including the reasons referred to in paragraph (b) is sent to the transferor and to the transferee within seven days of the resolution being passed.

(2) Subject to the constitution, the directors may refuse or delay the registration of a transfer of shares under subsection (1) where the shareholder fails to pay the company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of the sums payable by the shareholder in accordance with the constitution.

(3) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Order of Court for registration**

**107.** (1) If a company refuses to register a transfer, the transferee or the transferor may apply to the Court for an order under this section.

(2) On an application under subsection (1), the Court may order the company to register the transfer, if the Court is satisfied that the application is well-founded.

### **Validation of shares improperly issued**

**108.** (1) The Court may make an order validating the issue or allotment of the shares or confirming the terms of issue or allotment of the shares or both upon an application by the company or a shareholder or mortgagee of any of the shares or by a creditor of the company, if the Court is satisfied that in all the circumstances it is just and equitable to do so.

(2) The Court may make the order under subsection (1) if a company has purported to issue or allot shares and the creation, issue or allotment of the shares is invalid due to—

- (a) any provision in this Act or any other written law;
- (b) the constitution of the company or otherwise; or
- (c) the terms of issue or allotment were inconsistent with or unauthorized by any such provision.

(3) The shares shall be deemed to have been validly issued or allotted on the terms of the issue or allotment of the shares upon an order of the Court being lodged with the Registrar.

**Registration of transmission of shares or debentures**

**109.** (1) This section applies if the right to shares or debentures is transmitted to a person by operation of law and the person notifies the company in writing that the person wishes to be registered as a shareholder or debenture holder of the company in respect of the shares or debentures.

(2) Notwithstanding subsection (1), if the person referred to in that subsection elects to have another person registered, he shall testify his election by executing to that person a transfer of the share or debenture, as the case may be.

(3) All limitations, restrictions and provisions of this Subdivision relating to the right to transfer and the registration of transfers of shares or debentures referred to in subsection (2) shall be applicable to any notice or transfer as if the death or bankruptcy of the shareholder or debenture holder had not occurred and the notice or transfer were signed by that shareholder or debenture holder.

(4) Any document which is by law sufficient evidence of probate of the will or letters of administration of the estate of a deceased person having been granted to a person shall be accepted by the company as sufficient evidence of the grant.

(5) The company shall register the person as a shareholder or debenture holder of the company in respect of the shares or debentures within sixty days from receiving the notification.

(6) The registration of transmission of shares or debentures under this section shall entitle the registered holder to the same dividends and other advantages and to the same rights in relation to meetings of the company or to voting or otherwise.

(7) For the purposes of subsection (1), in case of the death of a member, the persons recognized as having any title to his interest in the shares or debentures shall be—

- (a) where the deceased was a sole holder, the legal personal representatives; and



(b) where the deceased was a joint holder, the survivor,

but nothing in this section shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

(8) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Limitation of liability of trustee, *etc.*, registered as owner of shares**

**110.** (1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in Malaysia as the holder of a share in any corporation may become registered as the holder of that share as trustee, executor or administrator of that estate and shall, in respect of that share, be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any corporation, being a share registered in a register or branch register kept in Malaysia may, with the consent of the corporation and of the registered holder of that share, become registered as the holder of the share as trustee, executor or administrator of that estate and shall, in respect of the share, be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in a corporation registered in a register or branch register kept in Malaysia and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch register in such a way as to identify the shares as being held in respect of the trust.

(4) Except as provided in this Act, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register or be receivable by the Registrar and no liabilities

shall be affected by anything done under subsection (1), (2) or (3) or under the law of any other place which corresponds to this section and the corporation concerned shall not be affected with notice of any trust by anything so done.

### **Lien on shares**

**111.** (1) Unless provided otherwise in the constitution, a company shall be entitled to a lien, in priority to any other claim, over—

(a) a partly paid issued share; and

(b) any dividend payment on the share,

for all money due by the shareholder to the company by way of money called or payable at a fixed date.

(2) A company may sell any share over which the company has a lien in a manner as the directors consider appropriate.

(3) The sale of any shares by a company referred to in subsection (2) shall not be made unless—

(a) a sum in respect of which the lien exists is presently payable; and

(b) until the expiry of fourteen days from a written notice, stating and demanding payment of such part of the amount in respect of which the privilege or lien exists as is presently payable has been given to the registered holder for the time of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder.

(4) For the purposes of giving effect to any sale under subsection (2), the directors may authorize a person to transfer the shares sold to the purchaser of the shares who shall be registered as the shareholder comprised in any such transfer and the directors shall not be bound to see to the application of the purchase money.

(5) The title of the purchaser to the share sold under subsection (2) shall not be affected by any irregularity or invalidity in the proceedings relating to the sale.

(6) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and any residue shall be paid to the person entitled to the share at the date of the sale, subject to a similar lien for sums not presently payable which exists over the shares before the sale.

(7) The directors may decline to register the transfer of a share over which the company has a lien, unless otherwise provided in the constitution.

### Subdivision 3

#### *Solvency Statement*

#### **Solvency test**

**112.** (1) For the purposes of provisions relating to redemption of preference shares, reduction of share capital and financial assistance, a company satisfies the solvency test in relation to a transaction if—

- (a) immediately after the transaction there will be no ground on which the company could be found to be unable to pay its debts;
- (b) either—
  - (i) it is intended to commence the winding up of the company within twelve months after the date of the transaction, the company will be able to pay its debts in full within twelve months after the commencement of the winding up; or
  - (ii) in any other case, the company will be able to pay its debts as the debts become due during the period of twelve months immediately following the date of the transaction; and
- (c) the asset of the company is more than the liability of the company at the date of the transaction.

(2) For the purpose of share buyback, a company satisfies the solvency test if—

- (a) the share buyback would not result in the company being insolvent and its capital being impaired at the date of the solvency statement; and
- (b) the company will remain solvent after each buyback during the period of six months after the date of the declaration made under subsection 113(5).

(3) For the purposes of subsection (2)—

- (a) a company shall be deemed to be solvent if it is able to continue to meet its debts as and when the debts become due without any substantial disposition of its assets outside the ordinary course of its business, restructuring its debts, externally forced revisions of its operations or other similar actions;
- (b) the capital of a company shall be deemed to be impaired when the value of its net assets is less than the aggregate amount of all the shares of the company after the share buyback.

### **Solvency statement**

**113.** (1) A solvency statement shall be made by the directors—

- (a) in a manner as may be determined by the Registrar;
- (b) stating—
  - (i) the date on which the statement is made; and
  - (ii) the name of each director making the statement; and
- (c) which shall be—
  - (i) signed by each director making the statement; and

- (ii) supported by a declaration to the effect that the directors have made an inquiry into the affairs of the company.

(2) A solvency statement referred to in subsection (1) shall be made by—

- (a) in the case of a transaction relating to a reduction of share capital or redemption of preference shares, all of the directors; and
- (b) in the case of a transaction relating to a financial assistance or share buyback, the majority of the directors.

(3) A solvency statement in relation to a transaction is a statement that each director making the statement has formed the opinion that the company satisfies the solvency test in relation to the transaction.

(4) In forming an opinion for the purpose of making a solvency statement, a director shall—

- (a) inquire into the company's state of affairs and prospects; and
- (b) take into account all the liabilities of the company, including contingent liabilities.

(5) Where a company proposes to purchase its own shares under a share buyback, the directors shall make a declaration that—

- (a) it is necessary for the company to buy back its own shares; and
- (b) the share buyback is made in good faith and in the interests of the company.

### **Offences regarding solvency statement**

**114.** A director who makes a solvency statement without having reasonable grounds for the opinion expressed in the statement commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.

## Subdivision 4

*Reduction of Share Capital***Company may reduce its share capital**

**115.** Unless otherwise provided in the constitution, a company may reduce its share capital by—

- (a) a special resolution and confirmation by the Court in accordance with section 116; or
- (b) a special resolution supported by a solvency statement in accordance with section 117.

**Reduction of share capital by Court**

**116.** (1) Subject to confirmation by the Court, a company may, by a special resolution, reduce the share capital of the company in any way which includes all or any of the following:

- (a) by extinguishing or reducing the liability on any of the shares of the company in respect of unpaid share capital;
- (b) by cancelling any paid-up share capital which is lost or unrepresented by available assets;
- (c) by returning to the shareholders any paid-up share capital which in excess of the needs of the company.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if directed by the Court—

- (a) every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which would be admissible in proof against the company as if that date were the date of the commencement of the winding up of the company shall be entitled to object to the reduction of the share capital;

(b) the Court shall settle a list of creditors who are entitled to object, unless the Court is satisfied on affidavit that there are no such creditors shall ascertain as far as possible without requiring an application from any creditor the names, the nature and the amount of debts or claims of those creditors, and may publish notices fixing a final day on or before which creditors not entered in the list may claim to be so entered; and

(c) where a creditor entered in the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs—

(i) if the company admits the full amount of the debt or claim or though not admitting it is willing to provide for it, the full amount of the debt or claim; or

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court after the similar inquiry and adjudication as if the company were being wound up by the Court.

(3) Notwithstanding subsection (2), the Court may, after considering any special circumstances of any case, direct that all or any of the provisions of that subsection shall not apply with regards to any class of creditors.

(4) The Court may, on such terms and conditions as the Court thinks fit, make an order confirming the reduction if the Court is satisfied with respect to every creditor who under subsection (2) is entitled to object, that—

(a) his consent to the reduction has been obtained; or

(b) his debt or claim has been discharged, determined or secured.

(5) An order made under subsection (4) shall specify the following matters:

- (a) the amount of the share capital of the company as altered by the order;
- (b) the number of shares into which the share is to be divided; and
- (c) the amount, if any, deemed to be paid-up on each share at the date of the order.

(6) The resolution for reducing share capital as confirmed by the order of the Court shall take effect upon lodgement of such order with the Registrar.

(7) A notice confirming the reduction of share capital issued by the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is as stated in the order.

(8) Upon the lodgement of the order of the Court, the particulars shown in the order under subsection (5) shall be deemed to substitute the corresponding particulars in the constitution, if any, and such substitution and any addition ordered by the Court to be made to the name of the company shall be deemed to be alterations of the constitution for the purposes of this Act for such period as is specified in the order of the Court.

(9) Where the name of any creditor entitled to object to the reduction is not entered in the list of creditors by reason of his ignorance of the proceedings for reduction or the nature and effect of the proceedings with respect to his claim and after the reduction, the company is unable to pay the amount of his debt or claim within the meaning of the provisions of this Act with respect to winding up by the Court—

- (a) every person who was a member of the company at the date of the lodging of the copy of the order for reduction shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he



would have been liable to contribute if the company had commenced to be wound up on the day before the date of the lodging of the copy of the order for reduction; and

(b) if the company is wound up, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or the nature and effect of the proceedings with respect to his claim, the Court may, if it thinks fit—

(i) settle accordingly a list of persons liable to contribute; and

(ii) make and enforce calls and orders on the contributories settled on the list as if the persons liable to contribute were ordinary contributories in a winding up.

(10) The rights of the contributories shall not be affected notwithstanding the reduction of the share capital under subsection (9).

(11) This section shall not apply to an unlimited company, but nothing in this Act shall preclude an unlimited company from reducing its share capital in any manner.

(12) Every officer of the company who—

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature of amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

**Reduction of share capital by private or public company**

**117.** (1) A company may reduce its share capital by a special resolution if the company—

(a) sends a notice to the Director General of the Inland Revenue Board referred to in section 134 of the Income Tax Act 1967 [*Act 53*] and the Registrar within seven days of the date of the resolution and the notice shall state that the resolution has been passed and contain the text of the resolution and the resolution date; and

(b) meets the solvency requirements under subsection (3).

(2) The resolution and the reduction of the share capital shall take effect in accordance with section 119.

(3) The company meets the solvency requirements if—

(a) all directors of the company make a solvency statement in relation to the reduction of share capital;

(b) the statement is made—

(i) in the case of a private company, within the period of fourteen days ending with the date of the resolution but shall be within time to comply with subsection (5); or

(ii) in the case of a public company, within the period of twenty one days ending with the date of the resolution but shall be within time to comply with subsection (6); and

(c) a copy of the solvency statement is lodged with the Registrar together with the notice required to be lodged under paragraph (1)(a).

(4) Notwithstanding subsection (1), a company need not meet the solvency requirements if the reduction of share capital is solely by way of cancellation of any paid-up share capital which is lost or unrepresented by available assets.

(5) Subject to subsection (4), a private company shall—

- (a) if the resolution for reducing share capital is a special resolution to be passed by a written resolution, ensure that every copy of the resolution served is accompanied with a copy of the solvency statement; or
- (b) if the resolution for reducing share capital is a special resolution to be passed in a general meeting, make the solvency statement or a copy of the solvency statement available for inspection by the members throughout that meeting; and
- (c) make the solvency statement or a copy of the solvency statement available at the company's registered office for inspection free of charge by any creditor of the company for a period of six weeks from the date of the resolution.

(6) Subject to subsection (4), a public company shall—

- (a) make the solvency statement or a copy of the solvency statement available for inspection by the members at the meeting throughout the meeting at which the resolution is to be passed; and
- (b) make the solvency statement or a copy of the solvency statement available at the company's registered office for inspection free of charge by any creditor of the company for a period of six weeks from the date of the resolution.

(7) Every officer of the company who contravenes subsection (5) or (6) commits an offence.

(8) Notwithstanding subsection (7), the resolution shall not become invalid by virtue only of a contravention of subsection (5) or (6).

(9) Any requirement under paragraph (3)(c), (5)(c) or (6)(b) ceases to have effect if the resolution is revoked.

(10) A company shall advertise a notice of the reduction of the share capital in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language not later than seven days from the date of the passing of the special resolution.

(11) The company and every officer who contravene subsection (10) commit an offence.

### **Creditor's right to object to the reduction of the share capital by the company**

**118.** (1) This section shall apply to a company which has passed a special resolution for reducing share capital under section 117.

(2) Any creditor of the company may apply to the Court for the resolution to be cancelled within six weeks from the date of the resolution.

(3) Subsection (2) shall apply to a creditor of the company who is entitled to any debt or claim which would be admissible as proof against the company at the date of his application to the Court if such date were the commencement of the winding up of the company.

(4) When an application is made under subsection (2)—

- (a) the creditor shall as soon as possible serve the application on the company; and
- (b) the company shall as soon as possible give to the Registrar notice of the application.

### **Position at end of period for objection by creditor**

**119.** (1) If no application for cancellation of the resolution is made under subsection 118(2) for the reduction of share capital to take effect, the company shall lodge with the Registrar after the end of six weeks, and before the end of eight weeks, from the date of the resolution—

- (a) a copy of the resolution;

- (b) a copy of the solvency statement under subsection 117(3), if applicable;
- (c) a statement made by the directors confirming that the requirements under subsection 117(1) and the solvency requirements under subsection 117(3), if applicable, have been complied with, and that no application for cancellation of the resolution has been made; and
- (d) a copy of the notice of the reduction of share capital referred to in subsection 117(10).

(2) If one or more applications for cancellation of the resolution made under subsection 118(2) are made for the reduction of share capital to take effect, the proceedings for all the applications shall have been brought to an end due to being dismissed, withdrawn or brought to an end due to any reason as the Registrar may allow, the company shall lodge with the Registrar within fourteen days beginning with the date on which the last such applications were dismissed, withdrawn or otherwise brought to an end—

- (a) a statement made by the directors confirming that the requirements under subsection 117(1), the solvency requirements under subsection 117(3), if applicable, and subsection 117(5) or (6), as the case may be, have been complied with, and that the application were dismissed, withdrawn or brought to an end due to any reason as the Registrar may allow or without determination;
- (b) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and
- (c) a notice containing the information relating to the reduction of share capital.

(3) The reduction of the share capital shall take effect when the Registrar has recorded the information lodged with him in the appropriate register.

(4) A notice confirming the reduction of share capital issued by the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is as stated in the order.

**Power of Court in relation to objection by creditor**

**120.** (1) An application by a creditor under section 118 shall be determined by the Court in accordance with this section.

(2) The Court shall make an order cancelling the resolution if, at the time the application is considered, the resolution has not been cancelled previously, any debt or claim on which the application was based is outstanding and the Court is satisfied that—

- (a) the debt or claim has not been secured and the applicant does not have other adequate safeguards for the debt or claim; and
- (b) it is not the case that security or other safeguards are unnecessary in view of the assets that the company would have after the reduction.

(3) If the Court is not satisfied to make an order under subsection (2), the Court shall dismiss the application.

(4) Where the Court makes an order under subsection (2), the company shall lodge a copy of the order to the Registrar within fourteen days from the date the order is made.

(5) For the purposes of this section—

- (a) a debt is outstanding if it has not been discharged; and
- (b) a claim is outstanding if it has not been terminated.

(6) The company and every officer who contravene subsection (4) commit an offence.

**Offences for making groundless or false statements**

**121.** A director making a statement under paragraph 119(2)(a) commits an offence if the statement—

- (a) is false; or
- (b) is not believed by him to be true,

and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Liability of members on reduced shares**

**122.** Where the share capital of a company is reduced under any provision of this Subdivision, a past or present member of the company shall not be liable in respect of the issue price of any share to any call or contribution greater in amount than the difference, if any, between—

- (a) the issue price of the share; and
- (b) the aggregate of the amount paid up on the share, if any, and the amount reduced on the share.

### Subdivision 5

#### *Assistance by a Company in the Purchase of Its Own Shares*

### **Financial assistance by a company in dealings in its shares, etc.**

**123.** (1) Unless otherwise provided in this Act, a company shall not give any financial assistance, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for—

- (a) any shares in the company; or
- (b) in the case where the company is a subsidiary, any shares in its holding company, or in any way purchase, deal in or lend money on its own shares.

(2) Unless otherwise provided in this Act, a company shall not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability, if—

- (a) a person has acquired shares in the company or its holding company; and

(b) the liability has been incurred by any person for the purpose of the acquisition of the shares.

(3) Any officer of the company who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

(4) Where a person is convicted of an offence under this section and the Court, by which the person is convicted is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence, the Court may, in addition to imposing a penalty under subsection (3), order the convicted person to pay compensation to the company or the person, as the case may be, such amount as the Court may specify, and such order may be enforced as if it were a judgment of the Court.

(5) Nothing in this section shall operate to prevent the company or any person recovering the amount of any loan made in contravention of this section or any amount for which it becomes liable either on account of any financial assistance given or under any guarantee entered into or in respect of any security provided in contravention of this section.

### **Consequences of failing to comply with this Subdivision**

**124.** If a company gives financial assistance in contravention of this Subdivision, the validity of the financial assistance and of any contract or transaction connected with the financial assistance is not affected only because of the contravention.

### **General exceptions**

**125.** Section 123 shall not prohibit—

- (a) the lending of money by the company in the ordinary course of its business if the lending of money is part of the ordinary business of a company;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the



company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company or a subsidiary of the company, including any director holding a salaried employment or office in the company or a subsidiary of the company;

- (c) the giving of financial assistance by a company to persons, other than directors, *bona fide* in the employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company or its holding company to be held by such persons by way of beneficial ownership; or
- (d) the making of a loan or the giving of a guarantee or the provision of security in connection with one or more loans made by one or more other persons by a company in the ordinary course of its business where the activities of that company are regulated by any written law relating to banking, insurance or takaful or which are subject to the supervision of the Securities Commission and where—
  - (i) the lending of money or the giving of guarantees or the provision of security in connection with loans made by other persons, is done in the course of such activities; and
  - (ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, such loan is made on ordinary commercial terms as to the rate of interest or returns, the terms of repayment of principal and payment of the interest or returns.

**Financial assistance not exceeding ten per centum of shareholders' funds**

**126.** (1) This section shall not apply to a company whose shares are quoted on a stock exchange.

(2) A company may, by a special resolution, give financial assistance for the purpose of the acquisition of a share in the company or its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if—

- (a) the directors resolve, before the assistance is given, that—
  - (i) the company may give the assistance;
  - (ii) the giving of the assistance is in the best interest of the company; and
  - (iii) the terms and conditions under which the assistance is to be given are just and reasonable to the company;
- (b) on the same day that the directors passed the resolution, the directors who voted in favour of the resolution make a solvency statement that complies with provisions in relation to the giving of the assistance;
- (c) the aggregate amount of the assistance and any other financial assistance given under this section that has not been repaid does not exceed ten per centum of the aggregate amount received by the company in respect of the issue of shares and the reserves of the company, as such aggregate amount is disclosed in the most recent audited financial statements of the company;
- (d) the company receives fair value in connection with the giving of the assistance; and
- (e) the assistance is given not more than twelve months after the day on which the solvency statement is made under paragraph (b).

(3) The resolution of the directors under paragraph (2)(a) shall set out in full the grounds for the conclusions of the directors made under that paragraph.

(4) A reference in paragraph (2)(c) to any other financial assistance given under this section that has not been repaid includes the amount of any financial assistance given in the form of a guarantee or security for which the company remains liable at the time the financial assistance in question is given.

(5) Within fourteen days from giving financial assistance under this section, the company shall send to each member of the company a copy of the solvency statement made under paragraph (2)(b) and a notice containing the following information:

- (a) the class and number of shares in respect of which the assistance was given;
- (b) the consideration paid or payable for those shares;
- (c) the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares;
- (d) the nature, the terms and, if quantifiable, the amount of the assistance.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or imprisonment not exceeding five years or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Purchase by a company of its own shares, *etc.***

**127.** (1) Notwithstanding section 123, a company whose shares are quoted on a stock exchange may purchase its own shares if so authorized by its constitution.

(2) A company shall not purchase its own shares unless—

- (a) the company is solvent at the date of the purchase and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased;
- (b) the purchase is made through the stock exchange on which the shares of the company are quoted and in accordance with the relevant rules of the stock exchange; and
- (c) the purchase is made in good faith and in the interests of the company.

(3) Notwithstanding paragraph 2(b), a company may purchase its own shares otherwise than through a stock exchange if the purchase is—

- (a) permitted under the relevant rules of the stock exchange; and
- (b) made in accordance with such requirements as may be determined by the stock exchange.

(4) Where a company has purchased its own shares, the directors of the company may resolve—

- (a) to cancel the shares so purchased;
- (b) to retain the shares so purchased in treasury which is referred to as “treasury shares” in this Act; or
- (c) to retain part of the shares so purchased as treasury shares and cancel the remainder of the shares.

(5) Shares that are purchased by a company under this section, unless held in treasury, shall be deemed to be cancelled immediately on purchase.

(6) Where shares are held as treasury shares, the company shall hold such shares in a securities account in accordance with the relevant rules of the stock exchange or the central depository as defined in section 146, as the case may be.

(7) Where such shares are held as treasury shares, the directors of the company may—

- (a) distribute the treasury shares as dividends to shareholders, such dividends to be known as “share dividends”;
- (b) resell the treasury shares or any of the treasury shares in accordance with the relevant rules of the stock exchange;
- (c) transfer the shares, or any of the shares for the purposes of or under an employees’ share scheme;
- (d) transfer the shares, or any of the shares as purchase consideration;

(e) cancel the shares or any of the shares; or

(f) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

(8) The holder of treasury shares which are held under subsection (5) shall not confer—

(a) the right to attend or vote at meetings and any purported exercise of such rights is void; and

(b) the right to receive dividends or other distribution, whether cash or otherwise, of the company's assets including any distribution of assets upon winding up of the company.

(9) While the shares are held as treasury shares, the treasury shares shall not be taken into account in calculating the number or percentage of shares or of a class of shares in the company for any purposes including, without limiting the generality of this provision, the provisions of any law or requirements of the constitution of the company or the listing requirements of a stock exchange on substantial shareholding, takeovers, notices, the requisitioning of meetings, the quorum for a meeting and the result of a vote on a resolution at a meeting.

(10) Where the directors decide to distribute the treasury shares as share dividends, the costs of the shares on the original purchase shall be applied in the reduction of the funds otherwise available for distribution as dividends.

(11) This section shall not be taken to prevent—

(a) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or

(b) the subdivision of any treasury shares into treasury shares of a larger number, or consolidation of any treasury shares into treasury shares of a smaller number.

(12) In the circumstances in which subsection (2) applies, any shares allotted as fully paid bonus shares in respect of the treasury shares shall, for the purposes of this Act, be treated as if the shares were purchased by the company at the time the shares were allotted.

(13) Where the directors resolve to cancel the shares so purchased or to cancel any treasury shares, the costs of the shares shall be applied in the reduction of the profits otherwise available for distribution as dividends.

(14) Where the directors resolve to cancel the shares so purchased, or cancel any treasury shares, the issued capital of the company shall be diminished by the shares so cancelled.

(15) A cancellation of shares made under paragraph (4)(a) or paragraph (7)(e) shall not be deemed to be a reduction of share capital within the meaning of this Act.

(16) A company shall lodge with the Registrar and the stock exchange a notice of the purchase of the shares in a manner to be determined by the Registrar within fourteen days from the purchase of the shares.

(17) The company, every officer and any other person or individual who contravene subsection (2) commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(18) The company and every officer who contravene subsection (16) commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Options to take up unissued shares**

**128.** (1) A public company may grant an option to any person to take up unissued shares for a period of not more than ten years from the date on which the option was granted.

(2) Subsection (1) shall not apply in any case where the debenture holders have an option to take up shares of the company by way of redemption of the debentures.

**Register of options to take up unissued shares in a company**

**129.** (1) A company shall maintain a register of options granted to persons to take up unissued shares in the company.

(2) The company shall, within fourteen days from the grant of an option to take up unissued shares in the company, enter in the register the following particulars:

- (a) the name, address and the number of the identity card issued under the National Registration Act 1959, or the passport number or other identification number and the nationality of the holder of the option;
- (b) the date on which the option was granted;
- (c) the number and description of the shares in respect of which the option was granted;
- (d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;
- (e) the consideration, if any, for the grant of the option;
- (f) the consideration, if any, for the exercise of the option or the manner in which that consideration is to be ascertained or determined; and
- (g) such other particulars as may be determined by the Registrar.

(3) Sections 50 to 55 shall apply to a register kept under this section as if the register were the register of members.

(4) A company shall maintain a copy of every instrument by which an option to take up shares in the company is granted at the place where the register under this section is kept and such records shall be deemed to be part of the register.

(5) The rights in respect of the option shall not be affected by failure of the company to comply with this section.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a

continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Power of company to pay interest out of capital in certain cases**

**130.** (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest or returns on the amount of such share capital as is for the time being paid up and charge the interest or returns paid to share capital as part of the cost of the construction or provision.

(2) For the purposes of subsection (1)—

- (a) the payment shall not be made unless it is authorized by the constitution or by special resolution and is approved by the Court;
- (b) the payment shall be made only for such period as determined by the Court not exceeding the period of twelve months after the works or buildings have been actually completed or the plant provided;
- (c) the rate of interest or returns shall not exceed five per centum per annum or such other rate as for the time being prescribed; and
- (d) the payment of the interest or returns shall not operate as a reduction of the amount paid-up on the shares in respect of which it is paid.

(3) Before approving of any payment under paragraph (2)(a), the Court may, at the expense of the company—

- (a) appoint a person to inquire and report as to the circumstances of the case; and
- (b) require the company to give security for the payment of the costs of the inquiry.



## Subdivision 6

*Dividends***Distribution out of profit**

**131.** (1) Subject to section 132, a company may only make a distribution to the shareholders out of profits of the company available if the company is solvent.

(2) The company, every officer and any other person or individual who contravene this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

**Distribution only if company is solvent**

**132.** (1) Before a distribution is made by a company to any shareholder, such distribution shall be authorized by the directors of the company.

(2) The directors may authorize a distribution at such time and in such amount as the directors consider appropriate, if the directors are satisfied that the company will be solvent immediately after the distribution is made.

(3) For the purposes of this section, the company is regarded as solvent if the company is able to pay its debts as and when the debts become due within twelve months immediately after the distribution is made.

(4) If, after a distribution is authorized and before it is made, the directors cease to be satisfied on reasonable grounds that the company will be solvent immediately after the distribution is made, the directors shall take all necessary steps to prevent the distribution from being made.

(5) Without prejudice to any other liability, every director or officer of the company who wilfully pays or permits to be paid or authorizes the payment of any improper or unlawful distribution shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or to both.

**Recovery of distribution**

**133.** (1) The company may recover from a shareholder any amount of distribution paid to the shareholder which exceeds the value of any distribution that could properly have been made, unless the shareholder—

(a) has received the distribution in good faith; and

(b) has no knowledge that the company did not satisfy the solvency test required under subsection 132(3).

(2) Every director or manager of a company who wilfully pays or permits to be paid any dividend in contravention of section 131 or 132, which he knows from his knowledge is not profits shall also be liable to the company to the extent of the amount exceeded the value of any distribution of dividends that could properly have been made.

(3) If the whole amount is recovered from one director or manager, the director or manager may recover contribution against any other person liable who has directed or consented to the payment.

(4) The liability imposed on any person under this section shall not extend or pass to his executors, administrators or the estate of such person upon his death.

**Subdivision 7***Substantial Shareholdings***Application and interpretation**

**134.** (1) This section shall not prejudice the operation of any other provisions of this Act.

(2) In this Subdivision, a reference to a company is a reference—

(a) to a company whose shares or any of the shares are quoted on a stock exchange;

- (b) to a public company whose shares are not quoted on a stock exchange;
- (c) to a body corporate incorporated in Malaysia, that is declared by the Minister by notification in the *Gazette* to be a company for the purposes of this Subdivision; or
- (d) to a body, not being a body corporate formed in Malaysia, that is for the time being declared by the Minister by notification in the *Gazette*, to be a company for the purposes of this Subdivision.

(3) The Minister may vary or revoke a notification published under subsection (2) by notification in the *Gazette*.

(4) In relation to a company, the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the company having the same amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

(5) A reference to the definition of “voting share” to a body corporate in subsection 2(1) includes a reference to a body referred to in paragraph (2)(d).

### **Persons obliged to comply with Subdivision**

**135.** (1) The obligation to comply with this Subdivision applies to—

- (a) a natural person, whether resident or non-resident in Malaysia or whether a Malaysian citizen or non-citizen; and
- (b) a body corporate, whether incorporated or carrying on business in Malaysia or otherwise.

(2) This Subdivision applies to acts done or omitted to be done outside Malaysia.

**Substantial shareholdings and substantial shareholders**

**136.** (1) For the purposes of this Subdivision, a person has a substantial shareholding in a company—

- (a) if the person has an interest in one or more voting shares in the company and the number or the aggregate number of such shares is not less than five per centum of the total number of all the voting shares in the company; or
- (b) being a company the share capital of which is divided into—
  - (i) two or more classes of the shares, if the person has an interest in one or more voting shares include in one of those classes; and
  - (ii) the number or the aggregate number of such shares is not less than five per centum of the aggregate number of the total number of all the voting shares included in that class of shares.

(2) A person who has a substantial shareholding in a company is a substantial shareholder in such company.

**Substantial shareholder to notify company of his interests**

**137.** (1) A substantial shareholder in a company shall give notice in writing to the company if he has any interest related to any particular shares.

(2) The notice shall—

- (a) contain the name, nationality, address and full particulars of the voting shares in which the substantial shareholder has an interest; and
- (b) include, unless the interest cannot be related to a particular shares—
  - (i) the name of the person who is registered as the shareholder; and

- (ii) the full particulars and the circumstances by reason of which the substantial shareholder has the interest.

(3) The substantial shareholder shall give the notice referred to in subsection (1) to the company—

- (a) in the case of a company whose shares are quoted on a stock exchange, within three days after the person becomes a substantial shareholder; or
- (b) in any other case, within five days after the person becomes a substantial shareholder.

(4) The notice shall be given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (2).

(5) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Substantial shareholder to notify company of change in his interests**

**138.** (1) A substantial shareholder shall give notice to the company in writing if there is a change of his interest in voting shares in the company—

- (a) in the case of a company whose shares are quoted on a stock exchange within three days after the date of the change; or
- (b) in any other case, within five days after the date of the change.

(2) The notice under subsection (1) shall contain—

- (a) the name and full particulars of the substantial shareholder; and

- (b) the date and circumstances by reason of which that change has occurred.

(3) For the purposes of subsection (1), where a substantial shareholder in a company acquires or disposes of voting shares in the company, the acquisition or disposal shall be deemed to be a change in the interest of the substantial shareholder in voting shares in the company.

(4) Any substantial shareholder who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Person who ceases to be substantial shareholder to notify company**

**139.** (1) A person shall give notice to the company in writing if he ceases to be a substantial shareholder in a company—

- (a) in the case of a company whose shares are quoted on a stock exchange, within three days after the person ceased to be a substantial shareholder; or
- (b) in any other case, within five days after the person ceased to be a substantial shareholder.

(2) The notice shall contain—

- (a) the name and date of which the person ceased to be a substantial shareholder; and
- (b) the full particulars of the circumstances by reason of which the person ceased to be a substantial shareholder.

(3) Any substantial shareholder who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**References to operation of interests in shares**

**140.** The circumstances required to be stated in a notice under section 137, 138 or 139 include circumstances by reason of which having regard to the operation of interests in share—

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company,

respectively.

**Copy of notice to be served on the Registrar**

**141.** A person who gives a notice under section 137, 138 or 139 to a company referred to in paragraph 134(2)(a) shall serve a copy of the notice to the Registrar on the day on which such person gives that notice.

**Notice to non-residents**

**142.** (1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest shall—

- (a) give a notice to the non-resident in the form and manner as determined by the Registrar; or
- (b) if the person knows or has reasonable grounds for believing that an interest of the non-resident in the shares is an interest that the non-resident holds for another person—
  - (i) give a notice to the non-resident in a form and manner as determined by the Registrar; and
  - (ii) direct the non-resident to give the notice or a copy of the notice to that other person.

(2) The notice shall be given by the person within fourteen days from becoming the holder of the voting shares.

(3) In this section, “non-resident” means a person who is not a resident in Malaysia or a body corporate that is not incorporated in Malaysia.

(4) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Registrar may extend time for giving notice under this Subdivision**

**143.** (1) The Registrar may, in his discretion, extend the time for giving the notice specified in this Subdivision upon an application of the person who is required to give a notice.

(2) Notwithstanding that the period referred to in subsection (1) has expired, the Registrar may exercise his power to further extend the time for giving the notice by such person.

### **Company to keep and maintain register of substantial shareholders**

**144.** (1) A company shall keep a register and shall forthwith enter—

- (a) the names of persons in alphabetical order from whom the company receives a notice under section 137 and the information given in the notice against each name entered in the register; and
- (b) the information given in such notice if the company receives a notice under section 138 or 139.

(2) The register shall be kept at the registered office of the company and shall be open for inspection by any member of the company without charge and by any other person on payment of ten ringgit for each inspection or such lesser sum as the company requires.



(3) The Registrar may at any time in writing require the company to furnish him a copy of the register or any part of the register within fourteen days from the day on which the requirement is received by the company.

(4) A company shall not—

(a) be deemed for any purpose to have notice of; or

(b) be put upon inquiry as to,

the right of a person to or in relation to a share in the company by reason of anything done under this Subdivision.

(5) The company and every officer who contravene this section commit an offence.

### **Powers of Court with respect to defaulting substantial shareholders**

**145.** (1) Where a person is a substantial shareholder in a company and fails to comply with section 137, 138 or 139, the Court may, whether or not the failure continues, on the application of the Registrar, make one or more of the following orders:

(a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;

(b) an order restraining a person who is or is entitled to be registered as the shareholder referred to in paragraph (a) from disposing of any interest in the shares;

(c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;

(d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;

- (e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

(2) An order under this section may—

- (a) include such ancillary or consequential provisions as the Court thinks just; or
- (b) if the order directs for the sale of a share—
  - (i) provide that the sale be made within such time;
  - (ii) subject to a condition that the sale shall not be made to a person who is, or as a result of the sale, would become a substantial shareholder in the company; and
  - (iii) provide for any other conditions as the Court thinks fit.

(3) The Court may direct that the share is vested in the Registrar if the share is not sold in accordance with an order of the Court under this section.

(4) Before making an order under this section and in determining the terms of such an order, the Court shall satisfy itself, so far as the Court can reasonably do so, that the order would not unfairly prejudice any person.

(5) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if the Court is satisfied that—

(a) the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and

(b) the failure ought to be excused in all the circumstances.

(6) Before making an order under this section, the Court may direct that a notice of the application be given to such persons as the Court thinks fit or direct that notice of the application be published in such manner as the Court thinks fit.

(7) The Court may rescind, vary or discharge an order made by the Court under this section or suspend the operation of such an order.

(8) Section 557 applies in relation to a share that is vested in the Registrar under this section in the same manner as that section applies in relation to an estate or interest in property.

(9) Subsection (10) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

(10) A person who contravenes an order under this section commits an offence.

## Subdivision 8

### *The Central Depository System — A Book-Entry or Scripless System for the Transfer of Securities*

## **Interpretation**

**146.** In this Subdivision, unless the context otherwise requires—

“central depository” has the meaning assigned to it in subsection 2(1) of the Securities Industry (Central Depositories) Act 1991 [*Act 453*];

“deposited securities” has the meaning assigned to it in subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“depositor” has the meaning assigned to it in subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“security” has the meaning assigned to it in subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“stock exchange” has the meaning assigned to it in subsection 2(1) of the Securities Industry (Central Depositories) Act 1991.

### **Depositor deemed to be member**

**147.** (1) A depositor whose name appears in the record of depositors maintained by the central depository in accordance with section 34 of the Securities Industry (Central Depositories) Act 1991 in respect of the securities of a company which have been deposited with the central depository shall be deemed to be a shareholder, debenture holder or option holder of the company, as the case may be, and shall, subject to the provisions of the Securities Industry (Central Depositories) Act 1991 and any regulations made under that Act, be entitled to the number of securities stated in the record of depositors.

(2) Notwithstanding section 101, all rights, benefits, powers and privileges are subject to all liabilities, duties and obligations in respect of, or arising from, such securities, whether conferred or imposed by this Act or the constitution of the company.

(3) Nothing in this Subdivision shall be construed as affecting the obligation of the company to keep—

- (a) a register of its members under sections 50 and 52;
- (b) a register of debenture holders under section 60; and
- (c) a register of option holders under section 129,

and to open the registers referred to in paragraphs (a), (b) and (c) for inspection in accordance with this Act except that the company shall not be obliged to enter in such registers the names and particulars of depositors who are deemed to be the shareholders, debenture holders or option holders.

(4) Notwithstanding any other provision of this Act, a depositor shall not be regarded as a member of a company entitled to attend any general meeting and to speak and vote at the general meeting unless his name appears on the record of depositors which is dated not less than three market days before the general meeting.

(5) The record of depositors shall be *prima facie* evidence of any matters inserted in the record as required or authorized by this Act.

(6) For the purposes of this section, “market day” means any day between Mondays and Fridays which is not a market holiday of the stock exchange or public holiday.

### **Transfer of securities is by way of book entry**

**148.** (1) The transfer of any securities or class of securities of a company whose securities or any class of whose securities have been deposited with a central depository shall be by way of book entry by the central depository in accordance with the rules of the central depository and notwithstanding section 105, 106 or 110, such company shall be precluded from registering and effecting any transfer of securities or class of securities which have been deposited for such company.

(2) Subsection (1) shall not apply to a transfer of securities to a central depository or its nominee company or from the central depository or its nominee company to the depositors.

### **Rectification of record of depositors**

**149.** (1) Notwithstanding anything in this Act or any written law, no order shall be made by the Court for the rectification of the record of depositors except in the circumstances and subject to the conditions specified in subsection (2).

(2) The Court may award to the depositor mentioned in paragraph (a) or any person who would have been entitled to be registered as having the title to such securities, as the case may be, on such terms as the Court deems to be equitable or make such other order as the Court deems fit, including an order for the transfer of such securities to such depositor or person if it is satisfied that—

- (a) a depositor did not consent to a transfer of any securities; or
- (b) a depositor should not have been registered as having title to any securities.

### **Non-application of section 472 to disposition made by way of book entry**

**150.** (1) Subsection 472(1) shall not apply to a disposition of property made by way of book entry by a central depository.

(2) Notwithstanding subsection (1), if the Court is satisfied that a party to the disposition other than the central depository had notice that a petition has been presented for the winding up of the other party to the disposition, the Court may—

- (a) award damages against the party on such terms as the Court thinks equitable; or
- (b) make such other orders as the Court thinks fit, including an order for the transfer of deposited securities by the party, except an order for the rectification of the record of depositors.

### **Exemption from this Subdivision**

**151.** The Minister may, by notice published in the *Gazette*—

- (a) exempt any company or class of companies from complying with all or any provisions of this Subdivision in relation to any securities of a company or any class of companies to which this Subdivision applies subject to such terms and conditions as he deems fit to impose; and
- (b) revoke or vary the notice in such manner as the Minister thinks fit.

## Subdivision 9

*Prospectus***Application of Subdivision 9**

**152.** (1) Unless otherwise provided in this Act, this Subdivision shall apply to an offer made to the public or any section of the public with regards to—

- (a) an offer or invitation in respect of shares or debentures made by an unlisted recreational club; and
- (b) an offer or invitation to deposit money with or lend money to a corporation as specified in section 158.

(2) This Subdivision shall not apply to an offer or invitation to subscribe for or purchase any securities of a corporation, including any excluded offer or excluded invitation as defined in the Capital Markets and Services Act 2007.

**Power of Minister to exempt the application of Subdivision 9**

**153.** (1) The Minister may, on the application in writing by any person interested and subject to the recommendation of the Registrar, by order declare that the whole or any part of this Subdivision shall not apply to any person making an offer of shares or debentures to the public, either unconditionally or subject to such terms and conditions as the Minister thinks fit to impose.

(2) The Registrar may make recommendation to the Minister if the Registrar is of the opinion that—

- (a) the cost of providing a prospectus outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if a prospectus were dispensed with.

**Requirement to register and lodge prospectus**

**154.** (1) A prospectus to which this Subdivision applies shall not be issued, circulated or distributed by any person unless—

- (a) the prospectus has first been registered by the Registrar; and
- (b) the prospectus has complied with the provisions of this Act.

(2) A prospectus registered with the Securities Commission under the Capital Markets and Services Act 2007 shall be lodged with the Registrar before the date of issue of the prospectus.

(3) A person shall not issue, circulate or distribute any form of application for shares in or debentures of a corporation unless—

- (a) he is authorized in writing by the Registrar; and
- (b) the form is accompanied with a copy of a prospectus which has been registered by the Registrar.

(4) Subsection (2) shall not apply to the form of application if—

- (a) the form is issued, circulated or distributed in connection with shares or debentures which are not offered to the public;
- (b) the form is issued, circulated or distributed in connection with a take-over offer which complies with the provisions of the relevant law applicable to such offers; or
- (c) the form is issued, circulated or distributed in connection with shares which are offered for purchase or subscription by employees of a corporation or its related corporation in accordance with a scheme approved by the Registrar.

(5) Any person who contravenes this section commits an offence and shall on conviction, be liable to imprisonment not exceeding five years or to a fine not exceeding one million ringgit or to both.



**Registration of prospectus**

**155.** A prospectus shall be registered if—

- (a) a copy of the prospectus signed by every director and every person who is named in the prospectus as a proposed director of the corporation or by his agent authorized in writing is lodged with the Registrar on or before the date of the issue of the prospectus; and
- (b) the prospectus is submitted to the Registrar together with—
  - (i) a written application for the registration of the prospectus;
  - (ii) copies of all consents required under section 160 from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
  - (iii) copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of the contract, verified in accordance with any requirements specified by the Registrar; and
  - (iv) any other information or documents as may be required by the Registrar.

**Refusal to register a prospectus**

**156.** (1) The Registrar shall refuse to register a prospectus if—

- (a) the Registrar is of the opinion that the prospectus does not comply with any provision of this Act;
- (b) the issue or invitation in respect of the shares or debentures to which the prospectus relates does not comply with this Act; or

- (c) the Registrar is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission.

(2) If the Registrar is of the opinion that the corporation or the directors of the corporation making such offer or invitation is not a fit and proper person to make such an issue or invitation to the public, the Registrar may refuse to register the prospectus.

(3) For the purposes of subsection (2), a director shall include a proposed director named in the prospectus and any other person falling under the definition of a director.

### **Keeping of documents relating to prospectus**

**157.** (1) A corporation shall cause a copy of—

- (a) any consent required under section 160 in relation to the issue of the prospectus; and
- (b) every material contract or document referred to in the prospectus,

to be deposited at the registered office of the corporation in Malaysia, and if the corporation has no registered office in Malaysia, at the address specified in the prospectus for that purpose, within three days after the registration of the prospectus.

(2) The corporation shall keep a copy of the documents referred to in subsection (1) for a period as may be specified by the Registrar for inspection by any person without charge.

(3) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Invitations to the public to lend money to or to deposit money with a corporation**

**158.** (1) An invitation to the public to deposit money with or lend money to a corporation or proposed corporation shall not be issued, circulated or distributed by the corporation or by any other person unless a prospectus in relation to the invitation has been registered by the Registrar under sections 154 and 155.

(2) For the purposes of this Division, any corporation which accepts or agrees to accept from any person any money on deposit or loan shall be deemed to make an invitation to the public to deposit money with or lend money to the corporation or proposed corporation.

(3) Notwithstanding subsection (2), a corporation is not required to issue a prospectus if—

(a) the corporation is not under a present or future liability to repay any money accepted by the corporation on deposit or loan from more than ten persons; or

(b) any money accepted by the corporation on deposit or loan is fully guaranteed by the Government.

(4) If a corporation has accepted from any person any money as a deposit or loan upon an invitation referred to in subsection (1), the corporation shall, within two months after the acceptance of the money, issue to that person a document which—

(a) acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and

(b) complies with the other requirements of this section.

(5) The document shall be described or referred to in the prospectus and in any other document, whether constituting or relating to the invitation and in the document itself, as an unsecured note or an unsecured deposit note unless the document is and may be otherwise described under subsection (6) or (7).

(6) The document may be described or referred to in the prospectus or in such other document or in the document itself as—

- (a) a mortgage debenture or certificate of mortgage debenture stock unless there is included in the prospectus the statements and the valuation referred to in the First Schedule; or
- (b) a debenture or certificate of debenture stock unless—
  - (i) the document may be, but is not, described or referred to in that prospectus or document as a mortgage debenture or certificate of mortgage debenture stock under paragraph (a); or
  - (ii) there is included in the prospectus the statement and the summary referred to in the First Schedule.

(7) This section shall not apply to a prescribed corporation and shall not require a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed corporation.

(8) In this section, “prescribed corporation” means—

- (a) a banking corporation; or
- (b) a corporation or a corporation of a class which, on the recommendation of the Central Bank of Malaysia, has been declared by the Minister charged with the responsibility for finance by notice in the *Gazette* to be a prescribed corporation for the purposes of this section.

(9) The Minister charged with the responsibility for finance may, by notice published in the *Gazette*—

- (a) specify terms and conditions subject to which subsection (7) shall have effect in relation to a corporation specified in paragraph (8)(b); or
- (b) vary or revoke any declaration or specification made under this section.

(10) For the purposes of this section, a document issued by a borrowing corporation certifying that a person named in the document in respect of any deposit with or loan to the corporation, the registered holder of a specified number or value—

- (a) of unsecured notes or unsecured deposit notes;
- (b) of mortgage debentures or mortgage debenture stock; or
- (c) of debentures or debenture stock,

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, the document shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

(11) The corporation and every officer who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Form and contents of prospectus**

**159.** (1) Every prospectus issued under this Subdivision shall comply with the requirements relating to the form and contents of a prospectus as specified in the First Schedule.

(2) If a prospectus relating to any shares in or debentures of a corporation is issued and the prospectus does not comply with this section, each director of the corporation and other person responsible for the prospectus commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

(3) In the event of non-compliance with or contravention of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) with regards to any matter not disclosed, the director or other person proves that he has no knowledge of the non-compliance or contravention;

- (b) the director or other person proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or
- (c) the non-compliance or contravention is in respect of matter which in the opinion of the Court dealing with the case is immaterial or is otherwise in the opinion of the Court reasonable to be excused upon considering all the circumstances of the case.

(4) A condition requiring or binding an applicant for shares in or debentures of a corporation to waive compliance with any requirement of this section, or purporting to affect the applicant with notice of any contract document or matter not specifically referred to in the prospectus shall be void.

(5) Nothing in this section shall limit or diminish any liability which any person may incur in any other provisions under this Act or any other written law.

### **Consent from person to issue prospectus containing his statement**

**160.** (1) A prospectus which includes a statement purporting to be made by an expert, or to be based on a statement made by such person shall not be issued unless—

- (a) the person has given his written consent to the issue of the prospectus with the statement made in the form and context in which the consent is included and has not withdrawn such consent before the date of issue of the prospectus; and
- (b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

(2) Subsection (1) shall not apply to a statement which is an extract of an official statement or any other statement as may be specified by the Registrar.

(3) If any prospectus is issued in contravention of this section, the corporation and every person who is knowingly a party to the issue commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

**Relief from requirements as to form and content of prospectus**

**161.** (1) The Registrar may, on the application in writing by any person required to comply with subsection 154(1), relieve the person or approve any variation from the requirements of this Act relating to the form and content of a prospectus.

(2) In granting the relief or approving the variation under subsection (1), the Registrar may impose such terms and conditions as the Registrar thinks fit.

(3) The Registrar shall not grant the relief or approve the variation under subsection (1) unless he has considered the nature and objectives of the corporation and is satisfied that—

- (a) the relief or variation does not cause the non-disclosure to the public of information necessary for the assessment of the investment in the shares or debentures of the corporation, as the case may be; and
- (b) the compliance with the requirements, for which the relief or variation is applied for, would impose unreasonable burden on the applicant.

(4) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if the prospectus is issued in compliance with subsection (1).

**Retention of over-subscription in issuance of debenture**

**162.** (1) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus—

- (a) that the corporation expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained being an amount not more than twenty-five per centum in excess of the amount of the issue as disclosed in the prospectus.

(2) Subject to the First Schedule, if a corporation specifies in a prospectus relating to a debenture issue that the corporation reserves the right to accept or retain over-subscriptions—

- (a) the corporation shall not make, authorize or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the corporation and of its guarantor corporations; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) The corporation that contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

### **Certain advertisements deemed to be prospectuses**

**163.** (1) Every advertisement offering or calling attention to an offer or intended offer to the public in respect of shares or debentures shall be deemed to be a prospectus unless it—

- (a) only contains the following information:
  - (i) the number and description of the shares or debentures concerned;
  - (ii) the name and date of registration of the corporation and its paid up share capital;
  - (iii) a concise statement of the general nature of the main business or proposed main business of the corporation; the names, addresses and occupations of the directors or proposed directors, the brokers or underwriters to the issue and in the case of debentures, the trustee for the debenture holders;
  - (iv) the name of the stock exchange of which the brokers or underwriters to the issue are members; and



- (v) particulars of the opening and closing dates of the offer and the time and place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained; and

- (b) states that applications for shares or debentures will proceed only on one of the forms of application being referred to, and attached to a printed copy of the prospectus.

(2) A statement in the advertisement that, or to the effect that, the advertisement is not a prospectus shall not affect the operation of this section.

(3) This section shall apply to advertisements published or disseminated in Malaysia by newspaper, broadcasting, television, cinematograph or any other means whatsoever.

(4) If an advertisement is deemed to be a prospectus by virtue of subsection (1), the provisions under this subdivision regarding the contents of prospectuses and liability in respect of false or misleading statements and material omissions shall apply and have effect accordingly.

(5) If—

- (a) an advertisement offering or calling attention to an offer or intended offer of shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase is published or disseminated;
- (b) the person who published or disseminated the advertisement before so doing, obtained a certificate signed by at least two directors of the corporation, or two proposed directors of the proposed corporation, that the proposed advertisement is an advertisement that will not be deemed to be a prospectus by virtue of subsection (1); and
- (c) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of that subsection,

only the corporation and every person who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement.

(6) Any person who has obtained a certificate referred to in paragraph (5)(b) shall forthwith deliver the certificate to the Registrar when so requested by the Registrar.

(7) Any person who contravenes subsection (6) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding two hundred and fifty thousand ringgit or to both and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(8) Where an advertisement that is deemed to be a prospectus by virtue of subsection (1) does not comply with the requirements of this Act as to prospectus, the person who published or disseminated the advertisement, and every officer of the corporation concerned, or other person, who knowingly authorized or permitted the publication or dissemination, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

(9) Nothing in this section shall limit or diminish any liability which any person may incur in any other provisions under this Act or any other written law.

### **Document containing offer of shares for sale to be deemed prospectus**

**164.** (1) Where a corporation allots or agrees to allot to any person any shares or debentures of the corporation with a view to all or any of the shares being offered for sale to the public, any document of the offer for sale made to the public shall, for all purposes, be deemed to be a prospectus issued by the corporation.

(2) If the documents are deemed to be prospectus for the purposes of subsection (1), the provisions under this Subdivision regarding the contents of prospectus and liability in respect of false or misleading statements and material omissions shall be applicable and have effect accordingly as if—

- (a) the shares or debentures has been offered to the public;  
and

- (b) the persons accepting the offer in respect of any shares or debentures were subscribers,

but without prejudice to the liability, if any, of the persons making the offer in respect of false or misleading statements or material omission in the document or otherwise.

(3) Unless the contrary is proved, an allotment of or an agreement to allot shares or debentures that is made with a view to the shares or debentures being offered for sale to the public shall be evidence if it is shown that—

- (a) an offer of the shares or debentures or of any of the shares or debentures for sale to the public is made within six months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the corporation in respect of the shares or debentures has not been received.

(4) The provisions of this Subdivision relating to the prospectus shall have effect as if the persons making an offer under this section were persons named in the prospectus as directors of a corporation.

(5) In addition to other requirements in this Subdivision, the document making the offer shall state—

- (a) the net amount of the consideration received or to be received by the corporation in respect of shares or debentures to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the shares or debentures have been or are to be allotted may be inspected.

(6) Where an offer to which this section relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the corporation or firm by two directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may authorize any agent in writing to sign on his behalf.

**Information memorandum deemed to be prospectus**

**165.** (1) Any information memorandum purporting to describe the business affairs of the person making the offer issued by the person or his agent shall be deemed to be a prospectus, in so far as regarding the liability of the person or his agent, for any untrue statement or non-disclosure of material information.

(2) A copy of the memorandum referred to in subsection (1) shall be lodged with the Registrar within seven days from the date the memorandum is first issued.

**Supplemental prospectus or replacement prospectus**

**166.** (1) This section applies if, after the registration of a prospectus but before its issue, the person who lodged or registered the prospectus becomes aware that—

- (a) a significant new matter has arisen being a matter, the information of which is required by this Act to be disclosed in a prospectus;
- (b) there is a significant change affecting a matter disclosed in the prospectus;
- (c) the prospectus contained a material statement that is false or misleading; or
- (d) there is a material omission from the prospectus.

(2) After becoming aware of the matters referred to in subsection (1), the person shall, as soon as practicable, lodge or register a supplemental or replacement prospectus with the Registrar, as the case may be.

(3) A supplemental prospectus shall—

- (a) clearly identify the prospectus to which the supplemental prospectus relates; and

(b) contain a statement in bold or coloured print on each page of the supplemental prospectus stating that—

- (i) it is a supplemental prospectus to be read in conjunction with the original prospectus; and
- (ii) if other supplemental prospectus has been issued in relation to the same original prospectus, both the original prospectus and previous supplementary prospectus.

(4) A supplemental prospectus shall be deemed to be part of the original prospectus to which the supplemental prospectus relates and the provisions under this Subdivision regarding the contents of prospectus and liability in respect of false or misleading statements and material omissions in a prospectus shall apply and have effect accordingly.

(5) Where a supplemental prospectus has been registered with the Registrar under subsection (1), every copy of the original prospectus shall be issued together with a copy of the supplemental prospectus.

(6) A replacement prospectus shall—

- (a) clearly identify the prospectus which the replacement prospectus replaces;
- (b) contain a statement in bold or coloured print at the beginning of the prospectus stating that it is a replacement prospectus; and
- (c) be regarded as replacing the original prospectus previously registered under section 155.

(7) Notwithstanding that the original prospectus to which the supplemental or replacement prospectus relates or replaces has been issued, a supplemental or replacement prospectus may be registered for the purposes of subsection (1) if—

- (a) the original prospectus relates to an invitation or offer which is addressed to an identifiable category of persons to whom the original prospectus is directly communicated by the person making the invitation or offer or by his

appointed agent, and a copy of the supplemental or replacement prospectus is sent to each of the persons in accordance with subsection (8); or

- (b) the original prospectus relates to an invitation or offer to the general public and a copy of the supplemental or replacement prospectus is advertised in every newspaper which originally advertised the invitation or offer or calling attention to the invitation or offer in accordance with subsection (8).

(8) For the purposes of subsection (7), a notice shall—

- (a) in the case of paragraph (7)(a), be sent together with a copy of the supplemental or replacement prospectus to every person referred to in that subsection; and
- (b) in the case of paragraph (7)(b), be advertised together with the supplemental or replacement prospectus stating that—
  - (i) a copy of the supplemental or replacement prospectus has been registered with the Registrar; and
  - (ii) every person who has submitted his application prior to the date of the notice is entitled to withdraw his application within fourteen days from the date of the notice and all application money received in respect of the shares or debentures will be refunded in full without interest or profit.

(9) Any supplemental or replacement prospectus that has been registered with the Securities Commission under the Capital Markets and Services Act 2007 shall be lodged with the Registrar immediately upon registration with the Securities Commission together with a notice indicating which original prospectus the supplemental or replacement prospectus relates to or replaces, as the case may be.

(10) Any person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

**Civil liability for misstatement in prospectus**

**167.** (1) A person who subscribes for or purchases any shares or debentures and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from the following persons:

- (a) the corporation and each director of the corporation at the time of the issue of the prospectus;
- (b) person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
- (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he is a party to the preparation of the prospectus;
- (d) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or
- (e) a person who authorized or caused the issue of a prospectus in contravention of section 168, for any loss or damage caused by such contravention.

(2) No person shall be liable under subsection (1) if he proves that—

- (a) having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus and that the prospectus was issued without his authority or consent;
- (b) the prospectus was issued without his knowledge or consent and he gave reasonable notice to the public after he became becomes aware of its issue;

(c) after the issue of the prospectus and before the allotment or sale of the shares or debentures, he has withdrawn his consent after he becomes aware of any false or misleading statement in the prospectus and gives reasonable notice to the public of the withdrawal together with the reason; or

(d) in relation to every false or misleading statement—

- (i) he has reasonable ground to believe that the statement is true up to the time of the allotment or sale of the shares or debentures;
- (ii) purporting to be a statement, or based on a statement, or contained in what purports to be a copy of or extract from a report of valuation, of an expert, and that he has reasonable ground to believe that the person making the statement is an expert and competent to make the true statement up to the time of the issue of the prospectus and that person has given the consent required under section 160 to the issue of the prospectus and has not withdrawn that consent before delivery of a copy of the prospectus for registration or before any allotment or sale of the shares or debentures; and
- (iii) purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, the statement is a true and fair representation of the statement or copy of or extract from the document.

(3) Subsection (2) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 160, as a person who has authorized or caused the issue of the prospectus in respect of a false and misleading statement purporting to have been made by him as an expert.

(4) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required by him by section 160 as a person who has authorized



the issue of a prospectus in respect of a false or misleading statement purporting to be made by him as an expert shall not be liable if he proves that—

- (a) he withdrew his consent in writing before a copy of the prospectus was lodged with the Registrar;
- (b) after a copy of the prospectus was lodged with the Registrar and before allotment or sale of the shares or debentures, he withdrew his consent in writing after he becomes aware of the false or misleading statement and gives reasonable notice to the public of the withdrawal together with the reason; or
- (c) he is competent to make the statement and that he has reasonable ground to believe that the statement is true up to the time of the allotment or sale of the shares or debentures.

(5) Where—

- (a) the prospectus contains the name of a person as a director of the corporation, or a person who has agreed but has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to the issue of the prospectus; or
- (b) the consent of a person is required under section 160 to the issue of the prospectus and he either has not given the consent or has withdrawn the consent before the issue of the prospectus,

the directors of the corporation except those without their knowledge or consent the prospectus is issued, and any other person who authorized or caused the issuance of the prospectus shall be liable to indemnify the person so named or whose consent is required against all damages costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by him, or in defending himself against any action or legal proceeding brought against him in respect of the prospectus.

**Criminal liability for misstatement in prospectus**

**168.** (1) No person shall authorize or cause the issuance of a prospectus that contains—

- (a) any statement or information that is false or misleading;  
or
- (b) a material omission from any statement or information.

(2) For the purposes of this section, it shall be a defence for a person if he proves that—

- (a) the statement or omission is immaterial; or
- (b) he has made all enquiries as are reasonable in the circumstances and after making such enquiries, he has reasonable grounds to believe and did believe the statement is true or the omission is immaterial up to the time of the issue of the prospectus.

(3) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

**Persons not to be taken to have authorized or caused issue of prospectus**

**169.** (1) For the purposes of this Part, the Registrar shall not be taken to have been involved in the preparation of a prospectus or authorized or caused the issuance of the prospectus for any reason including when he performs his functions or exercises his powers under this Act.

(2) For the purposes of sections 167 and 168, a person shall not be deemed to have authorized or caused the issuance of a prospectus by reason of—

- (a) his having given a consent as required under section 160;  
and
- (b) his name being included in the prospectus as a trustee for debenture holders, auditor, banker, advocate and solicitor or stock or share broker.

**Stop order**

**170.** (1) Where the prospectus has been registered by the Registrar and the Registrar is of the opinion that—

- (a) a prospectus does not comply with or is not prepared in accordance with any provision of this Act;
- (b) a prospectus contains a statement or information that is false or misleading;
- (c) a prospectus contains a statement or information from which there is a material omission; or
- (d) the corporation has contravened any provision of this Act,

the Registrar may, by stop order in writing served on the corporation or such other person as the Registrar may determine, direct the corporation or such other person not to allot, issue, offer, make an invitation to subscribe for or purchase or sell, further shares or debentures to which the prospectus relates, as the case requires.

(2) Subject to subsections (3) and (4), the Registrar shall not make a stop order under subsection (1) unless the Registrar has given a reasonable opportunity to be heard to any affected person as to whether a stop order shall be made.

(3) If the Registrar considers that by giving an opportunity to be heard would cause a delay that will be prejudicial to the public interest, the Registrar may make an interim stop order without giving the opportunity to be heard.

(4) An interim stop order under subsection (3) shall, unless sooner revoked, have effect until the end of twenty-one days from the day on which the interim order is made or the conclusion of the hearing in subsection (2), whichever date is the later.

(5) Where a stop order made under subsection (1) or an interim stop order made under subsection (3) is in force, this Part shall apply as if the prospectus has not been registered.

(6) An interim stop order made under subsection (3) may be revoked in writing if the Registrar is satisfied that the circumstances that resulted in the making of the order no longer exists.

(7) Where an application to subscribe for or purchase shares or debentures to which the prospectus relates has been made prior to the stop order made under subsection (1)—

(a) if the shares or debentures have not been issued to the applicant—

(i) the application shall be deemed to have been withdrawn and cancelled and the corporation or such other person who receives the moneys shall forthwith refund all moneys received from the applicant without interest or returns; and

(ii) if the money is not refunded within fourteen days of the stop order, the corporation shall be liable to refund such moneys with interest at the rate of ten per centum per annum or at such other rate as may be specified by the Registrar from the expiration of fourteen days; or

(b) if the shares or debentures have been issued to the applicant, the issue of the shares and debentures shall be deemed to be void and the corporation or such other person shall—

(i) forthwith refund without interest all moneys received from the applicant and if any such moneys is not refunded within fourteen days of the date of service of the stop order, the corporation shall be liable to refund such moneys with interest or returns at the rate of ten per centum per annum or at such other rate as may be specified by the Registrar from the expiration of fourteen days; and

(ii) take necessary steps to effect the stop order.

(8) Any person who contravenes a stop order made under subsection (1) or an interim stop order made under subsection (3) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

## Subdivision 10

### *Debentures*

#### **Application of Subdivision 10**

**171.** (1) Unless provided otherwise in this Act, this Subdivision shall be applicable to an offer made to the public, including an offer made to any section of the public however selected, with regards to—

- (a) an offer or invitation in respect of shares or debentures made by an unlisted recreational club; and
- (b) an offer or invitation to deposit money with or lend money to a corporation as specified under section 158.

(2) This Subdivision shall not apply to an offer or invitation to subscribe for or purchase any securities of a corporation, including any excluded offer or excluded invitation as provided for in the Capital Markets and Services Act 2007.

#### **Specific performance of contracts**

**172.** A contract with a company to take up and pay for any debentures of the company may be enforced by a Court order for specific performance.

#### **Perpetual debentures**

**173.** Notwithstanding any other law, a condition contained in a debenture or in a trust deed for securing a debenture, whether the debenture or trust deed is issued or made before or after the commencement of this Act shall not be invalid by reason that

the debentures are made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long.

### **Power to re-issue redeemed debentures**

**174.** (1) A company may re-issue the debentures which have been redeemed either by re-issuing the same debentures or issuing new debentures in place of the redeemed debentures, unless—

- (a) provided otherwise, either expressly or impliedly in the constitution or in any contract made by the company; or
- (b) the company has manifested its intention that the debentures shall be cancelled by passing a resolution to that effect or by some other act.

(2) If redeemed debentures are re-issued, the person entitled to the debentures shall have and shall be deemed always to have the same priorities as if the debentures have never been redeemed.

### **Deposit of debentures to secure advances**

**175.** Where a company has deposited any of its debentures to secure advances on current account or otherwise, the debentures are not treated as redeemed by reason only of the company's account having ceased to be in debit while the debentures remained deposited.

### **Qualifications of trustee for debenture holders**

**176.** (1) Every borrowing corporation which offers debentures to the public for subscription or purchase in Malaysia shall make provision for the appointment of a trustee corporation as a trustee for the debenture holders in such debentures or in a trust deed relating to the debentures.

(2) Where a borrowing corporation is required to appoint a trustee for the debenture holders in accordance with subsection (1), the borrowing corporation shall not allot any of the debentures

until the appointment has been made and the trustee corporation has consented to act as trustee.

(3) A trustee corporation shall not be appointed, hold office or act as trustee for the debenture holders of a borrowing corporation without leave of the Court if the trustee corporation is—

- (a) a shareholder who beneficially holds shares in the borrowing corporation;
- (b) beneficially entitled to moneys owed by the borrowing corporation to the trustee corporation;
- (c) a corporation that has entered into a guarantee in respect of the principal debt secured by the debentures or in respect of interest in the principal debt; or
- (d) a corporation that is by virtue of section 7 deemed to be related to—
  - (i) any corporation of a kind referred to in paragraphs (a), (b) and (c); or
  - (ii) the borrowing corporation.

(4) Subsection (3) shall not prevent a trustee corporation from being appointed, holding office or acting as a trustee for the debenture holders of a borrowing corporation by reason only that—

- (a) the borrowing corporation owes to the trustee corporation or to a corporation that is deemed by virtue of section 7 to be related to the trustee corporation any moneys so long as such moneys are—
  - (i) moneys, excluding the moneys referred to in subparagraphs (ii) and (iii), which does not exceed ten per centum of the amount of the debentures proposed to be offered to the public at the time of the appointment or within the period of three months after the debentures are first offered to the public, and which does not exceed ten per centum of the amount owed by the borrowing corporation to the debenture holders at any time after the expiration of that period;

- (ii) moneys that are secured only by a first mortgage over land of the borrowing corporation, or by any debentures issued by the borrowing corporation to the public or by any debentures not issued to the public which are issued under the same trust deed that creates other debentures issued at any time by the borrowing corporation to the public or by any debentures to which the trustee corporation, or a corporation that is deemed to be related to the trustee corporation is not beneficially entitled by virtue of section 7; or
  - (iii) moneys to which the trustee corporation, or a corporation that is entitled to be appointed as a trustee for the debenture holders of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed by virtue of section 7 deemed to be related to the trustee corporation; or
- (b) the trustee corporation, or a corporation that is deemed to be a shareholder of the borrowing corporation in respect of shares that trustee corporation beneficially holds by virtue of section 7 to be related to the trustee corporation so long as the shares in the borrowing corporation which are beneficially held by the trustee corporation and by all other corporations that are deemed to be related to the borrowing corporation by virtue of section 7 do not carry the right to exercise more than five per centum of the voting power at any general meeting of the borrowing corporation.

(5) Nothing in subsection (3) shall—

- (a) affect the operation of any debentures or trust deed issued or executed before the commencement of this Act; or
- (b) apply to or in relation to the trustee for the holders of any such debentures,

unless under any such debentures or trust deed a further offer of debentures is made to the public after the commencement of this Act.



(6) The corporation and every officer who contravene this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Duties of trustee**

**177.** (1) A trustee for debenture holders shall—

- (a) exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and of each of its guarantor corporations which are or may be available whether by way of security or otherwise are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;
- (b) satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;
- (c) ensure that the borrowing corporation complies with Subdivision 1 of Division 7 of Part III so far as the Subdivision relates to the debentures and is applicable;
- (d) exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
- (e) take all steps and do all such things as the trustee for debenture holders is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of those covenants, terms and provisions, except where it is satisfied that the breach will not materially prejudice the security, if any, for the debentures or the interests of the debenture holders;
- (f) where the borrowing corporation or any of its guarantor corporations fails to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed

if so required by the trustee, the trustee may place the matter before the meeting of debenture holders, submit such proposals for the protection of the debenture holders' investment as the trustee considers necessary or appropriate and obtain the directions of the debenture holders in relation to the investment; and

- (g) where the borrowing corporation submits to the debenture holders a compromise or an arrangement, give to the debenture holders a statement explaining the effect of the compromise or arrangement and, if the trustee thinks fit, recommend to the debenture holders an appropriate course of action to be taken by the debenture holders in relation to the compromise or arrangement.

(2) Where, after due inquiry, the trustee is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are available whether by way of security or otherwise are insufficient or likely to become insufficient to discharge the principal debt as and when the principal debt becomes due, the trustee may apply to the Minister for an order under this subsection.

(3) On an application referred to in subsection (2), after giving the borrowing corporation an opportunity of making representations in relation to such application, the Minister, by order in writing —

- (a) may serve on the corporation at its registered office in Malaysia and impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Minister thinks necessary for the protection of the interests of the debenture holders; or
- (b) may direct the trustee to apply to the Court for an order under subsection (4) and if the borrowing corporation requires the trustee to do so, the Minister shall direct the trustee to apply accordingly.

(4) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be

available whether by way of security or otherwise are insufficient or likely to become insufficient to discharge the principal debt as and when the principal debt becomes due; or

- (b) the corporation contravenes or fails to comply with an order made by the Minister under subsection (3),

the trustee may, and if the borrowing corporation requires the trustee to do so, the trustee shall apply to the Court for an order under subsection (5).

(5) Where an application is made to the Court under subsection (3) or (4), the Court may, by order, after giving the borrowing corporation an opportunity to be heard, do all or any of the following:

- (a) direct the trustee—

- (i) to convene a meeting of the debenture holders for the purpose of placing the information before the debenture holders relating to the interests and proposals for the protection of the debenture holders as the trustee considers necessary or appropriate;

- (ii) to obtain directions of the debenture holders in relation to the interests and proposals for the protection of the debenture holders; and

- (iii) to give any direction in relation to the conduct of the meeting as the Court thinks fit;

- (b) stay all or any actions or proceedings before any Court by or against the borrowing corporation;

- (c) restrain the payment of any moneys by the borrowing corporation to the debenture holders of the corporation or to any class of debenture holders;

- (d) appoint a receiver or receiver and manager of such property which constitutes the security, if any, for the debentures; and

- (e) give further directions to the members of the borrowing corporation or any of its guarantor corporations or the public as may be necessary to protect the interests of the debenture holders.

(6) The Court shall consider the rights of all creditors of the borrowing corporation upon making the order and may vary or rescind any order made under subsection (5) as the Court thinks fit.

(7) Upon making an application to the Minister under subsection (2) or (3) or to the Court under subsection (4), a trustee shall—

- (a) consider the nature and kind of the security given when the debentures are offered to the public; and
- (b) if no security is given, consider the position of the debenture holders as unsecured creditors of the borrowing corporation.

(8) A trustee may rely upon any certificate or report given or statement made by any advocate, auditor or officer of the borrowing corporation or guarantor corporation if the trustee has reasonable grounds for believing that the advocate, auditor or officer is competent to give or make the certificate, report or statement.

### **Retirement of trustee**

**178.** (1) Notwithstanding anything contained in any Act or in the relevant debentures or trust deed, a trustee for the debenture holders shall not cease to be the trustee until a corporation qualified under section 176 for the appointment as a trustee for the debenture holders has been appointed and has taken office.

(2) Where—

- (a) a provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the debenture holders upon retirement, the successor may be appointed in accordance with section 176; or

- (b) no provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing corporation may appoint a successor which is qualified to be appointed under section 176.

(3) Notwithstanding anything in this Act or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the debenture holders, appoint any corporation which is qualified for appointment under section 176 and which is deemed by virtue of section 7 to be related to the existing trustee as successor to the existing trustee.

(4) Where the trustee for the debenture holders has ceased to exist or ceased to be qualified under section 176 or fails or refuses to act or is disqualified under that section, the Court may, on the application of the borrowing corporation or the trustee for the debenture holders or any debenture holder or the Minister, appoint any corporation qualified under section 176 to be the trustee in place of the trustee which has ceased to exist or to be qualified or which fails or refuses to act as trustee or is disqualified.

(5) Where a successor is appointed to be a trustee in place of any trustee, the successor shall lodge with the Registrar a notice within thirty days from the appointment in the form and manner as determined by the Registrar.

(6) The successor who contravenes subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Contents of trust deed**

**179.** (1) Where a corporation offers debentures to the public for subscription in Malaysia, the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing corporation may borrow and shall contain covenants by the borrowing corporation which shall have the following effects:

- (a) the borrowing corporation shall use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) to the same extent as if the trustee for the debenture holders or any approved company auditor appointed by the trustee were a director of the corporation, the borrowing corporation shall—

- (i) make available for inspection all accounting or other records of the borrowing corporation; and
- (ii) give to the borrowing corporation any information as the borrowing corporation requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and

(c) on the application of persons holding not less than ten per centum in value of the issued debentures to which the covenant relates delivered to its registered office, the borrowing corporation shall—

- (i) summon a meeting of the debenture holders to consider the accounts and balance sheet which were last lodged with the trustee for the debenture holders by the borrowing corporation; and
- (ii) give to the trustee directions in relation to the exercise of the trustee's powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairpersonship of a person nominated by the trustee or such other person as is appointed in that behalf by the debenture holders present at the meeting.

(2) The notice of the meeting referred to in paragraph (1)(c) shall be—

- (a) given to each of the debenture holders, other than debentures payable to bearer, at his address as specified in the register of debentures; and
- (b) by an advertisement in at least one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language addressed to all debenture holders.

(3) If the debentures or the trust deed does not expressly contain covenants by the borrowing corporation, the debentures or the trust deed shall be deemed to contain the covenants as mentioned in subsection (1).

(4) The corporation and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

### **Power of Court in relation to certain irredeemable debentures**

**180.** (1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, forthwith or at such other time as the Court directs.

(2) In making an order under subsection (1), on the application by the trustee for the holders of the debentures or where there is no trustee, by the holder of any of the debentures, the Court shall be satisfied that—

- (a) at the time of the issue of the debentures the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest on the debt;
- (b) the security, if realized under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding regard being had to all prior charges and charges ranking equally, if any; and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or where no definite rate of interest is payable, interest on the sum at such rate as the Court considers would be a fair rate to expect from a similar investment.

(3) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

**Power of trustee to apply to Court for directions, etc.**

**181.** (1) The trustee for the debenture holders may apply to the Court—

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interests of the debenture holders.

(2) Upon application made under subsection (1), the Court may—

- (a) give such directions to the trustee as the Court thinks fit;
- (b) accede wholly or partially to the application on such terms and conditions if the Court is satisfied that the determination of the question will be just and beneficial or make such other order as the Court thinks just; or
- (c) order a meeting of all or any of the debenture holders to be called to consider any matters in which the debenture holders are concerned and to advise the trustee on the matters concerned and may give such ancillary or consequential directions as the Court thinks fit.

(3) The meeting referred to in paragraph (2)(c) shall be held and conducted in such manner as the Court directs under the chairpersonship of a person nominated by the trustee or such other person as the meeting may appoint.

**Obligations of borrowing corporation**

**182.** (1) Where there is a trustee for the debenture holders of a borrowing corporation, the directors of the borrowing corporation shall prepare a report—

- (a) at the end of a period not exceeding three months ending on a day, not later than six months after the date of the relevant prospectus which the trustee is required to notify the borrowing corporation in writing; and



- (b) at the end of each succeeding period, being a period of three months or such shorter time as the trustee may, in any special circumstances allow.

(2) The report relating to the period referred to in subsection (1) shall comply with subsection (3) and a copy of the report shall be lodged with the Registrar and the trustee within thirty days from the end of each period.

(3) The report referred to in subsection (1) shall be signed by not less than two of the directors of the borrowing corporation and shall set out in detail any matters adversely affecting the security or the interests of the debenture holders as follows:

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded;
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding on the borrowing corporation and each of its guarantor corporations respectively under the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations or any of the corporation, its subsidiaries or its guarantor corporations have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and if so, the particulars of the circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public which has not previously been reported upon as required by this section and if so, the particulars of such change; and

(f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which is deemed to be related to the borrowing corporation under section 7, the particulars of—

- (i) the total amounts deposited or loaned and the extent of any liability assumed during the period covered by the report; and
- (ii) the total amounts owing to the borrowing corporation in respect of money deposited or loaned and the extent of any liability assumed as at the end of the period covered by the report,

distinguishing between the secured and unsecured deposits, loans and assumptions of liabilities.

(4) The moneys referred to in paragraph (3)(f) shall not include any deposit with or loan to or any liability assumed on behalf of a corporation if the corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for debenture holders of the borrowing corporation.

(5) If there is a trustee for the debenture holders, the borrowing corporation and each of the guarantor corporations which has guaranteed the repayment of the moneys raised by the issue of the debentures shall furnish the trustee—

- (a) within twenty-one days from the date of the creation of any charge by the corporation or the guarantor corporation, as the case requires, the particulars of the charge created, whether or not any demand for the repayment has been made; and
- (b) if the amount to be advanced on the security of the charge is indeterminate—
  - (i) within seven days of any advances made, the particulars of the amount advanced; or
  - (ii) if the advances made are merged in a current account with bankers or trade creditors, once every three months, the particulars of the net amount outstanding in respect of any such advances made.

(6) The directors of every borrowing corporation and the directors of every guarantor corporation shall cause to be prepared a financial statement for the period from the end of that financial year until the expiration of six months after the end of that financial year and lodged with the Registrar and trustee for the debenture holders, if any, at some date not later than nine months after the expiration of each financial year of the corporation.

(7) Sections 249, 250, 252 and subsections 266(1), (2) and (6) shall, with such modifications as are necessary, be applicable to every financial statement prepared and lodged under subsection (6) as if that financial statement were a financial statement referred to in those sections.

(8) If the directors of a borrowing corporation do not lodge with the trustee for the debenture holders a report as required by subsection (1) or if the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the financial statement and reports as required by subsection (4) within the time prescribed, the trustee shall forthwith lodge notice of that fact with the Registrar.

(9) Any director of the borrowing corporation who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(10) Any director of a borrowing corporation or a guarantor corporation who contravenes subsection (2) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Obligation of guarantor corporation to furnish information**

**183.** (1) For the purpose of the preparation of a report required by this Act to be signed by or on behalf of the directors of a borrowing corporation or any of the directors of a borrowing corporation, the corporation may, by notice in writing, require

any of its guarantor corporations to furnish the corporation with any information relating to the guarantor corporation which is required to be contained in the report.

(2) The guarantor corporation shall furnish the information referred to in subsection (1) to the borrowing corporation not later than fourteen days from the date as specified in the notice.

(3) The corporation and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Loans and deposits to be immediately refundable on certain events**

**184.** (1) Where in any prospectus issued in connection with an invitation to the public to subscribe for or to purchase debentures of a corporation there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied, the corporation shall make periodic reports to the trustee for the debenture holders as to the progress that has been made towards achieving the purpose or completing the project.

(2) Each such report shall be included in the report required to be furnished to the trustee for the debenture holders under subsection 182(1).

(3) When it appears to the trustee for the debenture holders that the purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may and, if in his opinion it is necessary for the protection of the interests of the debenture holders, shall give notice in writing to the corporation requiring it to refund the moneys so received by the corporation and within thirty days from the notice is given, lodge with the Registrar a copy of the notice.

(4) The trustee shall not give a notice under subsection (3) if the trustee is satisfied that—

- (a) the purpose or project has been substantially achieved or completed;
- (b) the interests of the debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) the failure to achieve the purpose or project is due to the circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation at the time the prospectus is issued.

(5) Upon receipt of a notice referred to in subsection (3) by the corporation, the corporation shall be liable to refund and, on demand in writing by the trustee, the corporation shall immediately refund to any person entitled to any money owing to the corporation as a result of a loan or deposit made in response to the invitation unless—

- (a) before the moneys were accepted by the corporation, the corporation has given notice in writing to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the corporation accordingly; or
- (b) the corporation served a notice in writing on the debenture holders stating—
  - (i) the purpose or project for which the moneys would in fact be applied by the corporation; and
  - (ii) to offer to refund the moneys to the debenture holders and the person has not demanded from the corporation refund of the money in writing within fourteen days from the receipt of the notice, or such longer time as specified in the notice.

(6) If the corporation has given a notice in writing specifying the purpose or project for which the moneys will in fact be applied by the corporation under subsection (5), this section shall apply and have effect as if the purpose or project specified in the notice is the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

### **Liability of trustee for debenture holders**

**185.** (1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the debenture holders secured by a trust deed shall be void so far as the trust deed would have the effect of exempting a trustee from or indemnifying the trustee against liability for breach of trust where the trustee fails to show the degree of care and diligence required as trustee.

(2) Subsection (1) shall not invalidate—

- (a) any release of the trust deed otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling the release of the trust deed to be given—
  - (i) on the agreement of a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
  - (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on the trustee ceasing to act.

(3) Subsection (1) shall not operate—

- (a) to invalidate any provision in force at the commencement of this Act so long as any trustee then entitled to the benefit of that provision remains a trustee of the trust deed in question; or

- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision is in force.

## Subdivision 11

### *Restrictions on Allotment and Commencement of Business*

#### **Prohibition of allotment unless minimum subscription received**

**186.** (1) No allotment shall be made of any shares of a company offered to the public or offered for subscription or purchase or where an invitation to subscribe for or purchase shares is made under a prospectus that is registered under the Capital Markets and Services Act 2007 unless—

- (a) the minimum subscription has been subscribed; and
- (b) the amount payable on application for the shares so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which the cheque is drawn.

(2) The minimum subscription shall be—

- (a) calculated on the offer price of each share; and
- (b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share offered to the public or offered under a prospectus that is registered under the Capital Markets and Services Act 2007 shall not be less than five per centum of the offer price of the share.

(4) If the conditions referred to in paragraphs (1)(a) and (b) have not been satisfied on the expiration of four months after the first issue of the prospectus—

- (a) all moneys received from applicants for shares shall be forthwith refunded to the applicants without interest or returns; and
- (b) if such money is not refunded within five months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to refund that money with interest or returns at the rate of ten per centum per annum from the expiration of the period of five months, but a director shall not be liable if the directors proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Notwithstanding that the company is in the course of being wound up, an allotment made by a company to an applicant in contravention of this section or subsection 189(1) shall be voidable at the option of the applicant which may be exercised by a written notice served on the company not later thirty days from the date of the allotment.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.

(7) If an allotment of—

- (a) shares or debentures is made on the basis of a prospectus after the expiration of six months or such longer period as the Registrar may allow from the date of issue of the prospectus; or
- (b) securities is made on the basis of a prospectus that is registered under the Capital Markets and Services Act 2007 later than the period after the date of issue of the prospectus as the Securities Commission may specify,

the allotment shall not by reason only of that fact be voidable or void.



(8) A company, officer or promoter of that company or a proposed company shall not authorize or permit an allotment of—

- (a) any shares or debentures to the public on the basis of a prospectus after the expiration of six months or such longer period as the Registrar may allow from the date of issue of the prospectus; or
- (b) any securities as defined in the Capital Markets and Services Act 2007 on the basis of a prospectus that is registered under that Act later than the period after the date of issue of the prospectus as the Securities Commission may specify.

(9) The company and every officer or any promoter of a company or a proposed company who contravene subsection (7) commit an offence and shall, on conviction, be liable—

- (a) in the case of the company, to a fine not exceeding five million ringgit; and
- (b) in the case of the officer or promoter of a company or a proposed company, to imprisonment for a term not exceeding five years or to a fine not exceeding five million ringgit or to both.

(10) Every director of a company who knowingly contravenes or permits or authorizes the contravention of this section or subsection 190(1) shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both and, in addition, shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred but no proceedings for the recovery of any such compensation shall be commenced after the expiration of two years from the date of the allotment.

### **Application for moneys to be held in trust until allotment**

**187.** (1) All applications and other moneys paid prior to the allotment by any applicant on account of shares or debentures offered to the public or any securities for which a prospectus is required under the Capital Markets and Services Act 2007 shall

be held upon trust for the applicant by the company or in the case of an intended company by the persons named in the prospectus as proposed directors and by the promoters.

(2) There shall be no obligation or duty imposed on any bank or third person with whom any such moneys have been deposited to inquire into or to see the proper application of the moneys so long as the bank or person acts in good faith.

(3) A company and every officer who, or an intended company and every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorizes or permits the default commit an offence and shall, on conviction, be liable—

- (a) in the case of the company or an intended company, to a fine not exceeding five million ringgit; and
- (b) in the case of the person named in the prospectus as a proposed director or the promoter, to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

### **Restriction on allotment in certain cases**

**188.** (1) A public company having a share capital which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless a statement in lieu of prospectus which complies with the requirements of this Act has been lodged with the Registrar at least three days before the first allotment of either shares or debentures.

(2) If there is a contravention of this section, the company and every officer commit an offence and shall, on conviction, be liable—

- (a) in the case of the company, to a fine not exceeding five million ringgit; and
- (b) in the case of an officer, to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

**Requirements as to statements in lieu of prospectus**

**189.** (1) A statement in lieu of prospectus lodged by or on behalf of a company shall—

- (a) be signed by every person who is named in the statement as a director or a proposed director of the company or by his agent authorized in writing;
- (b) contain matters specified in Part I of the Second Schedule and set out the reports specified in Part II of that Schedule in the form and manner as determined by the Registrar; and
- (c) where the persons making any report specified in Part II of the Second Schedule have made the report or have, without giving the reasons, indicated in the report any adjustments as mentioned in paragraph 3 of Part III of that Schedule, shall have endorsed in the report or attached a written statement signed by those persons setting out the adjustments and giving the reasons for the adjustments.

(2) The Registrar shall not accept any statement in lieu of prospectus for registration unless the statement appears to him to comply with this Act.

(3) If there is any untrue statement or wilful non-disclosure in any statement in lieu of prospectus, any director who signed the statement commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both, unless the director proves either the untrue statement or wilful non-disclosure was immaterial or the director had reasonable ground to believe that the untrue statement was true or the wilful non-disclosure was immaterial at the time of the delivery of the statement in lieu of prospectus for registration.

**Restrictions on commencement of business in certain circumstances**

**190.** (1) Where a public company having a share capital has issued a prospectus inviting the public to subscribe for its shares or has issued a prospectus under the Capital Markets and Services Act 2007

in relation to its shares, the public company shall be entitled to commence any business or exercise any borrowing powers—

(a) if no money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any stock exchange;

(b) if—

(i) the shares held subject to the payment of the whole amount in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(ii) every director has paid to the company on each of the shares taken or contracted to be taken by the director, and for which the director is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.

(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares or has not issued a prospectus under the Capital Markets and Services Act 2007, the public company shall be entitled to commence any business or exercise any borrowing power if—

(a) a statement in lieu of prospectus which complies with this Act has been lodged with the Registrar; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by the director and for which the director is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash.

(3) A company referred to in subsection (1) or (2) shall lodge with the Registrar a statutory declaration by the secretary or one of the directors of the company verifying that paragraphs (1)(a) and (b) or 2(a) and (b), as the case may be, have been

complied with, and the company shall become entitled to commence business or exercise any borrowing powers from and after the lodgement of the statutory declaration.

(4) The statutory declaration referred to in subsection (3) shall be supported with a statement containing the following particulars:

- (a) an abstract of receipts and payments relating to the shares and debentures issued under the prospectus or statement in lieu of prospectus and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;
- (b) the particulars of any contract which is entered into by the company before the commencement of business; and
- (c) such other information as the Registrar may require.

(5) Any contract made by a company before the date on which it is entitled to commence business shall be provisional only and shall only be binding on the company to commence business.

(6) Nothing in this section shall prevent the receipt by the company of any money payable on application for the debentures if shares and debentures are offered simultaneously by a company for subscription.

(7) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(8) The company and every officer who contravene subsection (3) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding of five hundred ringgit for each day during which the offence continues after conviction.

**Restriction on varying contracts referred to in prospectus, etc.**

**191.** A company shall not vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus before the lodgement of statutory declaration under subsection 190(4) unless the variation is made subject to the approval of the general meeting.

## Division 2

*Members, Directors and Officers of Companies*

## Subdivision 1

*Members***Liability of members**

**192.** (1) A member shall not be liable for an obligation of a company by reason only of being a member of the company.

(2) The liability of a member of a company is limited to—

- (a) in the case of a company limited by shares, any amount unpaid on a share held by the member;
- (b) in the case of a company limited by guarantee, any amount which the member has undertaken to contribute to the company in the event of it being wound up;
- (c) any liability expressly provided for in the constitution of the company; and
- (d) any liability as provided for under this Act.

**Liability for calls and forfeiture**

**193.** (1) If a share renders its holder liable to calls or imposes a liability on its holder, that liability attaches to the shareholder for the time being, whether or not the liability became enforceable before the share was registered in the name of that shareholder and is not attached to a prior shareholder.

(2) Subject to sections 82 and 83, if all or part of the consideration payable in respect of the issue of a share remains unsatisfied and the person to whom the share was issued no longer holds that share, the liability in respect of the unsatisfied consideration remains with the person to whom the share was issued or any other person who assumed that liability at the time of issue and does not attach to the subsequent shareholders.

### **Shareholders not bound to acquire additional shares by alteration to constitution**

**194.** Unless a shareholder agrees in writing, the shareholder is not bound by an alteration of the constitution of a company that—

- (a) requires the shareholder to acquire or hold additional shares in the company more than the number held on the date the alteration is made; or
- (b) increases the liability of the shareholder to the company.

### **Members' rights for management review**

**195.** (1) The chairperson of a meeting of members of a company shall allow a reasonable opportunity for members at the meeting to question, discuss, comment, or make recommendation on the management of the company.

(2) A meeting of members may pass a resolution under this section which makes recommendations to the Board on matters affecting the management of the company.

(3) Any recommendation made under subsection (2) shall not be binding on the Board, unless the recommendation is in the best interest of the company, provided that—

- (a) the rights to make recommendations is provided for in the constitution; or
- (b) passed as a special resolution.

## Subdivision 2

*Directors***Directors of company**

**196.** (1) A company shall have a minimum number of directors as follows:

(a) in the case of a private company, one director; or

(b) in the case of a public company, two directors.

(2) A director shall be a natural person who is at least eighteen years of age.

(3) A director of a company shall not resign or vacate his office if by his resignation or vacation from office, the number of directors of the company is reduced below the minimum number required under subsection (1) and any purported resignation or vacation of office in contravention of this section shall be deemed to be ineffective unless a person is appointed in his place.

(4) For the purposes of this section, the minimum number of directors—

(a) shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia; and

(b) shall not include an alternate or substitute director.

**Persons connected with directors**

**197.** (1) A person shall be deemed to be connected with a director if the person is—

(a) a member of the director's family;

(b) a body corporate which is associated with that director;

(c) a trustee of a trust, other than a trustee for an employee share scheme or pension scheme, under which that director or a member of the director's family is a beneficiary; or



(d) a partner of that director or a partner of a person connected with that director.

(2) For the purposes of this section—

(a) “a member of the director’s family” means the director’s spouse, parent, child, including adopted child and stepchild, brother, sister and the spouse of the director’s child, brother or sister;

(b) a body corporate is associated with a director if—

(i) the body corporate is accustomed or is under an obligation, whether formal or informal, or the majority of directors of the body corporate is accustomed, to act in accordance with the that director’s directions, instructions or wishes of that director;

(ii) that director has a controlling interest in the body corporate; or

(iii) that director, or persons connected with that director, or that director and persons connected with him, are entitled to exercise, or control the exercise of, not less than twenty per centum of the votes attached to voting shares in the body corporate.

### **Persons disqualified from being a director**

**198.** (1) A person shall not hold office as a director of a company or whether directly or indirectly be concerned with or takes part in the management of a company, if the person—

(a) is undischarged bankrupt;

(b) has been convicted of an offence relating to the promotion, formation or management of a corporation;

(c) has been convicted of an offence involving bribery, fraud or dishonesty;

(d) has been convicted of an offence under sections 213, 215, 216, 217, 218, 228 and 539; or

(e) has been disqualified by the Court under section 199.

(2) The circumstances referred to in paragraphs (1)(a), (b), (c) and (d) shall be applicable to circumstances in or outside Malaysia.

(3) Notwithstanding subsection (1), a person who has been disqualified under paragraph (1)(a) may be appointed or hold office as a director with the leave of—

(a) the Official Receiver; or

(b) the Court provided that a notice of intention to apply for leave has been served on the Official Receiver and the Official Receiver is heard on the application.

(4) Notwithstanding subsection (1), a person who has been disqualified under paragraph (1)(b), (c), (d) or (e) may be appointed or hold office as a director with the leave of the Court.

(5) A person intending to apply for a leave of the Court under paragraph (3)(b) or subsection (4) shall—

(a) give the Registrar a notice of not less than fourteen days of the person's intention to do so; and

(b) make the Registrar a party to the proceedings under subsection (3).

(6) For the purposes of subsection (5), any person referred to in paragraph (1)(b), (c), (d) or (e) shall not be required to obtain a leave from Court after the expiry of five years calculated from the date he is convicted or if he is sentenced to imprisonment, from the date of his release from prison.

(7) Any person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

**Power of Court to disqualify persons from acting as director or promoter**

**199.** (1) The Court may, on an application by the Registrar, make an order to disqualify any person from acting or holding office as a director or promoter of a company, or be concerned with or taking part in the management of a company whether directly or indirectly, if—

- (a) within the last five years, the person has been a director of two or more companies which went into liquidation resulting from the company being insolvent due to his conduct as a director which contributed wholly or partly to the liquidation;
- (b) due to his contravention of the duties of a director; or
- (c) due to his habitual contravention of this Act.

(2) An application arising from the circumstances referred to in paragraph (1)(a) may be made by the Official Receiver and the Registrar shall be made a party to the proceedings.

(3) Before making an order under subsection (1), the Court may require any person—

- (a) to furnish the Court with such information with respect to the company's affairs; and
- (b) to produce and permit inspection of such books or documents relevant to the company.

(4) After considering the application and the additional information and documents received under subsection (3), if any, the Court may make an order to disqualify the person from acting or holding office as a director or promoter of a company, or be concerned with or taking part in the management of a company whether directly or indirectly for such period not exceeding five years commencing from the date of the order.

(5) The Registrar or the Official Receiver shall give notice of not less than fourteen days to the person referred to in subsection (1) notifying his intention to apply for an order under this section.

**Power of Registrar to remove name of disqualified director**

**200.** Notwithstanding any provision in this Act or the constitution of a company, the Registrar shall have the power to remove the name of a director who has been disqualified under section 198 or 199 from the register kept by the Registrar for that purpose.

**Directors' consent required**

**201.** A person shall not be appointed as a director of a company unless he has consented in writing to be a director and make a declaration that he is not disqualified from being appointed or holding office as a director of a company under this Act.

**Named directors and subsequent directors**

**202.** (1) A person named as a director in an application for incorporation of a company shall hold office as a director from the date of incorporation until that person ceases to hold office as a director in accordance with this Act.

(2) All subsequent directors of a company may be appointed by ordinary resolution.

(3) Subject to the constitution, the Board may, at any time, appoint a director in addition to existing director and the director so appointed shall hold office—

(a) in the case of a public company, until the next annual general meeting; or

(b) in the case of a private company, in accordance with the terms of appointment.

**Appointment of directors of public company to be voted on individually**

**203.** (1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors by a single resolution shall not be made unless a resolution that the motion shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed in accordance with a motion made in contravention of this section shall be void, whether or not the resolution being moved was objected to at the time.

(3) The provision for the automatic reappointment of retiring directors referred to in subsection 205(6) shall not apply where a resolution passed in accordance with a motion was made in contravention of this section.

(4) A motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) A resolution passed under this section shall not be construed as amending the constitution.

### **Validity of acts of directors and officers**

**204.** The acts of a director or manager or secretary shall be valid notwithstanding any defect that is discovered after his appointment or in his qualification.

### **Retirement of directors**

**205.** (1) The provision under this section shall apply with regards to the retirement of directors unless there is specific provision in the company's constitution or the term of appointment regarding retirement of directors.

(2) Notwithstanding subsection (1), a private company may pass a written resolution in accordance with section 297 to determine the retirement of a director.

(3) The directors shall retire as follows:

- (a) at the first annual general meeting of a public company, all directors shall retire from office at the conclusion of the meeting; and

- (b) at the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office at the conclusion of the meeting.

(4) The directors to retire in every year shall be the directors who have been longest in office since the director's last election, but as between persons who became directors on the same day, the directors to retire shall be determined by lot, unless they otherwise agreed among themselves.

(5) A retiring director shall be eligible for re-election as if he is not disqualified under this Act.

(6) Unless otherwise provided in the constitution, the company may appoint any person who is not disqualified under this Act to fill in the vacancy at the annual general meeting at which a director so retires, and if no appointment was made to fill the vacancy, the retiring director shall, if he offers himself for re-election, be deemed to have been re-elected, unless—

- (a) at that meeting the company expressly resolved not to fill the vacated office; or
- (b) a resolution for the re-election of the director is put to the meeting and lost.

## **Removal of directors**

**206.** (1) A director may be removed before the expiration of the director's period of office as follows:

- (a) subject to the constitution, in the case of a private company, by ordinary resolution; or
- (b) in the case of a public company, in accordance with this section.

(2) Notwithstanding anything in the constitution or any agreement between a public company and a director, the company may by ordinary resolution at a meeting remove the director before the expiration of the director's tenure of office.

(3) Special notice is required of a resolution to remove a director under this section or to appoint another person instead of the director at the same meeting.

(4) Notwithstanding paragraph (1)(b), if a director of a public company was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove the director shall not take effect until the director's successor has been appointed.

(5) A person appointed as director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

### **Right to be heard for directors of public company against removal**

**207.** (1) On receipt of special notice for a resolution to remove a director under subsection 206(3), the company shall forthwith send to the director a copy of the special notice.

(2) The director shall be given the right to make oral representation or written representation not exceeding a reasonable length on the resolution to remove him.

(3) Where the director makes written representation and requests the written representation be notified to the members, the company shall, unless the representation is received too late for the company to do so—

- (a) state the fact of the representation having been made in the notice of the resolution given to members of the company; and
- (b) send a copy of the representation to every member of the company to whom the notice of the meeting is sent.

(4) If a copy of the representations is not sent as required under subsection (3) due to the representations received too late by the company or due to the default of the company, the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.

(5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused.

(6) The Court may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(7) The constitution of a private company may provide the rights accorded under this section to its directors.

### **Vacation of office of director**

**208.** (1) The office of a director of a company shall be vacated if the person holding that office—

- (a) resigns in accordance with subsection (2);
- (b) has retired in accordance with this Act or the constitution of the company but is not re-elected;
- (c) is removed from office in accordance with this Act or the constitution of the company;
- (d) becomes disqualified from being a director under section 198 or 199;
- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the Mental Health Act 2001 [Act 615];
- (f) dies; or
- (g) otherwise vacates his office in accordance with the constitution of the company.

(2) Subject to subsection 196(3) and section 209, a director may resign his office by giving a written notice to the company at its registered office.



(3) A notice under subsection (2) shall be effective when it is delivered at the address of the registered office or at a later date specified in the notice.

(4) If a vacancy is created resulting from circumstances referred to in subsection (1), the Board shall have the power, at any time, to appoint any person to be a director to fill such casual vacancy and the director so appointed shall hold office—

(a) in the case of a public company, until the next annual general meeting; or

(b) in the case of a private company, in accordance with the terms of appointment.

### **Resignation, vacation or death of sole director or last remaining director**

**209.** (1) Subject to subsection 196(3), where a company has only one director or the last remaining director, that director shall not resign office until that director has called a meeting of members to receive the notice of the resignation and to appoint one or more new directors.

(2) Subsection (1) is also applicable to a company whose sole director is also the sole shareholder.

(3) For the purpose of appointing a new director, in the event of the office of a sole director or the last remaining director of the company being vacated due to the circumstances referred to in paragraph 208(1)(d), (e), (f) or (g), the secretary shall, as soon as practicable, call a meeting of the next of kin, other personal representatives or a meeting of members, as the case may be.

(4) The secretary shall be entitled to be indemnified by the company in relation to any reasonable costs and expenses of the meeting convened under subsection (3).

(5) Where the next of kin, personal representatives or members fail to appoint a director within six months of the death of the last director, the Registrar may direct the company to be struck off in accordance with Subdivision 1 of Division 4 of Part IV.

(6) Where a sole director who is also the sole shareholder of a company is unable to manage the affairs of the company by reason of his mental incapacity, the committee appointed under the Mental Health Act 2001 to manage his estate may appoint a person as a director.

### Subdivision 3

#### *Directors' Duties and Responsibilities*

#### **Interpretation**

**210.** For the purposes of this Subdivision, in sections 213, 214, 215, 216, 217, 218, 223 and 228, in addition to the definition of “director” in section 2, “director” includes chief executive officer, chief financial officer, chief operating officer or any other person primarily responsible for the management of the company.

#### **Functions of Board**

**211.** (1) The business and affairs of a company shall be managed by, or under the direction of the Board.

(2) The Board has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the company subject to any modification, exception or limitation contained in this Act or in the constitution of the company.

#### **Proceedings of Board**

**212.** Subject to the constitution, the provisions set out in the Third Schedule shall govern the proceedings of the Board.

#### **Duties and responsibilities of directors**

**213.** (1) A director of a company shall at all times exercise his powers in accordance with this Act, for a proper purpose and in good faith in the best interest of the company.

(2) A director of a company shall exercise reasonable care, skill and diligence with—

- (a) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and
- (b) any additional knowledge, skill and experience which the director in fact has.

(3) A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Business judgment rule**

**214.** (1) A director who makes a business judgment is deemed to meet the requirements of the duty under subsection 213(2) and the equivalent duties under the common law and in equity if the director—

- (a) makes the business judgment for a proper purpose and in good faith;
- (b) does not have a material personal interest in the subject matter of the business judgment;
- (c) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
- (d) reasonably believes that the business judgment is in the best interest of the company.

(2) For the purposes of this section, “business judgment” means any decision on whether or not to take action in respect of a matter relevant to the business of the company.

**Reliance on information provided by others**

**215.** (1) A director in exercising his duties as a director may rely on information, professional or expert advice, opinions, reports or statements including financial statements and other financial data, prepared, presented or made by—

- (a) any officer of the company whom the director believes on reasonable grounds to be reliable and competent on the matters concerned;
- (b) as to matters involving skills or expertise, any other person retained by the company in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence;
- (c) another director in relation to matters within the director's authority; or
- (d) any committee to the board of directors on which the director did not serve in relation to matters within the committee's authority.

(2) The director's reliance made under subsection (1) is deemed to be made on reasonable grounds if it was made—

- (a) in good faith; and
- (b) after making an independent assessment of the information or advice, opinions, reports or statements, including financial statements and other financial data, having regard to the director's knowledge of the company and the complexity of the structure and operation of the company.

**Responsibility for actions of delegatee**

**216.** (1) Except as is otherwise provided by this Act, the constitution or any resolution of the Board or members of the company, the directors may delegate any power of the Board to any committee of the Board, director, officer, employee, expert or any other person.

(2) Where the directors have delegated any power, the directors are responsible for the exercise of the power by the delegatee as if the power had been exercised by the directors themselves.

(3) The directors are not responsible under subsection (2) if—

- (a) the directors believed on reasonable grounds at all times that the delegatee would exercise the power in conformity with the duties imposed on the directors under this Act and the constitution of the company, if any; and
- (b) the directors believed on reasonable grounds, in good faith and after making a proper inquiry, if the circumstances indicated the need for the inquiry, that the delegatee was reliable and competent in relation to the power delegated.

### **Responsibility of a nominee director**

**217.** (1) A director who was appointed by virtue of his position as an employee of a company, or who was appointed by or as a representative of a member, employer or debenture holder, shall act in the best interest of the company and in the event of any conflict between his duty to act in the best interest of the company and his duty to his nominator, he shall not subordinate his duty to act in the best interest of the company to his nominator.

(2) A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or to both.

### **Prohibition against improper use of property, position, etc.**

**218.** (1) A director or officer of a company shall not, without the consent or ratification of a general meeting—

- (a) use the property of the company;
- (b) use any information acquired by virtue of his position as a director or officer of the company;

- (c) use his position as such director or officer;
- (d) use any opportunity of the company which he became aware of, in the performance of his functions as the director of the company; or
- (e) engage in business which is in competition with the company,

to gain directly or indirectly, a benefit for himself or any other person, or cause detriment to the company.

(2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or to both.

### **General duty to make disclosure**

**219.** (1) A director of a company shall give notice in writing to the company—

- (a) of the particulars relating to the shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance with section 59 by the company;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change; and
- (c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance with the requirements of this Act by the company.

(2) A person required to give notice under subsection (1) shall give the notice, within fourteen days—

- (a) in the case of a notice under paragraph (1)(a)—
  - (i) from the date on which the director became a director; or

(ii) from the date on which the director acquired an interest in the shares, debentures, participatory interests, rights, options or contracts;

(b) in the case of a notice under paragraph (1)(b), from the occurrence of the event giving rise to the change; and

(c) in the case of a notice under paragraph (1)(c), from the date of such events and matters referred to in that paragraph.

(3) For the purposes of paragraphs (2)(a) and (b), in the case of a company whose shares are quoted on a stock exchange, the notice period shall be five days.

(4) A company shall, send a copy of the notice to each of the other directors of the company within seven days from receiving a notice under subsection (1).

(5) For the purposes of this section—

(a) a reference to a participatory interest means a reference to an interest within the meaning of the Interest Schemes Act 2015; and

(b) in determining whether a person has an interest in a debenture or participatory interest, section 8, except for subsections 8(1) and (3), have effect and in applying those provisions, a reference to a share shall be construed as a reference to a debenture or participatory interest.

(6) A director who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to—

(a) in the case of subsection (1), imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or both; and

(b) in the case of subsection (2), a fine not exceeding twenty five thousand ringgit and in the case of a continuing offence, to a further fine of one thousand ringgit for each day during which the offence continues.

(7) A company which contravenes subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding twenty five thousand ringgit and in the case of a continuing offence, to a further fine of one thousand ringgit for each day during which the offence continues.

### **Effect of other rules of law on duties of directors**

**220.** Sections 214 to 219 shall be in addition to and not in derogation of any other written law relating to the duty or liability of directors or officers of a company.

### **Disclosure of interest in contracts, proposed contracts, property, offices, etc.**

**221.** (1) Subject to this section, every director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of his interest at a meeting of the board of directors.

(2) The requirements of subsection (1) shall not apply in the case where the interest of the director being a member or creditor of a corporation interested in a contract or proposed contract with the first mentioned company if the interest of the director may be regarded as not being a material interest.

(3) A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract by reason only—

- (a) in a case where the contract or proposed contract relates to any loan to the company that the director has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) in the case where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 7 is deemed to be related to the company that he is the director of that corporation,



and this subsection shall have effect not only for the purposes of this Act but also for the purposes of other written laws, but this subsection shall not affect the operation of any provision in the constitution of the company.

(4) For the purposes of subsection (1), a general notice given to the board of directors by a director to the effect that the director is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract made if the notice specifies the nature and extent of the director's interest in the specified corporation or firm and the interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any contract is so made.

(5) The notice referred to in subsection (4) shall be of no effect unless the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that the notice is brought up and read at the next meeting of the directors after it is given.

(6) Every director of a company who holds any office or possesses any property where duties or interests may be created in conflict with his duties or interests as director shall declare the fact and the nature, character and extent of the conflict at a meeting of the directors of the company.

(7) The declaration shall be made at the first meeting of the directors held—

(a) after he becomes a director; or

(b) if already a director, after he commenced to hold the office or to possess the property,

as the case requires.

(8) The secretary of the company shall record every declaration made under this section in the minutes of the meeting at which the declaration was made.

(9) For the purposes of this section, an interest in the shares or debenture of a company—

- (a) the spouse of a director who is not a director of the company; or
- (b) a child, including adopted child or stepchild, of a director of a company who is not a director of the company,

shall be treated as an interest in the contract and proposed contract.

(10) A contract entered into in contravention of this section shall be voidable at the instance of the company except if it is in favour of any person dealing with the company for any valuable consideration and without any actual notice of the contravention.

(11) Except as provided in subsection (3), this section shall be in addition to and not in derogation of the operation of any provision in the constitution restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

(12) Every officer and any other person or individual who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Interested director not to participate or vote**

**222.** (1) Subject to section 221, a director of a company who is in any way, whether directly or indirectly, interested in a contract entered into or proposed to be entered into by the company, unless the interest is one that need not be disclosed under section 221, shall be counted only to make the quorum at the meeting of the Board but shall not participate in any discussion while the contract or proposed contract is being considered during the meeting and shall not vote on the contract or proposed contract.

(2) Subsection (1) shall not apply to—

- (a) a private company unless it is a subsidiary to a public company;

- (b) a private company which is a wholly-owned subsidiary of a public company, in respect of any contract or proposed contract to be entered into by the private company with the holding company or with another wholly-owned subsidiary of that same holding company;
- (c) any contract or proposed contract of indemnity against any loss which any director may suffer by reason of becoming or being a surety for a company; and
- (d) any contract or proposed contract entered into or to be entered into by a public company or a private company which is a subsidiary of a public company, with another company in which the interest of the director consists solely of—
  - (i) in him being a director of the company and the holder of shares not more than the number or value as is required to qualify him for the appointment as a director; or
  - (ii) in him having an interest in not more than five per centum of its paid up capital.

(3) A contract entered in contravention of subsection (1) shall be voidable at the instance of the company except if it is in favour of any person dealing with the company for a valuable consideration and without any actual notice of the contravention.

(4) A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Approval of company required for disposal by directors of company's undertaking or property**

**223.** (1) Notwithstanding anything in the constitution, the directors shall not enter or carry into effect any arrangement or transaction for—

- (a) the acquisition of an undertaking or property of a substantial value; or

(b) the disposal of a substantial portion of the company's undertaking or property unless—

- (i) the entering into the arrangement or transaction is made subject to the approval of the company by way of a resolution; or
- (ii) the carrying into effect of the arrangement or transaction has been approved by the company by way of a resolution.

(2) For the purposes of subsection (1)—

- (a) the term “undertaking or property” includes the whole or substantially the whole of the rights, including developmental rights, benefits or control in the undertaking or property;
- (b) in the case of a company where all or any of its shares are quoted on a stock exchange, or its subsidiary, the term “substantial value” or “substantial portion” shall mean the same value prescribed in the listing requirements of the stock exchange where approval of the shareholders at a general meeting is required;
- (c) in the case of an unlisted subsidiary whose holding company is a listed company, the directors of such holding company shall procure the shareholders' approval of the holding company in a general meeting for the arrangement or transaction by the unlisted subsidiary in addition to the shareholders' approval of the unlisted subsidiary in a general meeting procured by the directors of the unlisted subsidiary.

(3) In the case of any company other than a company to which subsection (2) applies, an undertaking or property shall be considered to be of a substantial value and a portion of the company's undertaking or property shall be considered to be a substantial portion if—

- (a) its value exceeds twenty-five per centum of the total assets of the company;

- (b) the net profits, after deducting all charges except taxation and excluding extraordinary items, attributed to it amounts to more than twenty-five per centum of the total net profit of the company; or
- (c) its value exceeds twenty-five per centum of the issued share capital of the company,

whichever is the highest.

(4) The Court may, on the application of any member of the company, restrain the directors from entering into or carrying into effect an arrangement or transaction which is in contravention of subsection (1).

(5) An arrangement or transaction which is in contravention of subsection (1) shall be void except in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention.

(6) This section shall not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver or receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or by a Court or a liquidator of a company appointed in a voluntary winding up.

(7) Any director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Loans to director**

**224.** (1) A company shall not—

- (a) make a loan to a director of the company or of a company which by virtue of section 7 is deemed to be related to that company; or
- (b) enter into any guarantee or provide any security in connection with a loan made to such a director by any other person.

(2) Nothing in this section shall apply—

- (a) to an exempt private company;
- (b) subject to subsection (3), to anything done to provide such director with funds to meet the expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- (c) subject to subsection (3), to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
- (d) to any loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has passed a resolution to approve a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

(3) Paragraph (1)(a) or (b) shall not authorize the making of any loan, or the entering into any guarantee or the provision of any security except with the prior approval of the company on the resolution in which the purpose of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed.

(4) If there is no prior approval given under subsection (2), the company may authorize the making of any loan or the entering into any guarantee or the provision of any security—

- (a) in the case of a public company, at or before the next following annual general meeting; or
- (b) in the case of a private company, within six months from the making of the loan, the entering into any guarantee, or the provision of any security.

(5) If there is no authorization given by company under subsection (3), the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be—

(a) in the case of a public company, after six months from the conclusion of the annual general meeting referred to in paragraph 4(a); or

(b) in the case of a private company, after twelve months from the making of the loan, the entering into any guarantee, or the provision of any security.

(6) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss incurred.

(7) Nothing in this section shall operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

(8) This section shall not apply to the extent that a financial institution in the ordinary course of business makes a loan to a director of a financial institution or of a company which by virtue of section 7 is deemed to be related to that financial institution, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person, in accordance with specifications made by the Central Bank of Malaysia under the laws enforced by it.

(9) For purposes of this section, “financial institution” refers to a licensed institution and a development financial institution prescribed under the Development Financial Institutions Act 2002 [*Act 618*].

(10) If a company contravenes this section, any director who authorizes the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

**Prohibition of loans to persons connected with directors**

**225.** (1) Subject to the provisions of this section, a company, other than an exempt private company, shall not—

- (a) make a loan to any person connected with a director of the company or of its holding company; or
- (b) enter into any guarantee or provide any security in connection with a loan made to such person by any other person.

(2) Subsection (1) shall not apply—

- (a) where the loan is made, or the guarantee or security is provided in relation to a loan made to a subsidiary or holding company or a subsidiary of its holding company;
- (b) to a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, or to anything done by the company in the ordinary course of that business, if the activities of that company are regulated by any written law relating to banking, insurance or takaful or are subject to the supervision of the Central Bank of Malaysia; or
- (c) to any loan made to a person connected with a director who is engaged in the full-time employment of a company or its related corporation, as the case may be—
  - (i) for the purpose of meeting the expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
  - (ii) in accordance with a scheme for the making of loans to employees approved by the company.

(3) Nothing in this section shall operate to prevent the company or any person from recovering the amount of any loan or the amount for which it becomes liable under any guarantee entered into or in respect of any security provided in contravention of this section.



(4) If a company contravenes this section, any director who authorizes the making of any loan or the entering into any guarantee contrary to this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Prohibition of tax free payments to directors**

**226.** (1) A company shall not pay a director any remuneration, whether as director or otherwise, free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or the rate of income tax.

(2) Any provision contained in the constitution or any resolution of the Board or members of the company for payment to a director of remuneration free of income tax or otherwise calculated by reference to or varying with the amount of his income tax or the rate of income tax shall have effect as if the provision or resolution, as the case may be provide for payment as a gross sum subject to income tax, of the net sum for which it actually provides.

(3) The company and every officer and any other person or individual who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Payment to directors for loss of office, etc.**

**227.** (1) It shall not be lawful—

- (a) for a company to make to any director any payment by way of compensation for loss of office as an officer of that company or of a subsidiary of that company or as consideration for or in connection with his retirement from any such office; or
- (b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment including the amount, have been disclosed to the members of the company and the resolution for the proposal has been approved by the members and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

(2) In the case of a public company, the director who is interested in the proposed payment referred to in paragraph (1)(a) or (b) and persons connected with the director shall abstain from voting on the resolution.

(3) Where a payment is to be made to a director in connection with the transfer to any person as a result of an offer made to shareholders of all or any of the shares in the company, the director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount of the proposed payment, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders in accordance with the relevant law applicable to takeovers.

(4) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other shareholders or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall be deemed to have been a payment made to him by way of compensation for loss of office or as a consideration for or in connection with his retirement from office.

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include—

- (a) any payment under an agreement entered into before the commencement of this Act;
- (b) any payment under an agreement, where particulars have been disclosed to and approved by special resolution of the company;

- (c) any *bona fide* payment by way of damages for breach of contract;
- (d) any *bona fide* payment by way of pension or lump sum payment in respect of past services including any superannuation or retiring allowance, superannuation, gratuity or similar payment, where the value or amount of the pension or payment, except so far as it is attributable to contributions made by the director, does not exceed the total remuneration of the director in the three years immediately preceding his retirement or death; or
- (e) any payment to a director under an agreement made between the company and the director before he became a director of the company as a consideration or part of a consideration for the director agreeing to serve the company as a director.

(6) This section shall be in addition to and not in derogation of any rule requiring disclosure to be made with respect to any such payments or any other like payment.

(7) In this section, “director” includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 7 deemed to be related to the company.

(8) In this section—

- (a) a person who contravenes subsection (2) commits an offence; and
- (b) a director who contravenes subsection (3) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by subsection (3) and who fails to do so, commits an offence, and if the requirements of this section are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

**Transactions with directors, substantial shareholders or connected persons**

**228.** (1) Subject to subsection (2) and section 229, a company shall not enter or carry into effect any arrangement or transaction where a director or a substantial shareholder of the company or its holding company, or its subsidiary, or a person connected with a director or substantial shareholder—

- (a) acquires or is to acquire shares or non-cash assets of the requisite value, from the company; or
- (b) disposes of or is to dispose of shares or non-cash assets of the requisite value, to the company, unless—
  - (i) the entering into the arrangement or transaction is made subject to the approval of shareholders at a general meeting; or
  - (ii) the carrying into effect of the arrangement or transaction has been approved by shareholders at a general meeting.

(2) An arrangement or transaction which is carried into effect in contravention of subsection (1) shall be void unless there is prior approval of the arrangement or transaction—

- (a) by a resolution of the company; or
- (b) by a resolution of the holding company, if the arrangement or transaction is in favour of a director or substantial shareholder of its holding company or person connected with such director or substantial shareholder.

(3) For the purposes of subsection (1), in the case of an unlisted subsidiary whose holding company is a listed company, the directors of such holding company shall procure the shareholders' approval of the holding company in a general meeting for the arrangement or transaction by the unlisted subsidiary in addition to the shareholders' approval of the unlisted subsidiary in a general meeting procured by the directors of the unlisted subsidiary.

(4) In the case of a public company or its holding company or its subsidiary, the director or substantial shareholder or person connected with the director or substantial shareholder who is interested in the arrangement or transaction referred to in paragraph (1)(a) or (b) shall abstain from voting on the resolution at the general meeting to consider the arrangement or transaction referred to in subsection (2).

(5) Where an arrangement or transaction is entered or carried into effect by a company in contravention of subsections (1) and (2), the director, substantial shareholder or person connected with a director or substantial shareholder and any director who knowingly authorized the arrangement or transaction shall, in addition to any other liability, be liable—

(a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and

(b) jointly and severally with any person liable under this subsection, to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(6) The Court may, on the application of any member or director of the company, restrain the company from entering or carrying into effect an arrangement or transaction in contravention of subsection (1).

(7) A director or substantial shareholder of a company or its holding company, or its subsidiary or a person connected with such director or substantial shareholder, in whose favour the company carries into effect an arrangement or transaction and who knows that such arrangement or transaction is carried into effect by a company in contravention of this section, or a director who knowingly authorized the company to carry into effect such arrangement or transaction, in contravention of this section, commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

(8) For the purposes of subsection (1)—

- (a) “person connected with a substantial shareholder” has the same meaning assigned to a “person connected with a director” in section 197 save that all references therein to a director shall be read as a reference to a substantial shareholder;
- (b) “requisite value”, in the case of a company where all or any of its shares are quoted on the stock exchange, shall be the same value as the value prescribed in the listing requirements of the stock exchange where approval of the shareholders at a general meeting is required;
- (c) in the case of any company other than a company to which paragraph (b) applies, non-cash asset is of the requisite value if, at the time of the transaction, its value exceeds two hundred and fifty thousand ringgit or if its value does not exceed two hundred and fifty thousand ringgit but exceeds ten per centum of the company’s net asset value provided it is not less than fifty thousand ringgit, where—
  - (i) the value of the company’s assets is determined by reference to the accounts prepared under section 245 in respect of the last financial year prior to the arrangement or transaction; or
  - (ii) no accounts have been so prepared and laid before that time, the amount of the company’s called up share capital.

(9) In this section—

- (a) a reference to the acquisition or disposal of a non-cash asset includes the creation or extinction of an estate or interests in, or a right over, any property and also the discharge of any person’s liability, other than liability for a liquidated sum;
- (b) “cash” includes foreign currency; and

- (c) “non-cash asset” means any property or interest in property other than cash.

### **Exception to section 228**

**229.** Section 228 shall not apply to an arrangement or transaction for the acquisition or disposal of a non-cash asset entered into—

- (a) by a company—
- (i) and any of its wholly-owned subsidiaries;
  - (ii) and its holding company which holds all the issued shares of the company; or
  - (iii) which is a wholly-owned subsidiary of a holding company and another wholly-owned subsidiary company of that same holding company;
- (b) by a company which is being wound up, unless the winding up is a members’ voluntary winding up;
- (c) by a company which is an acquisition or disposal of an asset in the ordinary course of business of the company and is on terms not more favourable than those generally available to the public or employees of the company;
- (d) by a company if such arrangement or transaction does not involve transfer of cash or property and which shall have no effect unless approved at a general meeting or by a relevant authority;
- (e) by a company made in accordance with a scheme of arrangement approved by the Court under section 366; or
- (f) by a company in connection with a takeover offer made in accordance with the relevant law applicable to such offers.

**Approvals for fees of directors**

**230.** (1) The fees of the directors, and any benefits payable to the directors including any compensation for loss of employment of a director or former director—

(a) of a public company; or

(b) of a listed company and its subsidiaries,

shall be approved at a general meeting.

(2) In the case of a private company, the Board may, subject to the constitution approve the fees of the directors and any benefits payable to the directors including any compensation for loss of employment of a director or former director.

(3) Any approval made under subsection (2) shall be recorded in the minutes of the directors' meeting and the Board shall notify the shareholders of the approval of the fees within fourteen days from the date of the approval.

(4) Where a fee is made or other benefits payable to which subsection (2) applies, members holding at least ten per centum of the total voting rights and who consider that the payment was not fair to the company, within thirty days after they have knowledge of such payments, may require the company to pass a resolution to approve the payment either by way of a written resolution or at a general meeting.

(5) Unless an approval has been obtained through a resolution passed under subsection (4), the payment shall constitute a debt due by the director to the company.

(6) A company that contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit and any payment in contravention of subsection (1) shall constitute a debt due by the director to the company.

(7) The company and every officer who contravene subsection (3) commit an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit.



**Directors' service contracts**

**231.** (1) For the purposes of this Division, a director's "service contract" in relation to a public company means a contract under which—

- (a) a director of the company undertakes personally to perform services, as a director or otherwise for the public company or for a subsidiary of the public company; or
- (b) services that a director of the public company undertakes personally to perform as director or otherwise are made available by a third party to the public company, or to a subsidiary of the public company.

(2) The provisions of this Division relating to directors' service contracts shall—

- (a) be applicable to the terms of a person's appointment as a director of a public company; or
- (b) not be restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

**Copy of contracts to be available for inspection**

**232.** (1) Subject to section 233, a public company shall keep and maintain a copy of every director's service contract with the company or with its subsidiaries available for inspection.

(2) All the copies of contracts shall be kept available for inspection at the registered office of the company.

(3) The copies of contracts shall be made available for inspection for at least one year from the date of termination or expiry of the contract.

(4) The company shall give notice to the Registrar—

- (a) of the place at which the copies of the contracts are kept available for inspection; and

(b) of any change in that place,

unless the copies of the contracts have at all times been kept at the registered office of the company.

(5) The company and every officer who contravene subsection (1), (2) or (3) commit an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

(6) This section shall apply to a variation of a director's service contract as is applicable to the original contract.

### **Right of member to inspect and request copy**

**233.** (1) Every copy of the contract required to be kept under section 232 shall be made available for inspection by—

(a) in the case of a public company having share capital, by members holding at least five per centum of the total paid up capital; or

(b) in the case of a public company not having share capital, by at least ten per centum of members.

(2) Subject to subsection (1), the members so entitled to inspect on request and on payment of such fee as may be prescribed shall be entitled to be provided with a copy of any such contract.

(3) The copy shall be provided within seven days from the date the request is received by the company.

(4) Every officer who refuses a request for inspection under subsection (1) or contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit.

(5) In the case of any such refusal or default, the Court may, by order, compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

**Contract with sole member who is also a director**

**234.** (1) This section applies where—

- (a) a limited company having only one member enters into a contract with the sole member;
- (b) the sole member is also a director of the company; and
- (c) the contract is not entered into in the ordinary course of the company's business.

(2) The company shall, unless the contract is in writing, ensure that the terms of the contract are duly recorded in the minutes of the meeting of the directors that immediately after the making of the contract.

(3) This section shall be in addition to and not in derogation of any other law applying to contracts between a company and a director of the company.

(4) The company and every officer who contravenes this section commit an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

**Subdivision 4***Secretary***Requirement for a secretary**

**235.** (1) A company shall have at least one secretary who shall be—

- (a) a natural person;
- (b) eighteen years of age and above; and
- (c) a citizen or permanent resident of Malaysia,

who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.

(2) A secretary shall be—

(a) a member of a body as set out in the Fourth Schedule;  
or

(b) a person licensed by the Commission under section 20G  
of the Companies Commission of Malaysia Act 2001.

(3) For the purposes of paragraph (2)(a), the Minister may prescribe any professional body or any other body by notification in the *Gazette* and may impose any term and condition as he thinks fit.

(4) The company and every director who contravene this section commit an offence.

### **Appointment of a secretary**

**236.** (1) The Board shall appoint a secretary and determine the terms and conditions of such appointment.

(2) Notwithstanding subsection (1), the appointment of the first secretary shall be made within thirty days from the date of incorporation of a company.

(3) No person shall be appointed as a secretary unless—

(a) he has consented in writing to be appointed as a secretary;

(b) he is qualified under subsection 235(2); and

(c) he is not disqualified under section 238.

(4) The company and every person who contravene this section commit an offence.

### **Resignation of a secretary**

**237.** (1) Subject to the constitution or the terms of appointment, a secretary may resign from his office by giving a notice to the Board.

(2) If none of the directors of the company can be communicated with at the last known residential address, the secretary may, notwithstanding subsection 235(1), notify the Registrar of that fact and of his intention to resign from the office.

(3) The secretary shall cease to be the secretary of the company—

- (a) on the expiry of thirty days from the date of the notice lodged under subsection (1) or the period specified in the constitution or the terms of appointment, as the case may be; or
- (b) on the expiry of thirty days from the date of the notice to the Registrar under subsection (2).

(4) Nothing in subsections (1) and (2) shall relieve the secretary from liability for any act or omission done before the secretary vacated that office.

### **Disqualification to act as a secretary**

**238.** (1) A person shall be disqualified to act as a secretary if—

- (a) he is an undischarged bankrupt;
- (b) he is convicted whether in or outside Malaysia of any offence referred to in section 198; or
- (c) he ceases to be a holder of a practicing certificate issued by the Registrar under section 241.

(2) Notwithstanding subsection (1), if the Registrar is of the opinion that a person has failed to act honestly or use reasonable diligence in the discharge of his duties as a secretary, the Registrar may require the person to show cause why his practising certificate should not be revoked or why he should not be disqualified from acting as a secretary of a company.

(3) If a person continues to act as a secretary for a company after the person is disqualified under this section without leave of the Court, the secretary and every director who knowingly permits the person to act in that capacity commit an offence.

### **Removal of a secretary**

**239.** The Board may remove a secretary from his office in accordance with the terms of appointment or the constitution.

### **Office of secretary shall not be left vacant**

**240.** The office of the secretary of a company shall not be left vacant for more than thirty days at any one time.

### **Requirement to register with Registrar**

**241.** (1) Any person who is qualified to act as a secretary and who desires to act as a secretary shall be registered under this section before he can act as a secretary.

(2) The Registrar shall cause a register of secretaries to be kept and shall cause to be entered in the register in relation to a secretary—

- (a) the name of the secretary;
- (b) the residential address and business address of the secretary;
- (c) the details of the qualifications referred to in subsection 235(2); and
- (d) such other information as the Registrar may require.

(3) The Registrar, before registering such person, may—

- (a) require him to produce any evidence to his satisfaction of the qualification as stated under subsection 235(2);  
or
- (b) impose any other conditions that he deems fit.

(4) If the requirements under subsection (3) are satisfied, the Registrar shall—

- (a) enter the particulars in the register of secretaries; and
- (b) issue a practising certificate in such form as the Registrar may determine.

(5) On or after the commencement of this Act, a person who is a secretary of a company and who is not registered under subsection (1) may continue to act as a secretary to the company for a period of not more than twelve months or any longer period as the Registrar may allow.

(6) After the expiry of the period referred to in subsection (5), a person who fails to comply with the requirement to register shall be deemed to have not been registered under this section.

(7) The Minister shall have the power to make regulations on any matters relating to any practicing certificate issued under this section.

(8) Any person who contravenes subsection (1) commits an offence.

### **Prohibition to act in dual capacity**

**242.** A person is prohibited to act in a dual capacity as both a director and a secretary in a situation that requires or authorizes anything to be done by a director and a secretary.

## **Division 3**

### *Accounts and Audit*

#### **Subdivision 1**

### *Financial Statements and Report*

### **Interpretation**

**243.** For the purposes of this Division—

“approved accounting standards” has the meaning assigned to it in section 2 of the Financial Reporting Act 1997 [*Act 558*];

“subsidiary”, except for section 246 has the meaning assigned to it in the approved accounting standards issued by the Malaysian Accounting Standards Board established under the Financial Reporting Act 1997.

### **Compliance with approved accounting standards**

**244.** (1) The approved accounting standards shall apply to the financial statements of a company or the consolidated financial statements of a holding company if, at the time when the financial statements or consolidated financial statements are made out, the approved accounting standards—

- (a) apply in relation to the financial year of the company or the holding company to which the financial statements or consolidated financial statements relate; and
- (b) are relevant to those financial statements or consolidated financial statements.

(2) Without prejudice to the generality of the provisions of this Subdivision, the directors of a company shall ensure that the financial statements of the company and, if the company is a holding company for which consolidated financial statements are required, the consolidated financial statements of the company are made out in accordance with the applicable approved accounting standards and shall—

- (a) in the case of a public company, be circulated to its members and laid before the company at its annual general meeting; or
- (b) in the case of a private company, be circulated to its members or laid before the company at a meeting of members.

(3) Notwithstanding subsection (2), the directors of a company or holding company shall not be required to ensure that the financial statements or consolidated financial statements, as the case may be, are prepared in accordance with the approved accounting



standards if the directors are of the opinion that preparing the financial statements or consolidated financial statements in accordance with the approved accounting standard would not give a true and fair view—

- (a) of the matters required under section 249 to be dealt with in the financial statements or consolidated financial statements; or
- (b) of the results of the business and the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated financial statements.

(4) If the financial statements of a company or consolidated financial statements of a holding company are not prepared in accordance with a particular approved accounting standard under subsection (3), the directors of the company shall—

- (a) disclose by way of a note on the financial statements the reason for not making out the financial statements or consolidated financial statements in accordance with the approved accounting standards; and
- (b) give particulars in the note of the quantified financial effect on the financial statements or consolidated financial statements if the relevant approved accounting standards was complied with.

(5) Notwithstanding anything in this Act, if financial statements are required to be prepared for or lodged with the authorities referred to in section 26D of the Financial Reporting Act 1997, those financial statements shall be prepared in accordance with the approved accounting standards subject to any specifications, guidelines or regulations as may be issued by the authorities.

(6) The information in the accounts or consolidated accounts of persons reporting to the authorities as referred to in section 26D of the Financial Reporting Act 1997 shall be deemed to have complied with the requirements of this Division if the financial statements are made out in accordance with that law.

(7) If a conflict or inconsistency arises between the provisions of an applicable approved accounting standard and this Act in their respective applications to the financial statements of a company or consolidated financial statements of a holding company, the provisions of the applicable approved accounting standard shall prevail.

### **Accounts to be kept**

**245.** (1) A company, the directors and managers of a company shall—

- (a) cause to be kept the accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and
- (b) cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited.

(2) A company, the directors and managers of a company shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which the entries relate.

(3) The company shall retain the records referred to in subsection (1) for seven years after the completion of the transactions or operations to which the entries relate.

(4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open for inspection by the directors.

(5) Notwithstanding subsection (4), the accounting and other records of operations outside Malaysia may be kept by the company at a place outside Malaysia provided that such accounting and other records shall be sent to and kept at a place in Malaysia and be made available for inspection by the directors at all times.

(6) The accounting and other records referred to in subsection (5) shall include such statements and returns with respect to the business dealt with in the records so kept as to enable the preparation of true and fair financial statements and any documents required to be attached to the financial statements.

(7) If any accounting and other records are kept at a place outside Malaysia under subsection (4) or (5), the Registrar may require the company to produce those records at a place in Malaysia or determine the type and manner of the records to be kept in Malaysia.

(8) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(9) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **System of internal control**

**246.** (1) The directors of a public company or a subsidiary of a public company shall have in place a system of internal control that will provide a reasonable assurance that—

- (a) the assets of the company are safeguarded against loss from unauthorized use or disposition and to give a proper account of the assets; and
- (b) all transactions are properly authorized and that the transactions are recorded as necessary to enable the preparation of true and fair view of the financial statements of the company.

(2) Any director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or a fine not exceeding one million ringgit or to both.

**Accounting periods of companies within the same group**

**247.** (1) Subject to subsections (10), (11) and (12), the directors of every holding company that is not a foreign company shall take such necessary steps to ensure that within two years after any corporation becomes a subsidiary of the holding company, the financial year of that corporation coincides with the financial year of the holding company.

(2) Where the financial year of a holding company that is not a foreign company and that of each of its subsidiaries coincide, the directors of the holding company shall at all times take necessary steps to ensure that the financial year of the holding company or any of its subsidiaries is not altered so that all the financial years do not coincide with the holding company unless the consent of the Registrar is obtained.

(3) If the directors of the holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, the directors may apply in writing to the Registrar for an order authorizing any subsidiary to continue to have or to adopt, as the case requires, a financial year which does not coincide with that of the holding company.

(4) The application shall be supported by a statement by the directors of the holding company stating their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply any information relating to the operation of the holding company and of any corporation that is deemed by virtue of section 7 to be related to the holding company as he thinks necessary for the purpose of determining the application.

(6) In determining the application, the Registrar, may at the expense of the holding company of which the applicants are directors, request any approved company auditor to investigate and report on the application.

(7) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit and shall serve the order on the holding company.

(8) The applicants aggrieved by any order made by the Registrar may appeal against the order to the Minister within two months after the service of the order on the holding company.

(9) The Minister shall determine the appeal and in determining the appeal, may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar may have exercised in relation to the original application.

(10) If the directors of a holding company have applied to the Registrar for an order authorizing any subsidiary to continue to have a financial year which does not coincide with that of the holding company, the operation of subsection (1) shall be suspended in relation to that subsidiary until the determination of the application and of any appeal arising out of the application.

(11) Where an order is made authorizing any subsidiary to have a financial year which does not coincide with that of the holding company, compliance with the terms of the order of the Registrar or where there has been an appeal, compliance with the terms of any order made on the determination of the appeal shall be deemed to be a compliance with subsection (1) in relation to that subsidiary.

(12) Where an application for an order to authorize any subsidiary to have a financial year which does not coincide with that of the holding company and the appeal, if any, arising out of that application are refused, the time within which the directors of the holding company are required to comply with subsection (1) in relation to that subsidiary shall be deemed to be the period of twelve months after the date upon which the order of the Registrar is served on the holding company or the period of twelve months after the determination of the appeal, as the case may be.

(13) Where the directors of a holding company have applied to the Registrar for an order authorizing any of its subsidiaries to continue to have or to adopt a financial year which does not

coincide with that of the holding company and the application and the appeal, if any, arising out of that application, has been refused, the directors of the holding company shall not make a similar application with respect to that subsidiary within three years after the refusal of the application or where there is an appeal, after the determination of that appeal unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

(14) Any director who contravenes this section commits an offence.

### **Directors shall prepare financial statements**

**248.** (1) The directors of every company shall prepare financial statements—

- (a) within eighteen months from the date of its incorporation; and
- (b) subsequently, within six months of its financial year end.

(2) The financial statements referred to in subsection (1) shall be duly audited before the financial statements are sent to every member under section 257 or, in the case of a public company, sent to every member under section 257 and laid before an annual general meeting under section 340.

(3) Any director of the company who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding one year or both.

### **General requirements for financial statements**

**249.** (1) The annual financial statements for a financial year shall give a true and fair view of the financial position as at the end of the financial year and the financial performance for the financial year of the company.

(2) The annual consolidated financial statements for a financial year shall—

- (a) give a true and fair view of the financial position of the company and all its subsidiaries which are dealt with in the consolidated financial statements as a whole at the end of the financial year; and
- (b) give a true and fair view of the financial performance of the company and all its subsidiaries which are dealt with in the consolidated financial statements as a whole for the financial year.

(3) For the purposes of this Division, the Registrar may require additional information as he deems fit apart from the information required by the authorities referred to in section 26D of the Financial Reporting Act 1997 in the financial statements of persons reporting to such authorities as referred to in subsection 244(6).

(4) Notwithstanding any relevant provisions of the applicable approved accounting standards, the financial statements shall contain, in the notes to the statements, the information as the Registrar may determine and may include but not limited to the following:

- (a) the directors' remuneration;
- (b) the directors' retirement benefits;
- (c) compensation to directors for loss of office;
- (d) loans, quasi-loans and other dealings in favour of directors;
- (e) the total of the amount paid to or receivable by the auditors as remuneration for their services as auditors, inclusive of all fees, percentages or other payments or consideration given by or from the company or by or from any subsidiary of the company.

(5) Any document, other than financial statements prepared in accordance with this Act or advertisement published, issued or circulated by or on behalf of a company, other than a banking

corporation, shall not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied—

(a) if the reserve is invested outside the business of the company, with a statement showing the manner in which it is invested and the security for such investment; or

(b) if the reserve is being used in the business of the company, with a statement to the effect that the reserve is being so used.

(6) Where a company licensed under any written law relating to insurance or takaful is required to prepare financial statements in the form prescribed by that law, the company shall be deemed to have complied with the requirements of the approved accounting standards if its financial statements are prepared in accordance with that law.

(7) If the company carries on business other than insurance or takaful business so far as that law does not require the company to deal with any matters which are required to be dealt with under approved accounting standards, the company shall comply with this section and the approved accounting standards.

(8) A holding company of any company licensed under any written law relating to insurance or takaful shall be deemed to have complied with the requirements of the approved accounting standards relating to the preparation of its financial statements provided that it carries no other business except as the holding company.

### **Subsidiaries to be included in consolidated financial statements**

**250.** (1) The consolidated financial statements for a financial year shall include all the subsidiaries of a company.

(2) Where the consolidated financial statements do not deal with a subsidiary of a company, the directors shall disclose by way of a note on the financial statements the reason for not causing the financial statements for such one or more subsidiaries to be consolidated.



(3) In the case of a subsidiary incorporated in a country outside Malaysia, whether it has or has not established a place of business in Malaysia, which country has been declared by the Minister by notice published in the *Gazette* to be a country to which this section applies, it shall be sufficient if the separate profit and loss account or balance sheet, as the case may require, of the subsidiary is in such form and is so reported upon by auditors and contains such particulars and includes such documents, if any, as the company is required to make out and lay before the company in a general meeting by the law for the time being applicable to the company in the place where it is incorporated.

(4) For the purposes of subsection (1), the holding company shall have the power to request all relevant information from its subsidiaries to secure compliance under this section.

(5) Any director who fails to take all reasonable steps to secure compliance under subsection (1) commits an offence.

### **Financial statements to be approved by the Board**

**251.** (1) Financial statements shall be—

- (a) approved by the Board; and
- (b) accompanied with a statutory declaration by a director or where the director is not primarily responsible for the financial management of the company, by the person responsible in setting forth his opinion as to the correctness or otherwise of the financial statements and where applicable, the consolidated financial statements.

(2) The directors shall make a statement in accordance with the resolution of the Board stating whether in their opinion the financial statements or where applicable the consolidated financial statements is or are drawn up, in accordance with the applicable accounting standards, to give a true and fair view of the financial position and financial performance of the company and of the group.

(3) The statement referred to in subsection (2) shall be signed by at least two directors and in the case of a sole director, by that director, and to be attached to the financial statements for circulation in accordance with section 257.

(4) In respect of any financial statements a copy of which is circulated, published or issued by a company, the company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or imprisonment not exceeding one year or to both.

### **Directors shall prepare directors' report**

**252.** (1) The directors of a company shall prepare for each financial year a report and such report shall be attached to the financial statements prepared under section 248.

(2) A directors' report—

(a) shall be approved by the Board; and

(b) shall be signed on the directors' behalf by at least two directors, or in the case of a single director, that director.

(3) Every copy of directors' report laid before a company in an annual general meeting under section 340, or sent to a member under section 257 or otherwise circulated, published or issued by the company shall state the name of the person who signed the report on the directors' behalf.

(4) Any director who fails to take all reasonable steps to secure compliance under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or imprisonment not exceeding one year or to both.

(5) The company and every officer who contravene subsection (2) commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

**Contents of directors' report**

**253.** (1) A directors' report for a financial year in relation to a company shall contain—

(a) the name of every person who was a director of the company—

(i) during the financial year; and

(ii) during the period commencing from the end of the financial year and ending on the date of the report;

(b) the principal activities of the company in the course of the financial year including its subsidiaries; and

(c) the matters set out in the Fifth Schedule.

(2) This section shall have effect in relation to a directors' report required to be prepared under section 252 as if a reference to the company in subsection (1) or (2) were a reference to—

(a) the company; and

(b) the subsidiary undertakings included in the consolidated financial statements for the financial year.

(3) The directors' report prepared under section 252 may include a business review as set out in Part II of Fifth Schedule or any other reporting as prescribed.

**Form and contents of directors' report and financial statement of a banking corporation, etc.**

**254.** The provisions of this Act relating to the form and content of the report of the directors and the financial statements for a financial year shall apply to a licensed institution with such modifications and exceptions as are determined either generally or in any particular case by the Central Bank of Malaysia.

**Relief from requirements as to form and contents of financial statements and directors' report**

**255.** (1) The directors of a company may apply to the Registrar in writing for an order relieving the directors from any requirement of this Act relating to the form and content of the financial statements or consolidated financial statements or to the form and content of the directors' report required under sections 252 and 253 and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the financial statements or consolidated financial statements or directors' report as the Registrar thinks fit to impose.

(2) The application for a relief order under subsection (1) shall not be granted if the Registrar is of the opinion that the order is not consistent with the approved accounting standards.

(3) The Registrar may where he considers it appropriate make an order in respect of any class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of financial statements or consolidated financial statements or to the form and content of the directors' report required by sections 252 and 253.

(4) The order under subsection (3) may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of financial statements or consolidated financial statements or directors' report as the Registrar thinks fit to impose.

(5) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would—

- (a) render the financial statements or consolidated financial statements or directors' report, as the case may be, misleading or inappropriate to the circumstances of the company; or
- (b) impose unreasonable burdens on the company or any officer of the company.

(6) The Registrar may make an order under subsection (1) or (2) which may be limited to a specific period and may make a decision to vary, suspend or revoke any such order on the application by the directors or without any such application, in which case the Registrar shall give to the directors an opportunity to be heard.

### **Power of Registrar to require a statement of valuation of assets**

**256.** (1) The Registrar may, with notice in writing, require the directors of any company to supply a statement of valuation at current value of assets and liabilities of the company within the time specified in the notice.

(2) The Registrar may, on the application of the company, extend the period of time specified in the notice referred to in subsection (1), if he considers appropriate.

### **Duty to circulate copies of financial statements and reports**

**257.** (1) Every company shall send a copy of its financial statements and reports for each financial year to—

- (a) every member of the company;
- (b) every person who is entitled to receive notice of general meetings;
- (c) every auditor of the company; and
- (d) every debenture holder of the company on a request being made to the company.

(2) Copies of the financial statements and reports shall be sent to the last known address provided to the company.

(3) Any member or debenture holder to whom copies of the financial statements and reports have not been sent shall, on a request being made by the member or debenture holder to the company be furnished with such copies without charge.

(4) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

### **Time allowed for sending out copies of financial statements and reports**

**258.** (1) The circulation of financial statements and reports—

- (a) for a private company, shall be within six months of its financial year end; and
- (b) for a public company, shall be at least twenty one days before the date of its annual general meeting.

(2) In relation to a public company, the financial statements and reports may be circulated at a shorter period if it was agreed by all the members entitled to attend and vote at the annual general meeting.

(3) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Duty to lodge financial statements and reports with the Registrar**

**259.** (1) A company shall lodge with the Registrar for each financial year the financial statements and reports required under this Act—

- (a) in the case of a private company, within thirty days from the financial statements and reports are circulated to its members under section 258;
- (b) in the case of a public company, within thirty days from its annual general meeting; and

- (c) all amounts shown in the financial statements and reports lodged with the Registrar shall be quoted in Malaysian currency, and if such financial statements and reports are in a language other than the national language or English language, there must be annexed to such financial statements and reports a translation in the national language or English language certified to be a correct translation in the manner to be determined by the Registrar.

(2) If an application for extension is made before the expiry of the period referred to in paragraph 1(a) or (b), the Registrar may, as he considers fit, extend the period to such period as specified in the notice of extension.

(3) Every officer who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) For the purposes of this section, “financial statements and reports” includes “consolidated financial statements and reports” in cases of holding companies.

### **Duty to lodge certificate relating to exempt private company**

**260.** (1) An exempt private company may lodge with the Registrar for each financial year a certificate relating to its status as an exempt private company in lieu of the requirements in paragraph 259(1)(a) within thirty days from the circulation of the financial statements and reports are circulated under section 258.

(2) The certificate shall be signed by a director, auditor and secretary of the company confirming that—

- (a) the company is and has at all relevant times been an exempt private company;
- (b) a duly audited financial statements and reports required under this Act has been circulated to its members; and

- (c) as at the date to which the financial statement has been made up, the company appeared to have been able to meet its liabilities as and when the liabilities fall due.

(3) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Auditor's statements**

**261.** (1) A company that is not required by this Act to lodge financial statements with the Registrar shall lodge with the Registrar a statement relating to the financial statements of the company required to be circulated to its members, signed by the auditor of the company—

- (a) stating whether the company has in his opinion kept proper accounting records and other books during the period covered by those accounts;
- (b) stating whether the financial statements have been audited in accordance with this Act;
- (c) stating whether the auditor's report on the financial statements was made subject to any qualification or opinion under any applicable auditing standards, or included any comment made under subsection 266(3) and, if so, particulars of the qualification or comment; and
- (d) stating whether as at the date to which the financial statement has been made up, the company appeared to have been able to meet its liabilities as and when the liabilities fall due.

(2) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continued after conviction.



## Subdivision 2

*Auditors***Definition of “outgoing auditor”**

**262.** For the purpose of this Subdivision, “outgoing auditor” means an auditor whose term of office has expired or is about to expire.

**Company auditors to be approved by Minister charged with responsibility for finance**

**263.** (1) Any person may apply to the Minister charged with the responsibility for finance to be approved as a company auditor for the purposes of this Act.

(2) The Minister may, if he is satisfied that the applicant is of good character and competent to perform the duties of an auditor under this Act, upon payment of the prescribed fee, approve the applicant as a company auditor.

(3) Any approval granted by the Minister under subsection (2) may be made subject to such limitations or conditions as he thinks fit and may be revoked at any time by him by the service of a notice of revocation on the approved person.

(4) Every approval under this section including a renewal of approval of a company auditor shall be in force for a period of two years after the date of issue unless sooner revoked by the Minister.

(5) The Minister may delegate all or any of his powers under this section to any person, or body of persons charged with the responsibility for the registration or control of accountants in Malaysia.

(6) Any person who is aggrieved with any decision of the Minister or with the decision of any person or body of persons to whom such Minister has delegated all or any of his powers under this section may appeal to the Court.

(7) For the purposes of this section, “person” means a chartered accountant as defined under the Accountants Act 1967 [*Act 94*].

### **Company auditors**

**264.** (1) A person shall not—

- (a) knowingly consent to be appointed as an auditor for any company;
- (b) knowingly act as an auditor for any company; and
- (c) prepare, for or on behalf of a company, any report required by this Act to be prepared by an approved company auditor if—
  - (i) he is not an approved company auditor;
  - (ii) he is indebted to the company or to a corporation that is deemed to be related to that company by virtue of section 7 in an amount exceeding twenty five thousand ringgit;
  - (iii) he is—
    - (A) or his spouse is an officer of the company;
    - (B) a partner, employer or employee of an officer of the company;
    - (C) a partner or employee of an employee of an officer of the company; or
    - (D) a shareholder or his spouse is a shareholder of a corporation whose employee is an officer of the company;
  - (iv) he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of members or the register of debenture holders of the company;

(v) he is an undischarged bankrupt within or outside Malaysia except with leave of the Court; or

(vi) he has been convicted of any offence involving fraud or dishonesty punishable with imprisonment for three months or more.

(2) For the purposes of subparagraph (1)(c)(iii), a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of section 7 if he has been an officer or promoter of the company or such a corporation at any time within the preceding period of twelve months, unless the Minister directs otherwise.

(3) For the purposes of this section, a person shall not be deemed to be an officer by reason only of him having been appointed as an auditor of a corporation.

(4) A firm of auditors shall not knowingly consent to be appointed, and shall not knowingly act, as an auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an approved company auditor unless—

(a) all the partners of the firm resident in Malaysia are approved company auditors and, where the firm is not registered as a firm under any law for the time being in force, a return showing the full names and addresses of all the partners of the firm has been lodged with the Registrar; and

(b) no partner of the firm is disqualified under subsection (1) from acting as the auditor of the company.

(5) A company shall not appoint a person or a firm as an auditor unless prior to the appointment—

(a) that person has consented in writing to act as the auditor; or

(b) in the case of a firm, at least one partner of the firm has consented in writing.

(6) The appointment of a firm in the name of the firm as auditors of a company shall take effect as an appointment as auditors of the company of the persons who are partners of that firm at the time of the appointment.

(7) The appointment of a firm in the name of the limited liability partnership or foreign limited liability partnership as auditors of a company shall take effect as an appointment as auditors of the company as if—

- (a) the partners of the limited liability partnership, whether the partners at the time the limited liability partnership was appointed as auditor or later; and
- (b) employees of the limited liability partnership who are approved company auditors in that limited liability partnership, whether employed at the time the limited liability partnership was appointed as auditor or later,

are appointed as auditors of the company.

(8) Any person who is or any firm which is appointed as an auditor contravenes subsection (1) or (4) respectively commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

### **Registration of firms of auditors**

**265.** (1) A new firm of auditors shall notify the Registrar the following particulars within thirty days from the date of commencement of business:

- (a) the name of the firm;
- (b) the firm number;
- (c) the address of the principal place of business and the address of each other's place of business, if any;
- (d) the date of commencement of business;
- (e) the full names, addresses, approval numbers and other particulars of all the partners; and

(f) such other particulars as the Registrar thinks appropriate.

(2) The notification in subsection (1) shall be in the form as determined by the Registrar.

(3) The Registrar shall cause a register of firms of auditors to be kept and shall cause to be entered in the register in relation to a firm of auditors the particulars referred to in subsection (1).

(4) Where a firm of auditors is reconstituted by reason of retirement, withdrawal or death of a partner or by reason of the admission of a new partner or where there is a change in any particulars relating to the firm or its partners, a notification shall be lodged with the Registrar indicating the relevant alteration and the date of the alteration within thirty days of such alteration.

(5) A report or notice that purports to be made or given by a firm appointed as an auditor of a company shall not be taken to be duly made or given unless—

(a) it is signed in the name of the firm and in his own name by a partner of the firm who is an approved company auditor; and

(b) the firm number and the approval number of the partner is legibly written or printed either under or beside the signature of the firm and the partner respectively.

(6) For the purposes of this section—

(a) “approval number”, in relation to an auditor, is the number allocated to that person on the approval granted by the Minister charged with responsibility for finance;

(b) “firm number”, in relation to a firm of auditors, is the number allocated by the Registrar to a firm of auditors in the notification under subsection (1); and

(c) “partner”, in relation to a firm of auditors, includes a sole proprietor of a firm.

**Powers and duties of auditors**

**266.** (1) Every auditor of a company shall report to the members on the financial statements and on the company's accounting and other records relating to those financial statements and if it is a holding company for which consolidated financial statements are prepared shall also report to the members on the consolidated financial statements, and the report shall be—

(a) in the case of a public company, laid before the company at its annual general meeting; or

(b) in the case of a private company—

(i) circulated to its members; or

(ii) laid before the company at a meeting of members.

(2) An auditor shall, in a report under this section, state—

(a) whether the financial statements and, if the company is a holding company for which consolidated financial statement are prepared, the consolidated financial statements are in his opinion properly drawn up—

(i) so as to give a true and fair view of the matters required by section 248 to be dealt with in the financial statement and, if there are consolidated financial statements, in the consolidated financial statements;

(ii) in accordance with this Act so as to give a true and fair view of the company's affairs; and

(iii) in accordance with the applicable approved accounting standards, or in the case where financial statements are required to be prepared for or lodged with the authorities referred to in section 26D of the Financial Reporting Act 1997, such financial statements shall be made in accordance with the applicable approved accounting standards subject to any specifications, guidelines or regulations as may be issued by such authorities;

- (b) if in his opinion the financial statements, and where applicable the consolidated financial statements, have not been drawn up in accordance with a particular applicable approved accounting standard—
  - (i) whether in his opinion the financial statements or consolidated financial statements, as the case may be, would, if drawn up in accordance with that approved accounting standard, have given a true and fair view of the matters required under section 248 to be dealt with in the financial statements or consolidated financial statements;
  - (ii) if in his opinion the financial statements or consolidated financial statements, as the case may be, would not, if so drawn up, have given a true and fair view of those matters, his reasons for holding that opinion;
  - (iii) if the directors have given the particulars of the quantified financial effect under section 244, his opinion concerning the particulars; and
  - (iv) in a case to which neither subparagraph (ii) nor (iii) applies, the particulars of the quantified financial effect on the financial statements or consolidated financial statements of the failure to so draw up the financial statements or consolidated financial statements, as the case may be;
- (c) in the case of consolidated financial statements, the names of the subsidiaries, if any, of which he has not acted as auditor;
- (d) any defect or irregularity in the financial statements or consolidated financial statements and any matter not set out in the financial statements or consolidated financial statements without regard to which a true and fair view of the matters dealt with by the financial statements or consolidated financial statements would not be obtained; and
- (e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.

(3) An auditor of a company shall have a duty to form an opinion to each of the following matters:

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether proper accounting and other records, including registers, have been kept by the company as required by this Act;
- (c) whether the returns received from branch offices of the company are adequate; and
- (d) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amount taken into any consolidated accounts were appropriate to the circumstances of the consolidation,

and the auditor shall state in his report the particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(4) An auditor of a company has a right of access at all reasonable times to the accounting and other records, including registers of the company and is entitled to require from any officer of the company and any auditor of a related company such information and explanations as he desires for the purposes of audit.

(5) An auditor of a holding company for which consolidated financial statements are required—

- (a) has a right of access at all reasonable times to the accounting and other records, including registers, of any subsidiary, if necessary; and
- (b) is entitled to require from any officer or auditor of any subsidiary included in the consolidated financial statements, at the expense of the holding company, such information and explanations in relation to the affairs of such subsidiaries included in the consolidated financial statements.



(6) The auditor's report shall be attached to or endorsed on the financial statements or consolidated financial statements and shall, if any member so requires, be read before the company in general meeting and shall be open for inspection by any member at any reasonable time.

(7) An auditor of a company or his agent authorized by him in writing is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to any general meeting which a member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(8) If an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that—

- (a) there has been a breach or non-observance of any of the provisions of this Act; and
- (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the financial statements or consolidated financial statements or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company,

he shall forthwith report the matter in writing to the Registrar.

(9) In addition to subsection (8), if an auditor in the course of the performance of his duties as an auditor of a public company or a company controlled by a public company is of the opinion that a serious offence involving fraud or dishonesty is being or has been committed against the company or this Act by officers of the company, he shall forthwith report the matter in writing to the Registrar.

(10) No duty to which an auditor of a company may be subjected shall be regarded as having been contravened by reason of his reporting the matter referred to in subsection (9) in good faith to the Registrar.

(11) For the purposes of subsection (9)—

- (a) a company is presumed, unless the contrary is established, to be controlled by a public company if the public company is entitled to exercise or control the exercise of not less than twenty per centum of votes attached to the voting shares of the company; and
- (b) “a serious offence involving fraud or dishonesty” means an offence that is punishable by imprisonment for a term that is not less than two years or the value of the assets derived or likely to be derived or any loss suffered by the company, member or debenture holder from the commission of such an offence exceeds two hundred and fifty thousand ringgit and includes offences under sections 592, 593, 594, 595 and 596.

(12) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation, or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its holding company—

- (a) to have access to any accounting and other records, including registers of the corporation in his custody or control;
- (b) to give any information or explanation as and when required under this section; or
- (c) otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand ringgit or to both.

(13) Any auditor who contravenes subsection (8) or (9) commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

## Chapter I

*Provisions relating to Auditor of Private Company***Appointment of auditors of private company**

**267.** (1) A private company shall appoint an auditor for each financial year of the company.

(2) Notwithstanding subsection (1), the Registrar shall have the power to exempt any private company from the requirement stated in that subsection according to the conditions as determined by the Registrar.

(3) The Board shall appoint an auditor of the company—

(a) in the case of newly incorporated companies, at least thirty days before the end of the period for the submission of the first financial statements to the Registrar; or

(b) to fill a casual vacancy in the office of auditor.

(4) The members shall appoint an auditor by ordinary resolution—

(a) in the case of subsequent years following the submission of its first financial statements, during the period for appointing auditors; or

(b) if the Board fails to appoint an auditor under subsection (3).

(5) An auditor of a private company shall only be appointed in accordance with subsection (3) or (4).

(6) For the purposes of subsection (4), the period for appointing auditors means the period of thirty days—

(a) before the end of the period allowed for the lodgement of the previous year financial statements with the Registrar under subsection 259(1); or

(b) if the previous year financial statements were lodged earlier, before the day on which financial statements were lodged with the Registrar.

(7) The company and every director of the company who contravene this section commit an offence.

### **Power of Registrar to appoint auditors of private company**

**268.** If a private company fails to appoint an auditor, the Registrar may appoint one or more auditors upon application in writing from any member of the company.

### **Term of office of auditors of private company**

**269.** (1) An auditor of a private company shall hold office in accordance with the terms of his appointment, provided that—

- (a) he does not take office until the previous auditor cease to hold office, unless he is the first auditor of the company; and
- (b) he ceases to hold office thirty days from the circulation of the financial statements to the members unless he is re-appointed.

(2) Notwithstanding paragraph (1)(a), an auditor may take office before the previous auditor ceases office in the following circumstances:

- (a) where the previous auditor is not the sole auditor; or
- (b) where he is appointed as an additional auditor.

(3) Where the office of an auditor becomes vacant under paragraph (1)(b) and no auditor has been appointed by members of the company, the auditor who holds office immediately before the vacancy shall be deemed to be re-appointed, unless—

- (a) he was appointed by the Board;
- (b) the constitution require actual re-appointment;
- (c) the deemed re-appointment is prevented by the members under section 270; or

- (d) the members have resolved that he should not be re-appointed.

(4) Subsection (3) is without prejudice to the provisions of this Subdivision as to removal and resignation of auditors.

### **Prevention by members of deemed re-appointment of auditor**

**270.** (1) An auditor of a private company shall not be deemed to be re-appointed under subsection 269(3) if the company has received notice under this section from members representing at least five per centum of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed.

(2) A notice under this section—

- (a) may be in hard copy or electronic form;
- (b) shall be authenticated by each member giving the notice; and
- (c) shall be received by the company at least thirty days before the circulation of the financial statements to the members.

## **Chapter II**

### *Provisions relating to Auditor of Public Company*

#### **Appointment of auditors of public company**

**271.** (1) An auditor of a public company shall be appointed for each financial year of the company.

(2) Notwithstanding subsection (1), the Board shall appoint an auditor—

- (a) at any time before the first annual general meeting of the company; or
- (b) to fill casual vacancy in the office of the auditor.

(3) Any auditor appointed under subsection (2) shall hold office until the conclusion of—

- (a) the first annual general meeting for the appointment under paragraph 2(a); or
- (b) the next annual general meeting for the appointment under paragraph 2(b).

(4) The members shall appoint an auditor by ordinary resolution—

- (a) at the annual general meeting;
- (b) if the company should have appointed an auditor at an annual general meeting but failed to do so; or
- (c) if the Board fails to appoint an auditor under subsection (2).

(5) An auditor of a public company should only be appointed in accordance with subsection (2) or (4).

(6) The company and every officer who contravene this section commit an offence.

### **Power of the Registrar to appoint auditors of public company**

**272.** If a public company fails to appoint an auditor, the Registrar may appoint one or more auditors upon application in writing from any member of the company.

### **Term of office of auditors of public company**

**273.** The auditor of a public company shall hold office in accordance with the terms of his appointment, provided that—

- (a) he does not take office until the previous auditor has ceased to hold office unless he is the first auditor of the company, and
- (b) he ceased to hold office at the conclusion of the annual general meeting next following his appointment, unless he is re-appointed.

## Chapter III

*General Provisions relating to Auditors***Fixing of auditor's remuneration**

**274.** (1) The remuneration of an auditor appointed—

- (a) by the members of a company shall be fixed by the members by ordinary resolution or in such manner as the members may determine;
- (b) by the Board shall be fixed by the Board and if not so fixed, by the company; or
- (c) by the Registrar shall be fixed either by the Registrar or the Board and if not so fixed, by the company.

(2) In this section, “remuneration” includes sums paid in respect of expenses and payment otherwise than cash.

**Obligation to furnish particulars of payment made to auditors**

**275.** (1) If a company is served with a notice sent by or on behalf of at least five per centum of the total number of members of the company or the holders in aggregate of not less than five per centum of the company's issued share capital, requiring particulars of all remuneration paid to or receivable by the auditor of the company, a partner, an employer or an employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall forthwith—

- (a) prepare or cause to be prepared a statement showing particulars of all the remuneration paid to or receivable by the auditor, partner, employer or employee of the auditor and of the services in respect of which the payments have been made for the financial year immediately preceding the service of the notice;
- (b) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

- (c) in the case of a public company, lay the statement before the company in general meeting.

(2) The company and every officer who contravene this section commit an offence.

### **Resolution to remove auditor from office**

**276.** (1) The members of a company may remove an auditor from office at any time—

- (a) by ordinary resolution at a general meeting; and
- (b) in accordance with section 277.

(2) This section shall not be taken as depriving the person removed of the compensation or damages payable to him in respect of the termination of his appointment as an auditor.

(3) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

### **Special notice required for resolution to remove auditor from office**

**277.** (1) A special notice shall be required for a resolution to remove an auditor from office at a general meeting of a company.

(2) Upon receipt of the special notice of such an intended resolution, the company shall immediately send a copy of the notice to the auditor proposed to be removed and the Registrar.

(3) The auditor may make a representation in writing not exceeding a reasonable length to the company within seven days from the receipt of the special notice and may request that prior to the meeting at which the resolution is to be considered, a copy of the representation be circulated by the company to every member of the company to whom notice of the meeting is sent.

(4) Upon request of the auditor referred to in subsection (3), the company shall send a copy of the representation to every member of the company to whom notice of the meeting is sent.



(5) If a copy of the representation is not sent as required under subsection (4), the auditor may, without prejudice to his right to be heard orally, require that the representation be read out at the meeting.

(6) A copy of the representation need not be circulated and the representation need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the Court is satisfied that the auditor is using this section to secure needless publicity or the matter is defamatory or some other grounds that the Court thinks reasonable.

### **Notice to Registrar of resolution to remove auditor from office**

**278.** (1) If a resolution is passed under section 276, the company shall give a notice of that fact to the Registrar within fourteen days.

(2) The company and every officer who contravene this section commit an offence.

### **Procedure to appoint auditor by written resolution**

**279.** (1) This section applies where a resolution is proposed as a written resolution of a private company the effect of which would be to appoint a person as an auditor in place of an outgoing auditor.

(2) The company shall send a copy of the proposed resolution to the person proposed to be appointed as an auditor and to the outgoing auditor.

(3) The outgoing auditor may make a statement in writing explaining the circumstances connected with his resignation not exceeding a reasonable length to the company within fourteen days from receiving the proposed resolution referred to in subsection (1) and may request a copy of the statement to be sent to every member of the company.

(4) The company shall send a copy of the statement to every member of the company to whom resolution under this section has been circulated prior to the period for agreeing to written resolution.

(5) The company shall circulate the resolution in accordance with section 301 or 303 and where this subsection and subsection (4) apply—

- (a) the period allowed under subsection 303(3) for service of copies of the proposed resolution is twenty eight days instead of twenty one days; and
- (b) subsections 303(5) and (6) shall apply in relation to a failure to comply with that subsection.

(6) A copy of the statement need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the Court is satisfied that the auditor is using this section to secure needless publicity or the matter is defamatory or other grounds that the Court thinks reasonable.

### **Procedure to appoint auditor at a meeting of members**

**280.** (1) This section applies to a resolution at a general meeting of a company the effect of which is to appoint a person as an auditor in place of an outgoing auditor.

(2) A special notice is required of such a resolution if—

- (a) in the case of a private company—
  - (i) no period for appointing auditor has ended since the outgoing auditor ceased to hold office due to his resignation or removal; or
  - (ii) such a period has ended and an auditor should have been appointed but is not appointed; or
- (b) in the case of a public company—
  - (i) no annual general meeting is held since the outgoing auditor ceased to hold office due to his resignation or removal; or

- (ii) an annual general meeting is held at which an auditor should have been appointed but is not appointed.

(3) Upon receipt of notice of such a proposed resolution, the company shall immediately send a copy of the notice to the person proposed to be appointed as an auditor.

### **Resignation of auditor**

**281.** (1) An auditor of a company may resign his office by giving a notice in writing to that effect at the company's registered office.

(2) A notice of resignation under subsection (1) shall bring the auditor's term of office to an end after twenty-one days from which the notice is given or from the date as may be specified in the notice.

### **Notice of resignation of auditor to Registrar**

**282.** (1) Where an auditor resigns his office, the company shall send a copy of the notice to the Registrar within seven days from the receiving of a notice of resignation.

(2) The company and every officer who contravene this section commit an offence.

### **Rights of resigning auditor of a public company**

**283.** (1) This section applies where the notice of resignation of an auditor of a public company is accompanied with a statement of the circumstances connected with his resignation.

(2) The auditor may give the notice of resignation referred to in section 281 together with a signed requisition calling on the directors of the company to immediately convene a general meeting of the company for the purposes of receiving and considering the explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The auditor may request the company to circulate a statement in writing not exceeding a reasonable length of the circumstances connected with the auditor's resignation to its members—

- (a) before the meeting convened on auditor's requisition; or
- (b) before any general meeting at which the auditor's term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation.

(4) The company shall—

- (a) state the fact that the statement referred to in subsection (3) has been made in any notice of the meeting given to members of the company; and
- (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) The directors shall hold the general meeting required under this section within twenty eight days from the date of the receipt of the notice of a requisition made under subsection (2).

(6) If a copy of the statement referred to in subsection (4) is not sent as required due to the default of the company, the auditor may, without prejudice to his right to be heard orally, require that the statement be read out at the meeting.

(7) A copy of a statement need not be sent and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the auditor is using this section to secure needless publicity or the matter is defamatory.

(8) The Court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that the auditor is not a party to the application.

(9) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 285 in relation to any general meeting of the company as mentioned in paragraph (3)(a) or (b).

(10) In this section, any reference in section 285 to matters concerning the auditor as an auditor shall be construed as references to matters concerning the auditor as a former auditor.

(11) Every director who fails to take all reasonable steps to secure that a meeting is convened under subsection (5) commits an offence.

### **Duty to inform upon cessation of office**

**284.** If an auditor has made written representation to the company under subsection 277(3) or if an auditor gives notice to the directors of the company under subsection 281(1), the auditor shall—

- (a) submit a copy of the written representation or his statement of circumstances connected with his resignation to the Registrar; and
- (b) in the case of a company whose shares or debentures are quoted on a stock exchange, submit a copy of the statement of the stock exchange,

within seven days from the submission of the written representation or his notice of resignation.

### **Attendance of auditors at general meetings where financial statements are laid**

**285.** (1) An auditor of a public company shall attend every annual general meeting where the financial statements of the company for a financial year are to be laid, so as to respond according to his knowledge and ability to any question relevant to the audit of the financial statements.

(2) In the case of a private company, if due notice is given to an auditor of the intention to move a resolution requiring the presence of the auditor at a general meeting of the company where financial statements of the company for any financial year are to be laid, the auditor shall attend that meeting so as to respond according to his knowledge and ability to any question relevant to the audit of the financial statements.

(3) An auditor who fails to attend a meeting as required under subsection (1) or (2) commits an offence unless—

- (a) the auditor is prevented by circumstances beyond his control from attending the meeting;
- (b) the auditor arranges for another auditor with knowledge of the audit to attend and carry out the duties of the auditor at the meeting;
- (c) if the auditor is a partner of a firm, the person attending the meeting in place of the designated auditor is a partner of that firm; or
- (d) the auditor arranges for an agent authorized by the auditor in writing to attend and carry out the duties of the auditor at the meeting.

**Auditor and other person to enjoy qualified privilege in certain circumstances**

**286.** (1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as an auditor, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of his duties and required under this Act to be lodged with the Registrar.

(3) An auditor shall not be liable to be sued in any court or be subject to any criminal or disciplinary proceedings for any report under section 266 submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this Act.

(4) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

**Duties of auditors to trustee for debenture holders**

**287.** (1) The auditor of a borrowing corporation shall send a copy of the financial statements or any report, certificate or other document which the auditor is required by this Act or by the debentures or trust deed to give to the corporation to every trustee for the debenture holders of the borrowing corporation by post within seven days from furnishing the corporation with any financial statements or any report, certificate or other document which he is required by this Act or by the debentures or trust deed to give to the corporation.

(2) Where in the performance of his duties as an auditor of a borrowing corporation the auditor becomes aware of any matter which is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the debenture holders of the corporation, the auditor shall send by post a report in writing on the matter to the borrowing corporation and a copy of the report to the trustee within seven days from the auditor becoming aware of the matter.

(3) An auditor shall not be liable to be sued in any court or be subject to any criminal or disciplinary proceedings for any report under section 266 submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this Act.

(4) Any auditor who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine of five hundred ringgit for each day during which the offence continues after conviction.

**Division 4***Indemnity and Insurance for Officers and Auditors***Provisions indemnifying directors or officers**

**288.** Any provision, whether contained in the constitution or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him

against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust, of which he may be guilty in relation to the company, shall be void.

### **Indemnity and insurance for officers and auditors**

**289.** (1) Unless provided otherwise in this section, a company shall not indemnify or directly or indirectly effect insurance for an officer or auditor of the company in respect of—

- (a) the liability for any act or omission in his capacity as an officer or auditor; or
- (b) the costs incurred by that officer or auditor in defending or settling any claim or proceedings relating to any such liability.

(2) An indemnity given in breach of this section shall be void.

(3) A company may indemnify an officer or auditor of the company for any costs incurred by him or the company in respect of any proceedings—

- (a) that relates to the liability for any act or omission in his capacity as an officer or auditor; and
- (b) in which judgment is given in favour of the officer or auditor or in which the officer or auditor is acquitted or in which the officer or auditor is granted relief under this Act, or where proceedings are discontinued or not pursued.

(4) A company may indemnify an officer or auditor of the company in respect of—

- (a) any liability to any person, other than the company, for any act or omission in his capacity as an officer or auditor; and



(b) costs incurred by that director or officer or auditor in defending or settling any claim or proceedings relating to any such liability except—

(i) any liability of the director to pay—

(A) a fine imposed in criminal proceedings; or

(B) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature, however arising; or

(ii) any liability incurred by the director—

(A) in defending criminal proceedings in which he is convicted;

(B) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him; or

(c) in connection with an application for relief under this Act.

(5) A company may, with the prior approval of the Board, effect insurance for an officer or auditor of the company in respect of—

(a) civil liability, for any act or omission in his capacity as a director or officer or auditor; and

(b) costs incurred by that officer or auditor in defending or settling any claim or proceeding relating to any such liability; or

(c) costs incurred by that officer or auditor in defending any proceedings that have been brought against that person in relation to any act or omission in that person's capacity as an officer or auditor—

(i) in which that person is acquitted;

(ii) in which that person is granted relief under this Act; or

(iii) where proceedings are discontinued or not pursued.

(6) In the case of a director, subsection (4) and paragraphs (6)(a) and (b) shall not apply to any civil or criminal liability in respect of a breach of the duty as specified in section 213.

(7) The directors shall—

(a) record or cause to be recorded in the minutes of the board of directors; and

(b) disclose or cause to be disclosed in the directors' report referred to in section 253,

the particulars of any indemnity given to, or insurance effected for, any officer or auditor of the company.

(8) Where insurance is effected for an officer or auditor of a company and subsection (6) or (7) has not been complied with, the officer or auditor shall be personally liable to the company for the cost of effecting the insurance unless the officer or auditor satisfies the Court that he is not liable.

(9) In this section—

“officer”, in relation to a corporation, includes—

(a) any director, manager, secretary or employee of the corporation;

(b) a former officer;

(c) a receiver or receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(d) any liquidator of a company appointed in a voluntary winding up, but does not include—

- (i) any receiver who is not also a manager;
- (ii) any receiver and manager appointed by the Court; or
- (iii) any liquidator appointed by the Court or by the creditors;

“effect insurance” includes pay, whether directly or indirectly, the costs of the insurance;

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises, and “indemnity” has a corresponding meaning.

## Division 5

### *Meetings*

#### Subdivision 1

#### *Meetings and Resolutions for Members*

#### **Passing a resolution**

**290.** (1) A resolution of the members or of a class of members of a private company shall be passed either—

- (a) by a written resolution; or
- (b) at a meeting of the members.

(2) A resolution of the members or of a class of members of a public company shall be passed at a meeting of the members.

(3) Unless otherwise provided in the constitution, where this Act does not specify the type of resolution required, the resolution of a company shall be passed as an ordinary resolution.

**Ordinary resolutions**

**291.** (1) An ordinary resolution of the members or a class of members of a company means a resolution passed by a simple majority of more than half of such members—

(a) who are entitled to vote and do vote in person, or where proxies are allowed, by proxy at a meeting of members; or

(b) who are entitled to vote on a written resolution.

(2) Subject to paragraph (1)(a), an ordinary resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by members representing a simple majority of members who are present at the meeting.

(3) An ordinary resolution is passed on a poll taken at a meeting if it is passed by members representing more than half of the total voting rights of the members who are entitled to vote and do vote in person or by proxy on the resolution.

(4) Subject to the provision of the constitution, any matter that may be passed by ordinary resolution may also be passed by special resolution.

**Special resolutions**

**292.** (1) A special resolution of the members or class of members of a company means a resolution passed by a majority of not less than seventy-five per centum of such members—

(a) who are entitled to vote and do vote in person, or where proxies are allowed, by proxy at a meeting of members; or

(b) who are entitled to vote on a written resolution.

(2) If a resolution of a private company is passed as a written resolution, the resolution is not a special resolution unless it is stated that it is a special resolution and passed as a special resolution.

(3) Subject to paragraph (1)(a), a special resolution passed at a meeting on a show of hands is passed as a special resolution if it is passed by not less than seventy-five per centum of the members who are present at the meeting.

(4) A special resolution is passed on a poll taken at a meeting if it is passed by members representing not less than seventy-five per centum of the total voting rights of the members who are entitled to vote and do vote in person or by proxy on the resolution.

(5) Where a resolution is passed at a meeting—

- (a) the resolution is not a special resolution unless the notice of the meeting includes the text of the resolution and states that the resolution is proposed as a special resolution; and
- (b) if it is so stated in the notice of the meeting, the resolution shall only be passed as a special resolution.

### **General rules on voting**

**293.** (1) Unless otherwise provided in the constitution—

(a) in the case of a company having a share capital—

- (i) on a vote on a written resolution, every member shall have one vote in respect of each share or stock held by him;
- (ii) on a vote on a resolution on a show of hands at a meeting, every member shall have one vote; or
- (iii) on a vote on a resolution on a poll taken at a meeting, every member shall have one vote in respect of each share or stock held by him; and

(b) in the case of a company not having a share capital, every member shall have one vote.

(2) Notwithstanding paragraph (1)(a), no member shall be entitled to vote at a meeting unless all calls or other sums presently payable by the member in respect of shares in the company has been paid.

### **Votes by proxy**

**294.** (1) Notwithstanding anything in the constitution, where a member entitled to vote on a resolution has appointed a proxy, the proxy shall be entitled to vote on a show of hands, provided that he is the only proxy appointed by the member.

(2) Where a member entitled to vote on a resolution has appointed more than one proxy—

- (a) the proxies shall only be entitled to vote on poll; and
- (b) the appointment shall not be valid unless he specifies the proportions of his holdings to be represented by each proxy.

(3) Notwithstanding subsection (1), in the case of a company whose shares are quoted on a stock exchange, if a member entitled to vote on a resolution has appointed more than one proxy, the entitlement of those proxies to vote on a show of hands shall be in accordance with the listing requirements of the stock exchange.

### **Votes of joint holders of shares**

**295.** (1) In the case of joint holders of shares of a company, the joint holders shall be considered as one shareholder.

(2) For the purposes of subsection (1)—

- (a) if the joint holders purport to exercise the power in the same way, the power is treated as exercised in that way; or
- (b) if the joint holders do not purport to exercise the power in the same way, the power is treated as not exercised.

**Right to object to a person's entitlement to vote**

**296.** (1) Unless otherwise provided in the constitution, no objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at the meeting shall be valid for all purposes.

(2) Any objection under subsection (1) made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

**Subdivision 2***Written Resolutions of Private Companies***Written resolutions of private companies**

**297.** (1) A resolution shall be proposed as a written resolution by the Board or any member of a private company.

(2) The following shall not be passed as a written resolution—

(a) a resolution under section 206 to remove a director before the expiration of his term of office; or

(b) a resolution under section 276 to remove an auditor before the expiration of his term of office.

**Eligibility of members to receive written resolution**

**298.** (1) In relation to a member's eligibility to receive a resolution proposed as a written resolution of a private company, the eligible members shall be the members who would have been entitled to vote on the resolution on the circulation date of the resolution.

(2) If a person who is entitled to vote on a written resolution changes during the course of the day the written resolution is circulated, the eligible members shall be the persons entitled to vote on the resolution at the time that the first copy of the resolution is circulated to a member for the member's agreement.

**Circulation date**

**299.** The circulation date of a written resolution shall be the date on which—

- (a) copies of the written resolution are circulated to members; or
- (b) if copies are circulated to members on different days, to the first of those days.

**Manner in which a written resolution to be circulated**

**300.** (1) A written resolution shall be circulated in hard copy or electronic form.

(2) Unless otherwise provided in the constitution, a written resolution—

- (a) circulated in hard copy shall be sent to any member either personally or by post to the address provided by the member to the company for such purpose; or
- (b) circulated in electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose.

**Circulation of written resolutions proposed by directors**

**301.** (1) Where the Board proposes a written resolution, the company shall circulate copies of the written resolution to every eligible member at the same time, so far as practicable in the manner specified under section 300.

(2) A copy of the written resolution shall be accompanied by a statement informing a member as to—

- (a) the procedure for signifying agreement or otherwise to the resolution; and
- (b) the date by which the resolution shall lapse if it is not passed.



(3) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(4) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

### **Members' power to require circulation of written resolution**

**302.** (1) Any member of a private company having a total of five per centum, or such lower per centum as specified in the constitution, of the total voting rights of all eligible members may require the company to circulate a resolution that may properly be moved as a written resolution.

(2) Any resolution may properly be moved as a written resolution unless the resolution—

- (a) if passed, would be ineffective whether by reason of inconsistency with any written law or the constitution;
- (b) is defamatory of any person;
- (c) is frivolous or vexatious; or
- (d) if passed, would not be in the best interest of the company.

(3) Where a member requires a company to circulate a written resolution, the member may require the company to circulate with the written resolution a statement of not more than one thousand words on the subject matter of the written resolution.

(4) A company is required to circulate the written resolution and any accompanying statement once the company has received a request to do so from any member representing not less than five per centum or such lower percentage as is specified in the constitution of the total voting rights of all members entitled to vote on the resolution.

(5) A request under subsection (1) shall—

- (a) be in hard copy or electronic form;
- (b) state the resolution and provide any accompanying statement; and

- (c) be signed or authenticated by the member making the request.

### **Circulation of written resolution proposed by members**

**303.** (1) If a company receives a request under subsection 302(1) to circulate a written resolution, the directors shall circulate to every eligible member in hard copy or electronic form—

- (a) a copy of the resolution; and
- (b) a copy of any accompanying statement.

(2) The directors shall circulate copies of the written resolution and any accompanying statement at the same time, so far as reasonably practicable to all eligible members in hard copy or in electronic form.

(3) The directors shall send the copies, or if copies are sent to members on different days, the first of those copies, not more than twenty one days from it becomes subject to the requirement under section 302 to circulate the resolution.

(4) The copy of the resolution shall be accompanied by a statement as to—

- (a) the procedure for signifying agreement or otherwise to the resolution; and
- (b) the date by which the resolution shall lapse if the resolution is not passed.

(5) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

(6) If the director fails to circulate a written resolution, any member who has requested the written resolution under section 302 may circulate the resolution.

(7) Any reasonable expenses incurred by the members circulating the resolution by reason of the failure of the directors to circulate a written resolution shall be reimbursed by the company.

(8) Any sum so reimbursed shall be retained by the company out of any sums due or to become due from the directors by way of fees or other remuneration in respect of the services of the directors as who were in default.

### **Expenses of circulation**

**304.** Unless the company resolves otherwise—

- (a) the expenses of the company in complying with section 303 shall be paid by the members who requested the circulation of the statement; and
- (b) the company shall not be bound to comply with section 303 unless there is deposited with or tendered to the company, not later than one week before the meeting, a sum reasonably sufficient to meet the company expenses in doing so.

### **Application not to circulate a member's written resolution**

**305.** (1) A company shall not be required to circulate a member's written resolution under subsection 303(1) if, on an application by the company or a person who claims to be aggrieved, the Court is satisfied that the rights conferred by section 302 are being abused.

(2) The Court may order any member who requested the circulation of the written resolution to pay the whole or part of the company's costs on such an application, even if the member is not a party to the application.

### **Procedure for signifying agreement to written resolution**

**306.** (1) A member signifies his agreement to a proposed written resolution when the company receives from him an authenticated document—

- (a) identifying the resolution to which it relates; and
- (b) indicating his agreement to the resolution.

(2) The document shall be sent to the company in hard copy or electronic form.

(3) A member's agreement to a written resolution, once signified, shall not be revoked.

(4) A written resolution shall be passed when the required majority of eligible members have signified their agreement to the written resolution.

### **Period for agreeing to written resolution**

**307.** (1) Unless otherwise provided in the constitution, a proposed written resolution made under section 302 lapses if it is not passed before the end of the period of twenty eight days beginning with the circulation date.

(2) The agreement of a member to a written resolution shall not be effective if it is signified after the expiry of that period.

### **Sending of documents relating to written resolutions by electronic means**

**308.** Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, the company shall be deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address, subject to any conditions or limitations specified in the document.

## **Subdivision 3**

### *Passing Resolutions at Meetings of Members*

#### **Resolutions at meetings of members**

**309.** Unless otherwise provided in the constitution, a resolution shall be validly passed at a meeting of members if—

(a) notice of the meeting and of the resolution is given; and

(b) the meeting is held and conducted,

in accordance with the provisions of this Subdivision.

**Power to convene meetings of members**

**310.** A meeting of members may be convened by—

- (a) the Board; or
- (b) by any member holding at least ten per centum of the issued share capital of a company or a lower per centum as specified in the constitution or if the company has no share capital, by at least five per centum in the number of the members.

**Power to require directors to convene meetings of members**

**311.** (1) The members of a company may require the directors to convene a meeting of members of the company.

(2) A requisition under subsection (1)—

- (a) shall be in hard copy or electronic form;
- (b) shall state the general nature of the business to be dealt with at the meeting;
- (c) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting; and
- (d) shall be signed or authenticated by the person making the requisition.

(3) The directors shall call for a meeting of members once the company has received requisition to do so from—

- (a) members representing at least ten per centum of the paid up capital of the company carrying the right of voting at meetings of members of the company, excluding any paid up capital held as treasury shares; or
- (b) in the case of a company not having a share capital, members who represent at least five per centum of the total voting rights of all members having a right of voting at meetings of members.

(4) Notwithstanding subsection (3), in the case of a private company, members representing at least five per centum of the paid up capital of the company carrying the right of voting at meeting of members of the company may require a meeting of members to be convened if more than twelve months has elapsed since the end of the last meeting of members convened pursuant to a requisition under this section and the proposed resolution is not defamatory, vexatious or frivolous.

(5) A resolution may properly be moved at a meeting unless the resolution—

- (a) if passed, would be ineffective whether by reason of inconsistency with any written law or the constitution;
- (b) is defamatory of any person;
- (c) is frivolous or vexatious; or
- (d) if passed, would not be in the best interest of the company.

(6) For the purposes of subsections (3) and (4), the right of voting shall be determined at the date the requisition is deposited with the company.

### **Directors' duty to call meetings required by members**

**312.** (1) In relation to section 311, the directors shall—

- (a) call for the meeting within fourteen days from the date of the requisition; and
- (b) hold the meeting on a date not more than twenty eight days after the date of the notice to convene the meeting.

(2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting shall include the text of the resolution.

(3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(4) If the resolution is to be proposed as a special resolution, the directors shall be considered as not having duly called for the meeting if the notice of the resolution is not given in accordance with subsection 316(2).

**Power of members to convene meeting of members at company's expense**

**313.** (1) If the directors—

(a) are required under section 311 to call a meeting of members; and

(b) do not do so in accordance with section 312,

the members who requisitioned the meeting, or any of the members representing more than one half of the total voting rights of all of the members who requisitioned the meeting, may call for a meeting of members.

(2) Where the requisition received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting shall include the text of the resolution.

(3) The meeting shall be convened on a date not more than three months after the date on which the directors received a requisition under subsection 311(1) to call for a meeting of members.

(4) The meeting shall be convened in the same manner, as nearly as possible, as that in which meetings are requisitioned to be convened by directors of the company.

(5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(6) Any reasonable expenses incurred by the members requisitioning the meeting by reason of the failure of the directors to call a meeting shall be reimbursed by the company.

(7) Any sum so reimbursed shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of the services of the directors as who were in default.

### **Power of Court to order meeting**

**314.** (1) This section applies if for any reason it is impracticable—

- (a) to call for a meeting of members of a company in any manner in which meetings of that company may be called; or
- (b) to conduct the meeting in the manner prescribed by the constitution or this Act.

(2) The Court may, either of its own motion or on the application—

- (a) of a director of the company;
- (b) of a member of the company who would be entitled to vote at the meeting; or
- (c) of the personal representative of any such member,

order a meeting to be called, held and conducted in any manner the Court thinks fit.

(3) Where such an order is made, the Court may give such ancillary or consequential direction as the Court thinks expedient.

(4) Such directions may include a direction that one member of the company present in person or by proxy at the meeting be deemed to constitute a quorum.

(5) A meeting called, held and conducted in accordance with an order under this section shall be deemed for all purposes to be a meeting of the company duly called, held and conducted.



**Resolution passed at adjourned meeting**

**315.** Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed.

## Subdivision 4

*Notice of Meetings***Notice required for meetings of members**

**316.** (1) A meeting of members of a private company, other than a meeting for the passing of a special resolution, shall be called by notice of at least fourteen days or any longer period specified in its constitution.

(2) A meeting of members of a public company shall be called by notice—

(a) in the case of an annual general meeting, at least twenty-one days or any longer period specified in its constitution; and

(b) in any other case, at least fourteen days or any longer period specified in its constitution.

(3) An annual general meeting may be called by a notice shorter than the period referred to in subsection (2) if agreed by all the members entitled to attend and vote thereat.

(4) A meeting of members other than an annual general meeting may be called by a notice shorter than the period referred to in subsection (1) or (2) if so agreed by the majority in the number of members entitled to attend and vote at the meeting, being a majority who—

(a) together hold not less than the requisite percentage in the number of the shares giving a right to attend and vote at the meeting, excluding any shares in the company held as treasury shares; or

- (b) in the case of a company not having a share capital, together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.

(5) The requisite percentage shall be—

- (a) in the case of a private company, ninety per centum or such higher percentage, not exceeding ninety five per centum as may be specified in the constitution; or
- (b) in the case of a public company, ninety five per centum.

(6) Any accidental omission to give notice of a meeting to, or the non-receipt of the notice of the meeting by, any member shall not invalidate proceedings at a meeting.

### **Contents of notices of meetings of members**

**317.** (1) Notice of a meeting of members of a company shall state—

- (a) the place, date and time of the meeting; and
- (b) the general nature of the business of the meeting.

(2) Notice of meeting of members may include text of any proposed resolution and other information as the directors deem fit.

### **Notice of adjourned meetings of members**

**318.** When a meeting of members is adjourned for thirty days or more, notice of the adjourned meeting shall be given in the same manner as in the case of the original meeting.

### **Manner in which notice to be given**

**319.** (1) Notice of a meeting of members shall be in writing and shall be given to the members either—

- (a) in hard copy;

- (b) in electronic form; or
  - (c) partly in hard copy and partly in electronic form.
- (2) Unless otherwise provided in the constitution, a notice—
  - (a) given in hard copy shall be sent to any member either personally or by post to the address supplied by the member to the company for such purpose; or
  - (b) given in electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose or by publishing on a website.

### **Notification of publication of notice of meeting on website**

**320.** (1) Notice of a meeting of members shall not be validly given by a company by means of a website unless a notification to that effect is given in accordance with this section.

(2) The company shall notify a member of the publication of the notice on the website and such notification shall be in writing and shall be given in hard copy or electronic form stating—

- (a) that it concerns a meeting of members;
- (b) the place, date and time of the meeting; and
- (c) in the case of a public company, whether the meeting is an annual general meeting.

(3) The notice shall be made available on the website throughout the period beginning from the date of the notification referred to in subsection (2) until the conclusion of the meeting.

### **Persons entitled to receive notice of meetings of members**

**321.** (1) Notice of a meeting of members shall be given to every member, director and auditor of the company.

(2) The reference to a member in subsection (1) includes any person who is entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting and the company has been notified of the person's entitlement in writing.

### **Resolution requiring special notice**

**322.** (1) Where special notice is required of a resolution under any provision of this Act, the resolution shall not be effective unless notice of the intention to move it has been given to the company at least twenty eight days before the meeting at which it is moved.

(2) The company is not required to give notice of the proposed resolution received under subsection (1) to the members unless the resolution can be properly moved at a meeting of members required under this Act.

(3) The company shall, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(4) Where it is not practicable to give its members notice in accordance with subsection (2), the company shall give its members notice of any such resolution at least fourteen days before the meeting—

(a) by advertising it in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language; or

(b) in any other manner as specified in the constitution.

(5) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called on a date twenty eight days or less after the notice has been given, the notice although not given within the time required by this section is deemed to have been properly given.

**Power of members to require circulation of statements**

**323.** (1) The members of a public company may require the company to—

- (a) circulate a statement of not more than one thousand words with respect to—
  - (i) a matter referred to in a proposed resolution to be dealt with at that meeting; or
  - (ii) other business to be dealt with at that meeting; or
- (b) give notice of a resolution which may be properly moved and is intended to move at that meeting,

to members of the company entitled to receive notice of a meeting of members.

(2) The directors shall be required to circulate the statement referred to in paragraph (1)(a) or give notice of a resolution referred to in paragraph (1)(b), as the case may be, once the company has received the requisition from—

- (a) members representing at least two and a half per centum of the paid up capital of the company carrying the right of voting excluding any paid up capital held as treasury shares;
  - (b) at least fifty members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least five hundred ringgit; or
  - (c) in the case of a company not having a share capital, members who represent at least two and a half per centum of the total voting rights of all members having a right of voting.
- (3) A request made under subsection (1) shall be—
- (a) in hard copy or electronic form;
  - (b) accompanied with the statement to be circulated;

(c) signed or authenticated by the person making it; and

(d) received by the company—

(i) in the case of requisition requiring notice of resolution, at least twenty eight days before the meeting; or

(ii) in the case of any other statement, at least seven days before the meeting.

(4) Unless the company resolves otherwise—

(a) the expenses of the company in complying with subsection (2) shall be paid by the members who requested the circulation of the statement; and

(b) it shall not be bound to comply with subsection (2) unless there is deposited with or tendered to the company, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

(5) For the purposes of subsection (2), the right of voting shall be determined at the date the requisition is deposited with the company.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

### **Director's duty to circulate members' statement**

**324.** (1) Subject to sections 308 and 326, the directors of a public company that is required to circulate a statement under section 323 shall send a copy of the statement to each member of the company who is entitled to receive notice of the meeting—

(a) in the same manner as the notice of the meeting; and

(b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

### **Power of Court to order non-circulation of members' statement**

**325.** (1) A company shall not be required to circulate a member's statement under section 324 if, on an application by the company or any person who claims to be aggrieved, the Court is satisfied that the rights conferred by section 323 are being abused to secure needless publicity or the matter is defamatory, frivolous or vexatious or if the circulation would not be in the best interest of the company.

(2) The Court may order the company's costs on an application by the company to be paid in whole, or in part by the requisitionists, notwithstanding that they are not parties to the application.

### **Sending documents relating to a meeting by electronic means**

**326.** Where a company has provided an electronic address in a notice calling a meeting, it shall be deemed to have been agreed that any document or information relating to proceedings at the meeting including the appointment and termination of a proxy may be sent by electronic means to that address, subject to any conditions or limitations specified in the notice.

## **Subdivision 5**

### *Procedure at Meetings*

### **Meetings of members at two or more venues**

**327.** (1) Subject to the constitution, a company may convene a meeting of members at more than one venue using any technology or method that enables the members of the company to participate and to exercise the members' rights to speak and vote at the meeting.

(2) The main venue of the meeting shall be in Malaysia and the chairperson shall be present at that main venue of the meeting.

### **Quorum at meetings**

**328.** (1) In the case of a company having only one member, one member personally present at a meeting shall constitute a quorum.

(2) In any other case, two members personally present at a meeting or by proxy shall be a quorum unless a higher number is specified in the constitution.

(3) For the purpose of constituting a quorum—

(a) one or more representatives appointed by a corporation shall be counted as one member; or

(b) one or more proxies appointed by a person shall be counted as one member.

(4) No business shall be transacted at any meeting of members unless a quorum is present at the time when the meeting proceeds to business.

(5) Unless otherwise provided in the constitution, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting—

(a) if convened upon the requisition of members, shall be dissolved; or

(b) in any other case, shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine.

### **Chairperson of meetings of members**

**329.** (1) Subject to any provision of the constitution that states who shall be the chairperson, the chairman of the Board, if any, shall preside as the chairperson at every general meeting of the company.



(2) If there is no such chairman, or if the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their members to be chairperson of the meeting.

### **Declaration by chairperson on a show of hands**

**330.** (1) At any meeting of members, a resolution put to the vote of the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands, a poll is demanded—

- (a) by the chairman;
- (b) by at least three members present in person or by proxy;
- (c) by any member present in person or by proxy and representing not less than ten per centum of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than ten per centum of the total paid up shares conferring that right.

(2) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairperson that the resolution has been passed unanimously or with a particular majority or is lost, and an entry to that effect in the minutes of the proceeding shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) An entry in respect of such a declaration in the minutes of the meeting recorded in accordance with section 343 is conclusive evidence of that fact.

(4) This section does not have effect if a poll is demanded in respect of the resolution, and the demand is not subsequently withdrawn.

**Right to demand a poll**

**331.** A provision of the constitution shall be void in so far as the provision would have the effect of—

- (a) excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting;
- (b) making ineffective a demand for a poll on any such question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting that is made—
  - (i) by not less than five members having the right to vote on the resolution;
  - (ii) by a member or members representing not less than ten per centum of the total voting rights of all the members having the right to vote on the resolution, excluding any voting rights attached to any shares in the company held as treasury shares; or
  - (iii) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than ten per centum of the total sum paid up on all the shares conferring that right, excluding shares in the company conferring a right to vote on the resolution which are held as treasury shares.

**Voting on a poll**

**332.** (1) On a poll taken at a meeting of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(2) If a poll is duly demanded, it shall be taken either forthwith or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

### **Representation of corporations at meetings of members**

**333.** (1) If a corporation is a member of a company, the corporation may by resolution of its Board or other governing body authorize a person or persons to act as its representative or representatives at any meeting of members of the company.

(2) If the corporation authorizes only one person, the person shall be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if he was an individual member of the company.

(3) If the corporation authorizes more than one person as its representative, every one of the representative is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if every one of the representative was an individual member of the company.

(4) If the corporation authorizes more than one person and more than one of the representatives purport to exercise the power under subsection (3)—

(a) if the representatives purport to exercise the power in the same way, the power is treated as exercised in that way; or

(b) if the representatives do not purport to exercise the power in the same way, the power is treated as not exercised.

(5) A certificate of authorization by the corporation shall be *prima facie* evidence of the appointment or the revocation of the appointment, as the case may be, of a representative under this section.

## Subdivision 6

*Proxies***Appointment of proxies**

**334.** (1) A member of a company shall be entitled to appoint another person as his proxy to exercise all or any of his rights to attend, participate, speak and vote at a meeting of members of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that the member specifies the proportion of the member's shareholdings to be represented by each proxy.

(3) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place within Malaysia as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

**Notice of meetings of members to contain statement of rights to appoint proxies**

**335.** (1) In every notice calling a meeting of members of a company, there shall appear prominently, a statement informing the member of his rights under section 334, failing which every officer who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(2) Any person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to only some of the members entitled to be sent a notice of the meeting and to vote in the meeting by proxy, commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) The proceedings of the meeting shall not be invalidated notwithstanding the non-compliance with this section.

### **Proxy as a chairperson of a meeting of members**

**336.** Unless expressly prohibited in the constitution, a proxy may be elected to be the chairperson of a meeting of members by a resolution of the company passed at the meeting.

### **Right of proxy to demand for a poll**

**337.** (1) The appointment of a proxy to vote on a matter at a meeting of a company, authorizes the proxy to demand, or join in demanding, a poll on that matter.

(2) In applying paragraph 331(*b*), a demand by a proxy counts—

- (*a*) for the purposes of subparagraph (*b*)(i), as a demand by the member;
- (*b*) for the purposes of subparagraph (*b*)(ii), as a demand by a member representing the voting rights that the proxy is authorized to exercise; or
- (*c*) for the purposes of subparagraph (*b*)(iii), as a demand by a member holding the shares to which those rights are attached.

### **Termination of a person's authority to act as a proxy**

**338.** (1) Unless the company receives a notice of termination before the commencement of a meeting of members or an adjourned meeting of members, the termination of the authority of the person to act as proxy does not affect—

- (*a*) the constitution of the quorum at the meeting;
- (*b*) the validity of anything he did as chairperson of a meeting;

(c) the validity of a poll demanded by him at a meeting; or

(d) the validity of the vote exercised by him at a meeting.

(2) If the constitution require or permit members to give the notice of termination in subsection (1) to a person other than the company, the reference to the company receiving the notice shall be taken as the person receiving the notice.

(3) Notwithstanding subsection (1), the constitution may require that the notice of termination of the authority of the proxy to be received by the company at a time earlier than that specified in subsection (1).

(4) Any provision of the constitution is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than forty eight hours before the time for holding the meeting or adjourned meeting.

## Subdivision 7

### *Class Meetings*

#### **Application to class meetings**

**339.** (1) The provisions of Subdivision 5 of this Division in relation to meetings shall apply to a meeting of holders of a class of shares and class of members subject to the modifications specified in this Subdivision.

(2) Sections 328 and 330 shall not apply in relation to a meeting of holders of a class of shares and class of members in connection with a meeting in respect of the variations of rights attached to the class of shares and class of members.

(3) The quorum for a variation of class rights meeting in respect of holders of a class of shares is—

(a) for a meeting other than an adjourned meeting, two persons present holding at least one-third of the number of issued shares of such class, excluding any shares of that class held as treasury shares; and

- (b) for an adjourned meeting, one person present holding shares of such class unless otherwise provided in the constitution.

(4) The quorum for a variation of class rights meeting in respect of holders of a class of members is—

- (a) for a meeting other than an adjourned meeting, two members of the class present, in person or by proxy, who together represent at least one-third of the voting rights of the class; and
- (b) for an adjourned meeting, one member of the class present, in person or by proxy, unless otherwise provided in the constitution.

(5) For the purposes of subsection (3), where a person is represented by a proxy or proxies, he is treated as holding only the shares in respect of which the proxy or proxies are authorized to exercise voting rights.

(6) For the purposes of this section—

- (a) any amendment of a provision contained in the constitution for the variation of the rights attached to a class of shares or the rights of a class of members, or the insertion of any such provision into the constitution, is itself to be treated as a variation of those rights; and
- (b) references to the variation of rights attached to a class of shares or a class of members include references to the abrogation.

(7) At a variation of class rights meeting, any holder of shares of such class or any member present, in person or by proxy, as the case may be, may demand a poll.

## Subdivision 8

*Additional Requirements for Public Companies***Annual general meeting**

**340.** (1) Every public company shall hold an annual general meeting in every calendar year in addition to any other meetings held during that period, to transact the following business:

- (a) the laying of audited financial statements and the reports of the directors and auditors;
- (b) the election of directors in place of those retiring;
- (c) the appointment and the fixing of the fee of directors;
- (d) any resolution or other business of which notice is given in accordance with this Act or the constitution.

(2) For the purposes of subsection (1), the annual general meeting shall be held—

- (a) within six months of the company's financial year end; and
- (b) not more than fifteen months after the last preceding annual general meeting.

(3) Notwithstanding subsection (1), a company shall not be required to hold an annual general meeting in the year of its incorporation or in the following year provided that the company hold its first annual general meeting within eighteen months of its incorporation.

(4) The company may apply to the Registrar to extend the periods referred to in this section, and the Registrar may extend such periods as he considers appropriate, upon being satisfied with the reasons provided.

(5) If a company fails to convene an annual general meeting under this section, the Court may, on the application of any member, order a general meeting to be called.



(6) The company and every officer who contravene subsection (1), (2) or (3) commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

## Subdivision 9

### *Record of Resolutions and Meetings*

#### **Records of resolutions and meetings**

**341.** (1) Every company shall keep records comprising—

- (a) all resolutions of members passed otherwise than at the meeting of members;
- (b) minutes of all proceedings of meetings of members; and
- (c) details provided to the company in accordance with section 344.

(2) The records shall be kept for at least seven years from the date of the resolution, meeting or decision, as the case may be.

(3) Every officer who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

#### **Inspection of records of resolutions and meetings**

**342.** (1) The records referred to in section 341 relating to the previous seven years shall be kept available for inspection—

- (a) at the registered office of the company; or
- (b) at another place which a notice has been given under subsection (2).

(2) Unless the records have at all times been kept at the registered office, the company shall give a notice to the Registrar in respect to the place where the records are kept or the change of the place within fourteen days from the date the records are kept at such place or such change of place.

(3) The records shall be made available for inspection by any member of the company without charge.

(4) Any member shall be entitled to be furnished with a copy of any minutes specified under section 341 within fourteen days after he has made a request in writing to the company at a charge not exceeding two ringgit for every one hundred words.

(5) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine of five hundred ringgit for each day during which the offence continues after conviction.

### **Records as evidence of resolutions**

**343.** (1) The record of a resolution passed otherwise than at a meeting of members, if purporting to be signed by a director of the company or by the secretary, is sufficient evidence of the passing of the resolution.

(2) If there is a record of a written resolution of a private company, the requirements of this Act with respect to the passing of the resolution are deemed to be complied with unless the contrary is proved.

(3) The record of proceedings of a meeting of members purporting to be signed by the chairperson of that meeting or by the chairperson of the next meeting of members is sufficient evidence of the proceedings at the meeting.

(4) If there is a record of proceedings of a meeting of members of a company, then, until the contrary is proved—

(a) the meeting is deemed to be duly convened;

(b) all proceedings at the meeting are deemed to have been duly taken place; and

- (c) all appointments at the meeting are deemed to be valid.

### **Details of decisions provided by a sole member**

**344.** (1) If a sole member of a company takes any decision that—

- (a) may be taken by the company in meeting of members;  
and
- (b) has effect as if agreed by the company in meeting of members,

he shall provide the company with details of that decision, unless that decision is taken by way of a written resolution.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) Failure to comply with this section does not affect the validity of any decision referred to in subsection (1).

## **Division 6**

### *Remedies*

### **Interpretation**

**345.** For the purposes of this Division “complainant” means—

- (a) a member of a company, or a person who is entitled to be registered as a member of a company;
- (b) a former member of a company if the application relates to the circumstances in which the member ceased to be a member;
- (c) any director of a company; or
- (d) the Registrar, in the case of a company declared under section 590.

**Remedy in cases of an oppression**

**346.** (1) Any member or debenture holder of a company may apply to the Court for an order under this section on the ground—

- (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders including himself or in disregard of his or their interests as members, shareholders or debenture holders of the company; or
- (b) that some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or debenture holders, including himself.

(2) If on such application the Court is of the opinion that either of those grounds is established, the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of, and without prejudice to the generality of subsection (1), the order may—

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the company in the future;
- (c) provide for the purchase of the shares or debentures of the company by other members or debenture holders of the company or by the company itself;
- (d) in the case of a purchase of shares by the company, provide for a reduction accordingly of capital of the company; or
- (e) provide that the company be wound up.

(3) If an order that the company be wound up is made under paragraph (2)(e), the provisions of this Act relating to winding up of a company shall apply as if the order had been made upon a petition duly presented to the Court by the company, with such adaptations as are necessary.

(4) If an order under this section makes any alteration in or addition to any constitution, then, notwithstanding anything in any other provision of this Act, but subject to the order, the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the constitution inconsistent with the order, but subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) An office copy of any order made under this section shall be lodged by the applicant with the Registrar within fourteen days from the making of the order.

(6) The applicant who contravenes subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine of five hundred ringgit for each day during which the offence continues after conviction.

### **Derivative proceedings**

**347.** (1) A complainant may, with the leave of the Court initiate, intervene in or defend a proceeding on behalf of the company.

(2) Proceedings brought under this section shall be brought in the company's name.

(3) The right of any person to bring, intervene in, defend or discontinue any proceedings on behalf of a company at common law is abrogated.

### **Leave of Court**

**348.** (1) An application for leave of the Court under section 347 shall be made to the Court without the need for an appearance to be entered.

(2) The complainant shall give thirty days' notice in writing to the directors of his intention to apply for the leave of Court under section 347.

(3) Where leave has been granted for an application under section 347, the complainant shall initiate proceedings in Court within thirty days from the grant of leave.

(4) In deciding whether or not the leave shall be granted, the Court shall take into account whether—

- (a) the complainant is acting in good faith; and
- (b) it appears *prima facie* to be in the best interest of the company that the application for leave be granted.

(5) Any proceedings brought, intervened in or defended under this section shall not be discontinued, compromised or settled except with the leave of the Court.

### **Effect of ratification**

**349.** If members of a company, ratify or approve the conduct of the subject matter of the action—

- (a) the ratification or approval does not prevent any person from bringing, intervening in or defending proceedings with the leave of the Court;
- (b) the application for leave or action brought or intervened in shall not be stayed or dismissed by reason only of the ratification or approval; and
- (c) the Court may take into account the ratification or approval in determining what order to make.

### **Powers of the Court**

**350.** In granting leave under this section and sections 347 and 348, the Court may make such other orders as the Court thinks appropriate including an order—

- (a) authorizing the complainant or any other person to control the conduct of the proceedings;

- (b) giving directions for the conduct of the proceedings;
- (c) for any person to provide assistance and information to the complainant, including to allow inspection of the company's books;
- (d) requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the application or action, or pending the grant of the leave or pending the grant of any injunction by the Court hearing the application for leave under this section; or
- (e) the costs of the complainant, the company or any other person for proceedings taken under this section, including an order as to indemnity for costs.

### **Injunction**

**351.** (1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Act;
- (b) an attempt to contravene this Act;
- (c) an attempt that aids, abets, advises or procures a person to contravene this Act;
- (d) an attempt to induce, whether by threats, promises or otherwise, a person to contravene this Act;
- (e) an attempt by which any person would be in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) an attempt of conspiracy with others to contravene this Act,

the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) If a person refused or failed, is refusing or failing, to do an act or thing that the person is required by this Act to do, the Court may, on the application of the Registrar or any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the Court thinks appropriate, requiring the person who refused or failed, is refusing or failing, to do that act or thing.

(3) The power of the Court to grant an injunction to restrain a person from engaging in conduct may be exercised whether or not—

- (a) it appears to the Court that the person intends to engage again or to continue to engage, in conduct of that kind;
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to any person if such person engages in a conduct of that kind.

(4) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not—

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) the person has previously refused or failed to do that act or thing; or
- (c) there is an imminent danger of substantial damage to any person if such person refuses or fails to do that act or thing.

(5) Where the Registrar applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person to give an undertaking as to damages as a condition for the granting of an interim injunction.

(6) Where an application for an injunction under subsection (1) or (2) has been made, the Court may grant an injunction by consent of all parties to the proceedings, if the Court determines it to be appropriate, whether or not the Court is satisfied that that subsection applies.



(7) The Court may grant an interim injunction pending, determination of an application under subsection (1) if in the opinion of the Court it is desirable to do so.

(8) The Court may revoke or vary an injunction granted under subsection (1), (2) or (7).

(9) In granting an injunction to restrain a person from engaging in particular conduct, or to require a person to do a particular act or thing, the Court may order that person to pay damages to any other person, either in addition to or in substitution of the grant of the injunction.

## Division 7

### *Charges, Arrangements and Reconstructions and Receivership*

#### Subdivision 1

#### *Charges*

### **Registration of charges**

**352.** (1) A company that creates a charge over its property or any of its undertakings to which this section applies shall lodge within thirty days from the creation of the charge, together with the prescribed fee with the Registrar for registration, a statement of particulars of the charge in the form and manner as may be determined by the Registrar.

(2) If a company contravenes with subsection (1), the charge shall be void against the liquidator and any creditor of the company, so far as any security on the company's property or undertaking is conferred.

(3) Nothing in subsection (2) shall prejudice any contract or obligation for the repayment of the money secured by a charge and when a charge becomes void under this section, the money secured shall immediately become payable.

(4) Any charge created, before the lapse of thirty days before a prior charge is registered with respect of the same debts, or a part of the debts, the charge shall not be valid or operative unless the Court is satisfied that the charge was created for the

purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Subdivision.

(5) Failure to register a charge created over a company's property or undertaking other than those relating to land, shall not affect the validity or limit the effect of the charge created under subsection (1).

(6) Subsection (1) shall not apply—

(a) to a charge created to secure payment or performance of a financial obligation arising from any instruments or transactions effected in the money market in such manner and to such extent as may be specified by the Central Bank of Malaysia under the Financial Services Act 2013 or the Islamic Financial Services Act 2013; or

(b) if the person interested in the charge is the Central Bank of Malaysia.

(7) For the purposes of subsection (6), the charge shall be treated as if it is a charge registered under subsection (1) and shall be valid against the liquidator and any creditor of the company.

(8) Notwithstanding subsection (1), any person interested in the charge may lodge with the Registrar the particulars of the charge before the end of the period allowed for registration.

(9) If a registration is effected by any person interested in the charge other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by that person on the registration.

(10) The company and every officer who contravene subsection 352(1) and section 354 commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Types of charges require registration**

**353.** The requirement for registration under section 352 shall apply to the following charges:

- (a) a charge to secure any issue of debentures;
- (b) a charge on uncalled share capital of a company;
- (c) a charge on shares of a subsidiary of the company which are owned by the company;
- (d) a charge or an assignment created or evidenced by an instrument which if executed by an individual within Peninsular Malaysia and affecting property within Peninsular Malaysia, would be invalid or of limited effect if not filed or registered under the Bills of Sale Act 1950 [*Act 268*];
- (e) a charge on land wherever situate or any interest in the land;
- (f) a charge on book debts of the company;
- (g) a floating charge on the undertaking or property of a company;
- (h) a charge on calls made but not paid;
- (i) a charge on a ship or aircraft or any share in a ship or aircraft;
- (j) a charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and
- (k) a charge on the credit balance of the company in any deposit account.

**Registration of charges created over property outside Malaysia**

**354.** If a charge created in Malaysia affects property outside Malaysia, the statement of the particulars as determined by the Registrar may be lodged for registration in accordance with section 352 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

**Registration of charges in series of debentures**

**355.** (1) When a series of debentures containing or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it shall be sufficient if there is lodged with the Registrar for registration within thirty days from the date of the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustee, if any, for the debenture holders.

(2) For the purposes of subsection (1), if more than one issues are made of debenture in the series, particulars of the date and amount of each issue shall be lodged within thirty days from each issue, but an omission to do so shall not affect the validity of the debentures issued.

(3) If any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his—

- (a) subscribing or agreeing to subscribe; or
- (b) procuring or agreeing to procure subscriptions,

whether absolute or conditional for any debentures, the particulars required to be lodged under this section shall include particulars as to the amount or rate per centum of the commission, allowance or discount paid or made, but omission to do so shall not affect the validity of the debentures issued.

(4) The deposit of any debentures as security for any debt of the company shall not, for the purposes of subsection (3), be treated as the issue of the debentures at a discount.

**Duty of company to register charges existing on property acquired****356. (1) If—**

- (a) a company acquires property which is subject to a charge and which would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Subdivision;
- (b) a foreign company becomes registered in Malaysia and has prior to such registration created a charge which would, if it had been created by the company while it was registered in Malaysia, have been required to be registered under this Subdivision; or
- (c) a foreign company becomes registered in Malaysia and has prior to such registration acquired property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition and while it was registered in Malaysia, have been required to be registered under this Subdivision,

the company or foreign company shall lodge a statement of the particulars of the charge as determined by the Registrar within thirty days from the date on which the acquisition is completed or the date of the registration of the foreign company in Malaysia, as the case may be, with the Registrar for registration.

(2) The company or a foreign company and every officer of the company or the foreign company who contravene subsection (1) commit an offence, and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Register of charges to be kept by Registrar**

**357. (1)** The Registrar shall keep and maintain a register of all charges lodged for registration under this Subdivision.

(2) The Registrar shall enter in the register with respect to those charges the following particulars:

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, the particulars as are required to be contained in a statement furnished under subsection 355(1); and
- (b) in the case of any other charge—
  - (i) the date of creation, if the charge is a charge created by the company;
  - (ii) the date of acquisition of the property, if the charge is a charge existing on property acquired by the company;
  - (iii) the amount secured by the charge;
  - (iv) a description sufficient to identify the property charged; and
  - (v) the name of the person entitled to the charge.

(3) The Registrar shall issue a certificate of registration of charge in the form as the Registrar may determine and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

### **Endorsement of certificate of registration on debentures**

**358.** (1) A company shall cause to be endorsed on every debenture forming one of a series of debentures or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge registered—

- (a) a copy of the certificate of registration; or
- (b) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) If a company contravenes this section, every person who knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section commits an offence.

### **Assignment and variation of charge**

**359.** (1) If after a charge on property of a company has been created and registered under this Subdivision, a person other than the original charge holder becomes the new holder of the charge, the new holder of the charge shall, within thirty days and upon payment of a prescribed fee—

(a) lodge with the Registrar a notice stating that he has become the new holder of the charge and the notice shall contain the information as may be determined by the Registrar; and

(b) give a copy of the notice to the company.

(2) If after a charge on the property of a company has been created and registered under this Subdivision there is a variation in the terms of the charge having the effect of—

(a) varying the amount of the debt or liabilities, whether present or prospective, secured by the charge; or

(b) prohibiting or restricting the creation of subsequent charges on the property,

the company shall lodge with the Registrar a notice setting out the particulars of the variation as may be determined by the Registrar within thirty days from the variation occurs and upon payment of a prescribed fee.

(3) For the purposes of subsection (2), if the amount of debt or liability secured by a registrable charge created by the company is—

(a) unspecified; or

(b) specified with further advances,

any payment or advance made by the charge holder to the company in accordance with the terms of the charge shall not be regarded to be a variation in the terms of the charge.

(4) A reference in this section to the charge holder in relation to a charge shall be construed as a reference to the trustee for debenture holders if the charge is constituted by a debenture or debentures and there is a trustee for the debenture holders.

(5) The new holder of the charge who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Satisfaction and release of property from charge**

**360.** (1) If, with respect to a registered charge—

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part of the property or undertaking has been released from the charge or has been ceased to form part of the company's property or undertaking,

the company shall lodge with the Registrar the particulars as may be determined by the Registrar of the fact within fourteen days from the payment, satisfaction, release or cessation, and the Registrar shall enter that particulars in the register.

(2) The payment, satisfaction, release or cessation referred to in subsection (1) shall be supported with sufficient evidence which shall be lodged with the Registrar.

(3) For the purposes of subsection (1), any other person entitled to the charge may lodge the particulars of information referred to in that subsection.



**Extension of time and rectification of register of charges**

**361.** The Court, on being satisfied that the omission to register a charge, whether under this Act or any corresponding previous written law, within the time required or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default, order that the time for registration be extended or that the omission or misstatement be rectified.

**Company to keep instruments of charges and register of charges**

**362.** (1) Every company shall cause the instrument creating any charge requiring registration under this Subdivision or a copy of such instrument to be kept at the registered office of the company.

(2) For the purposes of subsection (1), in the case of a series of debentures, the keeping of a copy of one debenture of the series shall be sufficient.

(3) Every company shall keep at the registered office of the company a register of charges and enter in the register all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case—

- (a) a short description of the property charged;
- (b) the amount of the charge; and
- (c) the names of the persons entitled to the charge except in the case of securities to the bearer.

(4) The instruments or copies of such instruments and the register of charges kept under this section shall be open for inspection by —

- (a) any creditor or member of the company for a fee of five ringgit; or
- (b) any other person on payment of such fee not exceeding ten ringgit for each inspection as is fixed by the company.

(5) Any person shall be, on an application to a company and upon payment of a fee not exceeding ten ringgit as is fixed by the company for every page, be furnished with a copy of any instrument of charge or debenture kept by the company under this section within three days of his making the application.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit, and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Documents made out of Malaysia**

**363.** If under this Subdivision, an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall be extended for a period of seven days or such further period as the Registrar may allow in relation to an instrument, deed, statement or other document executed or made in a place out of Malaysia.

### **Application of this Subdivision to foreign company**

**364.** A reference in this Subdivision to a company shall be read as including a reference to a foreign company to which Division 1 of Part V applies, but nothing in this Subdivision applies to a charge on property outside Malaysia of a foreign company.

## Subdivision 2

*Arrangements and Reconstructions***Interpretation**

**365.** In this Subdivision, unless the context otherwise requires—

“arrangement” includes a reorganization of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both of these methods;

“company” means any corporation or society liable to be wound up under this Act with the exception of section 370;

“transferee company” means—

- (a) in section 370, a company to which the whole or any part of the undertaking or property of the transferor company is transferred to; and
- (b) in section 371, a company to which all of the shares or all of the shares in any particular class of the transferor company is transferred to;

“transferor company” means—

- (a) in section 370, a company which transfers the whole or any part of the undertaking or property of the company; and
- (b) in section 371, a company which transfers all of the shares or all of the shares in any particular class of the company.

**Power of Court to order compromise or arrangement with creditors and members**

**366.** (1) The Court may, on an application under this Subdivision, order a meeting in a summary way to be summoned in such manner as the Court directs, by either—

- (a) the company;

- (b) any creditor or member of the company;
- (c) the liquidator, if the company is being wound up; or
- (d) the judicial manager, if the company is under judicial management.

(2) A meeting held pursuant to an order of the Court made under subsection (1) may be adjourned if the resolution for adjournment is approved by seventy five per centum of the total value of creditors or class of creditors or the members or class of members present and voting either in person or by proxy at the meeting.

(3) The compromise or arrangement shall be binding on—

- (a) all the creditors or class of creditors;
- (b) the members or class of members;
- (c) the company; or
- (d) the liquidator and contributories, if the company is being wound up,

if the compromise or arrangement is agreed by a majority of seventy five per centum of the total value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting and has been approved by order of the Court.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as the Court thinks just.

(5) An order under subsection (3) shall have no effect until an office copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take effect on and from the date of lodgement or such earlier date as the Court may determine and as may be specified in the order.

(6) Subject to subsection (7), a copy of every order made under subsection (3) shall be annexed to every copy of the constitution of the company issued after the order has been made, or in the

case of a company not having a constitution, to every copy of the instrument issued constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from complying with the requirements of subsection (6) or determine the period during which the company shall comply with the requirements.

(8) If any such compromise or arrangement, whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or the amalgamation of any two or more companies, has been proposed, the directors of the company shall—

- (a) if a meeting of the members of the company by resolution directs, instruct such accountants or advocates or both as are named in the resolution to report on the proposals and forward their report to the directors as soon as practicable; and
- (b) make the report available at the registered office of the company for inspection by the shareholders and creditors of the company at least seven days before the date of any meeting ordered by the Court to be summoned in accordance with subsection (1).

(9) The company and every officer who contravene subsection (6) or (8) commit an offence.

### **Power of Court to appoint an approved liquidator**

**367.** (1) The Court may, on an application under this Subdivision, appoint an approved liquidator to assess the viability of the scheme proposed for the compromise or arrangement and the approved liquidator appointed shall prepare a report for submission to the applicant.

(2) The report prepared under this section shall be tabled at the meeting of creditors or members held under section 366.

**Power of Court to restrain proceedings**

**368.** (1) If no order has been made or resolution passed for the winding up of a company and a compromise or arrangement has been proposed between the company and its creditors or any class of those creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or any member or creditor of the company, restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to any terms as the Court may impose.

(2) The Court may grant a restraining order under subsection (1) to a company for a period of not more than three months and the Court may on the application of the company, extend this period for not more than nine months if—

- (a) the Court is satisfied that there is a proposal for a scheme of compromise or arrangement between the company and its creditors or any class of creditors representing at least one-half in value of all the creditors;
- (b) the Court is satisfied that the restraining order is necessary to enable the company and its creditors to formalise the scheme of compromise or arrangement for the approval of the creditors or members under section 366;
- (c) a statement of particulars as to the affairs of the company made up to a date not more than three days before the application is lodged together with the application; and
- (d) the Court approves the person nominated by a majority of the creditors in the application by the company under subsection (1) to act as a director or if that person is not already a director, appoints that person to act as a director notwithstanding the provisions of this Act or the constitution of the company.

(3) The person approved or appointed by the Court to act as a director of the company under paragraph (2)(d) shall—

- (a) have the right of access to the accounting and other records including registers of the company at all reasonable times; and

- (b) be entitled to require from any officer of the company any information and explanation as he may require for the purposes of his duty.

(4) Unless the Court otherwise orders, any disposition of the property of the company including things in action and any acquisition of property by the company, other than in the ordinary course of business, made after the grant of the restraining order by the Court shall be void.

(5) Where an order is made under subsection (1), every company in relation to which the order is made shall, within seven days—

- (a) lodge an office copy of the order with the Registrar; and
- (b) publish a notice of the order in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language,

and the company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit and in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(6) An order made by the Court under subsection (1) shall not have the effect of restraining—

- (a) further proceedings in any action or proceeding that should be taken against the company by the Registrar or the Securities Commission; or
- (b) further proceedings in any action or proceeding against any person including the guarantor of the company but does not include the company that had applied for the restraining order.

(7) If a company disposes or acquires any property other than in the ordinary course of its business, without leave of the Court, the company and every officer who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not less than five years or to a fine not exceeding three million ringgit or to both.

**Information as to compromise or arrangement with creditors and members**

**369.** (1) If a meeting is summoned under this Subdivision, every notice summoning the meeting—

- (a) which is sent to a creditor or member shall be accompanied with a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect of the compromise or arrangement so far as it is different from the effect on the similar interests of other persons; and
- (b) which is given by advertisement shall either contain the statement referred to in paragraph (a) or a notification of the place at which and the manner in which the creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) If a notice given by advertisement includes a notification that copies of a statement can be obtained, every creditor or member entitled to attend the meeting shall on making an application in the manner indicated in the notice, be furnished with a copy of the statement free of charge by the company.

(4) Each director and each trustee for debenture holders shall provide the necessary information on matters relating to each director and each trustee for debenture holders for the purposes of this section within seven days of the receipt of a request by the company in writing.

(5) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.



(6) For the purposes of subsection (5), the officer of the company includes any liquidator of the company and any trustee for debenture holders.

(7) Notwithstanding subsection (5), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to the interests of the director or trustee for the debenture holders.

### **Reconstruction and amalgamation of companies**

**370.** (1) This section applies where an application is made to the Court under this Subdivision for the approval of a compromise or arrangement and it is proved to the Court that—

- (a) the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or the amalgamation of any two or more companies; and
- (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme, “transferor company,” is to be transferred to another company, “transferee company”.

(2) The Court may, either by the order approving the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;

- (d) the dissolution without winding up of the transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(3) If an order made under this section provides for the transfer of property or liabilities—

- (a) the property shall, by virtue of the order, be transferred to and vest in the transferee company; and
- (b) the liabilities shall, by virtue of the order, be transferred to and become the liabilities of the transferee company,

and in the case of any particular property if the order directs free from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(4) Every company in relation to which an order is made under this section shall lodge an office copy of the order—

- (a) with the Registrar within seven days of the making of the order; and
- (b) if the order relates to land, with the appropriate authority concerned with the registration or recording of dealings in that land.

(5) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

(6) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(7) In this section—

(a) “liabilities” includes duties;

(b) “property” includes all rights and powers relating to the property.

### **Right of offeror to buy out**

**371.** (1) If a scheme or contract involving the transfer of all the shares or all the shares in any particular class in a transferor company, to a “transferee company”, whose transfer involve the holders of not less than ninety per centum of the nominal value shares or of the shares of that class, other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary, have been approved, the transferor company on behalf of the transferee company has within four months to make offer to buy out the share.

(2) The transferee company may at any time within two months after the offer has been approved under subsection (1) give notice to any dissenting shareholder in the transferor company that the transferee company desires to acquire the dissenting shareholder’s shares in the form and manner as determined by the Registrar.

(3) If a notice has been given by the transferee company, the transferee company shall be entitled and bound to acquire those shares on the terms which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company or if the offer contained two or more, alternative sets of terms, upon the terms which were specified in the offer as being applicable to dissenting shareholders, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within seven days of a statement being supplied to a dissenting shareholder under subsection (4), whichever is the later, as the Court thinks fit to order otherwise.

(4) If a transferee company has given notice to any dissenting shareholder that the transferee company desires to acquire his shares, the dissenting shareholder shall be entitled to require the company to supply to him a statement in writing of the names and addresses of all other dissenting shareholders as shown in

the register of members, by a demand in writing served on that company within one month from the date on which the notice was given to the dissenting shareholder.

(5) Subject to subsection (4), the transferee company shall not be entitled or bound to acquire the shares of the dissenting shareholders until fourteen days after the posting of the statement of the names and addresses to the dissenting shareholder.

(6) If, under any such scheme or contract, shares in a company are transferred to another company or its nominee and those shares together with any other shares in the transferor company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer, comprise or include ninety per centum of the shares in the transferor company or any class of those shares, then—

- (a) the transferee company shall give notice of that fact in the form and manner as determined by the Registrar to the remaining shareholder or the remaining shares of that class who have not assented to the scheme or contract, within one month from the date of the transfer unless on a previous transfer under the scheme or contract, the transferee company has complied with this requirement; and
- (b) any shareholder may require the transferee company to acquire the shares in question within three months from the giving of the notice to him,

and if a shareholder gives notice under paragraph (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to the transferee company, or on such other terms as are agreed or as the Court thinks fit to order, on the application of either the transferee company or the shareholder.

(7) If a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, transmit a copy of the notice to the transferor

company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company —

- (a) after the expiration of one month after the date on which the notice has been given;
- (b) after fourteen days a statement has been supplied to a dissenting shareholder under subsection (4); or
- (c) if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of.

(8) In relation to subsection (7), the transferee company shall pay, allot or transfer the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire to the transferor company, and the transferor company shall register the transferee company as the shareholder.

(9) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any sums and any other consideration received shall be held by that transferor company in trust for the several persons entitled to the shares in respect of the sums received by the transferor company, respectively.

(10) If any consideration other than cash is held in trust by a company for any person under this section or under any corresponding previous written law, such consideration other than cash may, after the expiration of two years and shall before the expiration of ten years from the date on which the consideration was allotted or transferred to the company, be transferred to the Minister charged with the responsibility for finance.

(11) The Minister charged with the responsibility for finance shall sell or dispose of any consideration received under subsection (10) as he thinks fit and shall deal with the proceeds of the sale or disposal as if it were moneys paid to the Minister under the law relating to unclaimed moneys.

(12) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

### Subdivision 3

#### *Receivers and Receivers and Managers*

#### **Qualification for appointment of receiver or receiver and manager**

**372.** Any person who is an approved liquidator referred to in section 433 shall be qualified to be appointed as receiver or receiver and manager.

#### **Disqualification for appointment as receiver or receiver and manager**

**373.** Subject to section 372, the following person shall not be qualified to act as a receiver or receiver and manager of the property of a company:

- (a) a corporation;
- (b) an undischarged bankrupt; and
- (c) a mortgagee of any property of the company, an auditor of the company or an officer of the company or any corporation which is a mortgagee of the property of the company.

#### **Appointment of receiver or receiver and manager**

**374.** A receiver or receiver and manager may be appointed—

- (a) under any instrument that confers on a debenture holder or charge holder the power to appoint a receiver or receiver and manager;

- (b) under any instrument that creates a charge in respect of property and undertaking of a company that confers on the charge holder the power to appoint a receiver or a receiver and manager; or
- (c) by the Court.

### **Appointment of receiver or receiver and manager under instrument**

**375.** (1) If an instrument confers on the debenture holder the power to appoint a receiver or receiver and manager, the debenture holder may appoint a receiver or receiver and manager by an instrument in writing signed by him or on his behalf.

(2) Unless the instrument expressly provides otherwise—

- (a) a receiver or receiver and manager is the agent of the company;
- (b) a person appointed as a receiver may act as receiver and manager; or
- (c) a power conferred to appoint a receiver or receiver and manager includes the power to appoint—
  - (i) two or more receivers or receiver and managers;
  - (ii) a receiver or receiver and manager additional to a receiver or receiver and manager in office; and
  - (iii) a receiver or receiver and manager to replace a receiver or receiver and manager whose office has become vacant.

(3) If two or more receivers or receiver and managers are appointed under one instrument, unless the instrument expressly provides otherwise—

- (a) the functions or the powers of the receivers or receiver and managers may be performed or exercised by any one of them or by both or all of them jointly; and

- (b) a reference to the receiver or receiver and manager shall be a reference to whichever one of the receivers or receiver and managers.

### **Appointment of receiver or receiver and manager by Court**

**376.** (1) The Court may, after giving notice to the company appoint a receiver or receiver and manager on the application of a debenture holder or any other interested person and give notice to the company, where the Court is satisfied that—

- (a) the company has failed to pay a debt due to the debenture holder or has otherwise failed to meet any obligation to the debenture holder, or that any principal money borrowed by the company or interest is in arrears;
- (b) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security or charge; or
- (c) it is necessary to appoint a receiver or receiver and manager to ensure the preservation of the secured property for the benefit of the debenture holder.

(2) A person appointed as a receiver by the Court may act as a receiver and manager unless the Court order excludes the appointment as receiver and manager.

(3) If two or more receivers or receiver and managers are appointed by the Court, unless the Court expressly provides otherwise—

- (a) the functions or the powers of the receivers or receiver and managers may be performed or exercised by any one of them or by both or all of them jointly; and
- (b) a reference to the receiver or receiver and manager shall be a reference to whichever one of the receivers or receiver and managers.

(4) The right of any person to apply to the Court for the appointment of a receiver or receiver and manager under common law is not abrogated by the operation of this section or Subdivision.



**Notice of appointment of receiver or receiver and manager**

**377.** (1) If any person—

- (a) obtains an order for the appointment of a receiver or receiver and manager of the property of a company or of the property within Malaysia of any other corporation; or
- (b) appoints a receiver or receiver and manager under any powers contained in any instrument,

he shall lodge with the Registrar in a notice of appointment of that fact, within seven days from the date he obtained the order or made the appointment.

(2) Any person who contravenes this section commits an offence and, shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit, and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Vacancy in office of receiver or receiver and manager**

**378.** (1) The office of a receiver or receiver and manager shall become vacant if the person holding the office—

- (a) resigns;
- (b) dies;
- (c) becomes disqualified by any of the reasons under paragraph 373(b) or (c);
- (d) is terminated or removed under the instrument appointing a receiver or receiver and manager or where there is no instrument appointing a receiver or receiver and manager, by the Court;
- (e) assigns his estate for the benefit of his creditors or makes an arrangement with his creditors under any laws relating to bankruptcy; or

(f) is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more.

(2) A receiver or receiver and manager appointed under a power conferred by an instrument may resign from office by giving written notice not less than fourteen days of his intention to resign to the person by whom he was appointed.

(3) A receiver or receiver and manager appointed by the Court shall not resign without first obtaining the leave of the Court to do so.

(4) A person vacating the office of receiver or receiver and manager shall, where practicable, provide such information and give such assistance in the conduct of the receivership to his successor as that person reasonably requires.

(5) On the application of a person appointed to fill a vacancy in the office of receiver or receiver and manager, the Court may make any order that the Court considers necessary or desirable to facilitate the performance of his duties.

### **Notice of cessation of office**

**379.** (1) A person who ceases to act as receiver or receiver and manager by—

(a) reason stated under paragraph 378(1)(a), (c), (d) or (e);  
or

(b) having obtained leave to resign from the Court,

shall lodge with the Registrar a notice of cessation of that fact, in such manner as the Registrar may determine, within fourteen days after the occurrence of such vacancy.

(2) If a vacancy is caused by reason stated under paragraph 378(1)(b), the notice under subsection (1) shall be lodged to the Registrar by the personal representative or debenture holder of a receiver or receiver and manager.

(3) If a vacancy is caused by reason stated under paragraph 378(1)(f), the notice under subsection (1) shall be lodged with the Registrar by the debenture holder within fourteen days from the relevant facts have come to the knowledge of the debenture holder.

(4) Any person who contravenes this section commits an offence and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Statement relating to appointment of receiver or receiver and manager**

**380.** (1) If a receiver or a receiver and manager of the property has been appointed, every invoice, order for goods or services, business letter or order form whether in hard copy or electronic form issued by or on behalf of the corporation or the receiver or receiver and manager or the liquidator of the corporation and on which the name of the corporation appears, and every official website of the corporation where the name of the corporation appears shall contain a statement that a receiver or receiver and manager has been appointed.

(2) A failure to comply with subsection (1) shall not affect the validity of such document.

(3) The company and every officer who contravene this section commit an offence.

### **Liability of receiver or receiver and manager**

**381.** (1) Any receiver or receiver and manager or other authorized person entering into possession of any assets of a company for the purpose of enforcing any charge shall, without prejudice to his rights against the company or any other person, be liable for debts incurred by him or other authorized person in the course of the receivership or possession, for services rendered, goods purchased or property hired, leased, used or occupied unless otherwise provided in the instrument appointing the receiver or receiver and manager or other authorized person.

(2) Subsection (1) shall not be construed as to constitute the charge holder, as to be a mortgagee in possession.

(3) For the purposes of this section, “a mortgagee in possession” means a charge holder who personally or as through an agent exercises a power to—

- (a) receive income from a charged property;
- (b) enter into possession or assume control of a charged property; or
- (c) sell or otherwise alienate a charged property.

### **Liability for contract**

**382.** (1) A receiver or receiver and manager is personally liable for a contract entered into by him in the exercise of any of his powers unless specifically provided otherwise in the instrument appointing the receiver or receiver and manager.

(2) The terms of a contract referred to in subsection (1) may exclude or limit the personal liability of the receiver or receiver and manager other than a receiver or receiver and manager appointed by the Court.

### **Power of receiver or receiver and manager**

**383.** (1) A receiver or receiver and manager shall have the powers and authorities expressly or impliedly conferred by the instrument or by the order of the Court, by or under which the appointment was made.

(2) Subject to the instrument or order of the Court by or under which the appointment is made, a receiver or receiver and manager shall have the powers set out in the Sixth Schedule.

### **Application to Court for directions**

**384.** (1) A receiver or receiver and manager of the property of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or receiver and manager.

(2) If a receiver or receiver and manager has been appointed to enforce any charge for the benefit of debenture holders of the company, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or receiver and manager.

### **Appointment of liquidator as receiver or receiver and manager in cases of winding up**

**385.** An approved liquidator may be appointed as the receiver or receiver and manager, if an application is made to the Court to appoint a receiver or receiver and manager on behalf of the debenture holders or other creditors of the company which is being wound up by the Court.

### **Powers of receiver or receiver and manager on liquidation**

**386.** (1) After the commencement of winding up of a company —

- (a) a receiver may continue to act as a receiver and exercise all the powers of a receiver in respect of property or assets secured under the debenture appointing the receiver; and
- (b) a receiver and manager may continue to act as a receiver as referred to in paragraph (a) and a receiver and manager may exercise all the powers of a receiver and manager for the purpose of carrying on the business of the company provided that the receiver and manager obtains consent from the liquidator or if the liquidator withholds his consent, the consent of the Court.

(2) A receiver or receiver and manager holding office referred to in subsection (1) shall continue to act as the agent of the company.

(3) A debt or liability incurred by a company through the acts of a receiver or receiver and manager who is acting as the agent of the company in accordance with subsection (2) is not a cost, charge or expense of liquidation.

**Power of Court to fix remuneration of receiver or receiver and manager**

**387.** (1) The Court may, on an application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or receiver and manager of the property of the company.

(2) The power of the Court shall—

- (a) extend to fixing the remuneration for any period before the making of the order or the application;
- (b) be exercisable notwithstanding that the receiver or receiver and manager has died or ceased to act before the making of the order or the application; and
- (c) if the receiver or receiver and manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to require him or his personal representatives to account for the excess or such part of it as may be specified in the order,

if no previous order has been made with respect to it.

(3) The power conferred by paragraph (2)(c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(4) The Court may from time to time vary or amend an order made under this section on an application made either by the liquidator or by the receiver or receiver and manager.

**Provisions as to information if receiver or receiver and manager appointed**

**388.** (1) If a receiver or receiver and manager of the property of a company is appointed, the receiver or receiver and manager shall send a notice on his appointment to the company and the company shall, submit to the receiver or receiver and manager

a statement as to the affairs of the company in accordance with this section within fourteen days from receipt of the notice or such longer period as may be allowed by the Court.

(2) The receiver or receiver and manager shall within thirty days from the receipt of the statement under subsection (1) or such longer period as the Court may allow—

- (a) lodge with the Registrar a copy of the statement and any comments the receiver thinks fit to make on the statement;
- (b) send to the company a copy any such comments or, if the receiver does not think fit to make any comment, a notice to that effect; and
- (c) if the receiver or receiver and manager is appointed by or on behalf of debenture holders, send to the debenture holders' representative a copy of the statement and his comments in the statement or, if the receiver or receiver and manager does not think fit to make any comment, a notice to that effect.

(3) Subsections (1) and (2) shall not apply in relation to the appointment of a receiver or receiver and manager to act—

- (a) with an existing receiver or receiver and manager; or
- (b) in place of a receiver or receiver and manager ceasing to act,

except that, where subsections (1) and (2) apply to a receiver or receiver and manager who dies or ceases to act before the subsections have been fully complied with, the references in subsections (1) and (2) to the receiver or receiver and manager shall be, subject to subsection (4) include references to his successor and to any continuing receiver or receiver and manager.

(4) If the company is being wound up, this section and sections 389, 390, 391 and 392 shall apply notwithstanding that the receiver or receiver and manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(5) The receiver or receiver and manager who contravene this section commits an offence, and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Obligations of company and directors to provide information to receiver or receiver and manager**

**389.** (1) If a receiver or receiver and manager is appointed in respect of the property or undertaking of a company, the company and every director of the company shall—

- (a) make available to the receiver or receiver and manager all books, documents and information relating to the property or undertaking in receivership in the company's possession or under the company's control within seven days after the receipt of notice under subsection 388(1);
- (b) if required to do so by the receiver or receiver and manager, verify by way of an affidavit that the books, documents and information are complete and correct;
- (c) give the receiver or receiver and manager such assistance as he may reasonably require; and
- (d) if the company has a seal, make the seal available for use by the receiver or receiver and manager.

(2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit, and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Submission of statement of affairs**

**390.** (1) Statement as to the affairs of a company required by subsection 388(1) shall state as at the date of the appointment of a receiver or receiver and manager—

- (a) the particulars of the company's assets, debts and liabilities;



- (b) the names and addresses of its creditors;
- (c) securities held by creditors respectively;
- (d) the dates when the securities were respectively created;  
and
- (e) such other information as may be required by the Registrar.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the appointment of a receiver or receiver and manager, the directors of the company or by such of the persons in this subsection mentioned as the receiver or receiver and manager may require to submit and verify the statement, stating—

- (a) persons who are or have been officers;
- (b) persons who have taken part in the formation of the company at any time within one year before the date of the appointment of a receiver or receiver and manager;
- (c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the receiver or receiver and manager capable of giving the information required;
- (d) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver or receiver and manager out of his receipts such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver or receiver and manager may consider reasonable, subject to an appeal to the Court.

(4) Any person who contravenes subsections (1) and (2) commits an offence and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Lodging of accounts of receiver or receiver and manager**

**391.** (1) Every receiver or receiver and manager of the property of a company or of the property within Malaysia of any other corporation shall—

(a) within thirty days from the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within thirty days from his ceasing to act as receiver or receiver and manager, lodge with the Registrar a detailed account showing—

- (i) his receipts and his payments during each period of six months, or, where he ceases to act as receiver or receiver and manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date he ceased to act as receiver or receiver and manager;
- (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
- (iii) where he has been appointed under the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every six months after his appointment and, where he has ceased to act as receiver or receiver and manager at the date he ceased to act as receiver or receiver and manager, and his estimate of the total value of all assets of the company or other corporation which are subject to that instrument; and

(b) before lodging the account, verify by affidavit all accounts and statements referred to in the account.

(2) The Registrar may cause the accounts to be audited by an approved company auditor appointed by the Registrar at his own motion or on the application of the company or other corporation or a creditor.

(3) For the purpose of audit under subsection (2), the receiver or receiver and manager shall furnish the auditor with such vouchers and information as the receiver or receiver and manager requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or receiver and manager or any document or other records relating to the audit.

(4) The Registrar may require the applicant under subsection (2) to give security for the payment of the cost of the audit.

(5) The costs of an audit under subsection (2) shall be fixed by the Registrar and be paid by the receiver or receiver and manager unless the Registrar otherwise determines.

(6) Every receiver or receiver and manager who contravenes this section commits an offence and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Payments of certain debts subject to floating charge in priority to claims under charge**

**392.** (1) If a receiver or receiver and manager is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to floating charge, then if the company is not wound up at the time, there shall be paid out of the assets coming into the hands of receiver or receiver and manager or other person taking possession in priority to the debenture holders the following:

- (a) firstly, the costs, expenses and remuneration of the receiver or receiver and manager and any indemnity to which the receiver or receiver and manager is entitled to from or out of the property of the company;
- (b) secondly, all wages or salaries, including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, whether or not earned wholly or in part by way of commission, of any

employee in respect of services rendered by him to the company for a period of four months before the date of the appointment of the receiver or receiver and manager up to an amount not exceeding fifteen thousand ringgit;

- (c) thirdly, all remuneration payable to any employee in respect of vacation leave, or in the case of the employee's death to any other person in his right, accrued in respect of any period before the date of the appointment of the receiver or receiver and manager; and
- (d) fourthly, all amounts due in respect of contributions payable, including employee's portion which has been deducted but not paid, during the next twelve months before the date of the appointment of the receiver or receiver and manager, by the company as the employer of any person under any written law relating to employees social security contribution and superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the federal law relating to income tax.

(2) The debts in each class specified in subsection (1) shall rank in the order but as between debts of the same class shall rank *pari passu* between the debts, and shall be paid in full, unless the property of the company is insufficient to meet the debts, in which case the debts shall diminish in equal proportions.

(3) If any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a receivership, have a right of priority in respect of the money advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the receivership has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(4) If the company is under a contract of insurance, entered into before the date of appointment of the receiver or receiver and manager, insured against liability to third parties, then if any

such liability is incurred by the company, either before or after the date of appointment of the receiver or receiver and manager, and an amount in respect of that liability is or has been received by the company or the receiver or receiver and manager from the insurer, the amount shall, after deducting any expenses of or incidental to getting in the amount, be paid by the receiver or receiver and manager to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(5) Any payment made under this section shall be recovered as far as may be out of the assets of the company available for payment of general creditors.

(6) If a request is made by or with the concurrence of the receiver or receiver and manager for the giving of any of the supplies including water, electricity, gas and telecommunications, after the appointment of the receiver or receiver and manager, the supplier may make it a condition of the giving of the supply that the receiver or receiver and manager personally guarantees the payment of any charges in respect of the supply given after his appointment.

(7) Notwithstanding subsection (6), the supplier shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the appointment of receiver or receiver and manager are paid.

**Enforcement of duty of receiver or receiver and manager, etc., to make returns**

**393.** (1) Any receiver or receiver and manager of the property of a company who has defaulted in lodging any return, account or other document or in giving any notice required by law shall make good the default within fourteen days from the service of a notice requiring him to do so by any member or creditor of the company or trustee for the debenture holders.

(2) The Court may, on an application made by the person who has given the notice under subsection (1), make an order directing the receiver or receiver and manager to make good the default within such time as is specified in the order.

(3) If it appears that any receiver or receiver and manager of the property of a company has misapplied or retained or become liable or accountable for any money or property of the company or being guilty of any misfeasance or breach of trust or breach of duty in relation to the company, the Court may, on the application of any creditor or contributory or the liquidator, examine into the conduct of the receiver or receiver and manager and compel the receiver or receiver and manager—

- (a) to repay or restore the money or property or any part of the money or property with interest at such rate as the Court thinks just; or
- (b) to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or breach of duty as the Court thinks just.

(4) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

## Division 8

### *Corporate Rescue Mechanism*

#### **Interpretation**

**394.** For the purposes of this Division—

“nominee” means any person who is qualified to be appointed as an insolvency practitioner whose powers and duties shall include the powers and duties specified in the Seventh Schedule.

“voluntary arrangement” means a composition in satisfaction of a company’s debts or a scheme of arrangement of a company’s affairs under Subdivision 1.

## Subdivision 1

*Corporate Voluntary Arrangement***Non-application of this Subdivision**

**395.** This Subdivision shall not apply to—

- (a) a public company;
- (b) a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia;
- (c) a company which is subject to the Capital Markets and Services Act 2007; and
- (d) a company which creates a charge over its property or any of its undertaking.

**Persons who may propose voluntary arrangement**

**396.** (1) The directors of a company other than a company which is under a judicial management order or is being wound up may make a proposal to the company and to its creditors for a voluntary arrangement under this Subdivision.

(2) The proposal for a voluntary arrangement under this Subdivision shall include the appointment of a nominee either as a trustee or supervisor for the purpose of supervising the implementation of the voluntary arrangement.

(3) A proposal for a voluntary arrangement may also be made—

- (a) by a judicial manager if a company is under a judicial management order; or
- (b) by a liquidator if a company is being wound up,

who may also be the nominee for the voluntary arrangement.

(4) In the case where the liquidator is the Official Receiver, the nominee shall be an insolvency practitioner.

### **Proposal for voluntary arrangement**

**397.** (1) Where the directors of a company or Official Receiver intend to make a proposal for a voluntary arrangement, the directors or Official Receiver shall appoint a nominee and shall submit the following documents to the nominee:

- (a) a document setting out the terms of the proposed voluntary arrangement; and
- (b) a statement of the company's affairs containing—
  - (i) the particulars of the company's creditors and of its debts and other liabilities and of its assets; and
  - (ii) other information as may be required by the nominee to comply with subsection (2).

(2) For the purposes of subsection (1), the nominee shall submit to the directors, a statement indicating whether or not, in his opinion—

- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented;
- (b) the company is likely to have sufficient funds available for the company during the proposed moratorium to enable the company to carry on its business; and
- (c) that the meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) The nominee is entitled to rely on information submitted to him under subsection (1) in forming his opinion on matters required under subsection (2) unless he has reason to doubt of its accuracy.



**Moratorium**

**398.** (1) A moratorium in a voluntary arrangement commences automatically from the time of filing of the following documents to the Court:

- (a) a document setting out the terms of the proposed voluntary arrangement;
  - (b) a statement of the company's affairs containing—
    - (i) the particulars of the company's creditors and of its debts and other liabilities and of its assets; and
    - (ii) other information;
  - (c) a statement that the company is eligible for a moratorium;
  - (d) a statement from the nominee that he has given his consent to act;
  - (e) a statement from the nominee; and
  - (f) a statement disclosing the full particulars of previous proposed voluntary arrangements or an application for moratorium and the results of the application, if any.
- (2) The Eighth Schedule shall have effect with respect to—
- (a) companies eligible for a moratorium;
  - (b) the duration and extension of the moratorium;
  - (c) the effects of the moratorium; and
  - (d) the procedure applicable in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

**Summoning of meetings**

**399.** (1) Where a moratorium is in force, the nominee shall summon a meeting of the company and a meeting of its creditors at the time, date and place as the nominee thinks fit within the period specified in the Eighth Schedule.

(2) Every creditor of the company of whose claim and address the nominee is aware shall be summoned to the creditors' meeting under this section.

(3) A meeting summoned under this section shall be conducted in accordance with the rules of meeting under Division 5 of Part III.

**Decisions of meetings**

**400.** (1) A meeting summoned under section 399 shall decide whether to approve the proposed voluntary arrangement or otherwise.

(2) The required majority to approve a proposal for voluntary arrangement in the creditors' meeting shall be seventy five per centum of the total value of creditors present and voting at the meeting either in person or by proxy.

(3) A simple majority is required to pass a resolution to approve the proposal for voluntary arrangement in a meeting of members.

(4) A meeting summoned under section 399 shall not approve any proposal which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the secured creditor concerned.

(5) Once approved by the required majority under subsections (2) and (3), the proposed voluntary arrangement shall take effect and be binding on all creditors of the company whether or not the creditors have voted in favour of the proposal.

(6) A modification in respect of the proposal shall not be allowed to be made in any of the meeting under section 399.

(7) After the conclusion of each meeting held under subsection (2) and (3), the nominee shall report the result of the meeting to the Court and shall give notice of that result to the Registrar and to such other persons or bodies as the Court may approve.

### **Implementation of proposal**

**401.** (1) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred—

- (a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 399;
- (b) on any other person other than the nominee who is an insolvency practitioner,

shall be known as the supervisor of the voluntary arrangement.

(2) The Court may direct that the nominee be replaced by another person qualified to act as a nominee in relation to the voluntary arrangement on an application—

- (a) by the directors or Official Receiver in a case where the nominee fails to comply with any duty imposed on the nominee under the Seventh Schedule or the nominee has died; or
- (b) by the directors or Official Receiver or the nominee in a case where it is inappropriate for the nominee to continue to act.

(3) A person may only be appointed as a replacement nominee under the Seventh Schedule if the person submits a statement indicating his consent to act as nominee to the Court.

(4) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, the company's creditor may appeal to the Court and on receipt of the application of appeal, the Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor;

(b) give directions to the supervisor; or

(c) make such other order as the Court thinks fit.

(5) The supervisor may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement and is included among the persons who may apply to the Court for the winding up of the company or for a judicial management order to be made in relation to the winding up of the company.

(6) The Court may make an order appointing a person who is qualified to act as an insolvency practitioner or authorized to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy if—

(a) it is expedient to appoint a person to carry out the functions of the supervisor; and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court.

(7) The power conferred by subsection (6) is exercisable—

(a) to increase the number of persons exercising the functions of a supervisor; or

(b) to replace one or more of the persons if there is more than one person exercising the functions.

### **Arrangements coming to an end prematurely**

**402.** For the purposes of this Subdivision, a voluntary arrangement in which the approval of which has taken effect under section 401 comes to an end prematurely if the voluntary arrangement has not been fully implemented in respect of all persons bound by the arrangement by virtue of subsection 400(5) when the voluntary arrangement ceases to have effect.

Subdivision 2

*Judicial Management*

**Non-application of this Subdivision**

**403.** This Subdivision shall not apply to—

- (a) a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia; and
- (b) a company which is subject to the Capital Markets and Services Act 2007.

**Application to Court for a company to be placed under judicial management and for appointment of a judicial manager**

**404.** An application for an order that a company should be placed under a judicial management and for an appointment of a judicial manager may be made to the Court by the company or its creditor if the company or its creditor considers that—

- (a) the company is or will be unable to pay its debts; and
- (b) there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up.

**Power of Court to make a judicial management order and appoint a judicial manager**

**405.** (1) Where a company or its directors, under a resolution of its members or the board of directors, or a creditor, including any contingent or prospective creditor or all or any of those parties, together or separately, makes an application under section 404, the Court may make a judicial management order in relation to the company if—

- (a) the Court is satisfied that the company is or will be unable to pay its debts; and

(b) the Court considers that the making of the order would be likely to achieve one or more of the following purposes:

- (i) the survival of the company, or the whole or part of its undertaking as a going concern;
- (ii) the approval under section 366 of a compromise or arrangement between the company and any such persons as are mentioned in that section;
- (iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

(2) Upon hearing the application for a judicial management order, the Court may dismiss the application or adjourn the hearing conditionally or unconditionally or make an interim order or any other order that the Court thinks fit.

(3) Any judicial management order made under subsection (1) shall direct that during the period in which the order is in force, the affairs, business and property of the company shall be managed by a judicial manager appointed by the Court.

(4) The costs and expenses of any unsuccessful application for a judicial management order made under this section shall, unless the Court otherwise orders, be borne by the applicant and, if the Court considers that the application is frivolous or vexatious, the Court may make such orders to redress any injustice that may have resulted as the Court thinks just and equitable.

(5) Nothing in this section shall preclude a Court—

- (a) from making a judicial management order and appointing a judicial manager if the Court considers the public interest so requires; or
- (b) from appointing, after the making of an application for a judicial management order and on the application of the person applying for the judicial management order, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may be the person nominated in the application and may exercise such functions, powers and duties as the Court may specify in the interim order.

(6) A judicial management order shall not be made in relation to a company after the company has gone into liquidation.

(7) For the purposes of this Subdivision, “property” in relation to a company includes money, goods, things in action and every description of property, whether real property or personal property, and whether in Malaysia or elsewhere, and also obligations and every description of interest whether present or future or vested or contingent arising out of, or incidental to, property.

(8) The definition in section 466 of “inability to pay debts” shall apply for the purposes of this section as it applies for the purposes of Subdivision 7 of Division 1 of Part IV.

### **Duration of judicial management order and its extension**

**406.** (1) A judicial management order shall remain in force for a period of six months from the date of the making of the order, unless the judicial management is otherwise discharged, but the Court may, on the application of a judicial manager, extend this period for another six months subject to such terms as the Court may impose.

(2) If an application to extend the period of another six months as referred to in subsection (1) is made, the judicial manager shall give notice of the application to—

(a) all directors;

(b) all members;

(c) all creditors; and

(d) any person who is entitled to appoint a receiver or receiver and manager,

of the company, and such period shall not be taken as part of any limitation period as specified under any written law.

(3) The applicant shall notify the Registrar of any application made under subsection (1) in the form and manner as determined by the Registrar.

**Nomination of judicial manager**

**407.** (1) In any application for a judicial management order under section 404, the applicant shall nominate a person who is an insolvency practitioner, who is not the auditor of the company, to act as a judicial manager.

(2) The Court may refuse the nomination of the applicant under subsection (1) and may appoint another person who is an insolvency practitioner as the judicial manager.

(3) Where a nomination is made by the company under subsection (1), a majority in value of the creditors, including contingent or prospective creditors may be heard in opposition to the nomination and the Court may, if satisfied as to the value of the creditors' claims and as to the grounds of opposition—

(a) invite the creditors to nominate a person who is an insolvency practitioner to act as the judicial manager; and

(b) adopt the nomination if the Court thinks fit.

(4) A judicial manager shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined—

(a) by agreement between the judicial manager and the company or creditors, as the case may be;

(b) failing such agreement, by a resolution passed at a meeting of creditors by a majority of not less than seventy five per centum in value and of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the judicial manager by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the judicial manager and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.



**Notice of application for judicial management order**

**408.** (1) When an application for a judicial management order is made to the Court, the applicant shall cause the notice of the application—

- (a) to be advertised in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language; and
- (b) to be given—
  - (i) to the company, in a case where a creditor is the applicant; and
  - (ii) to any person who has appointed or is or may be entitled to appoint a receiver or receiver and manager of the whole, or substantially the whole, of a company's property under the terms of any debentures of a company.

(2) The applicant shall notify the Registrar of any application made under subsection (1) in the form and manner as determined by the Registrar.

**Dismissal of application for judicial management order**

**409.** Subject to subsection 405(5), the Court shall dismiss an application for a judicial management order if it is satisfied that—

- (a) a receiver or receiver and manager referred to in subparagraph 408(1)(b)(ii) has been or will be appointed; and
- (b) the making of the order is opposed by a secured creditor.

**Effect of application for a judicial management order**

**410.** During the period beginning with the making of an application for a judicial management order and ending with the making of such an order or the dismissal of the application—

- (a) no resolution shall be passed or order made for the winding up of the company;

- (b) no steps shall be taken to enforce any charge on or security over the company's property or to repossess any goods in the company's possession under any hire purchase agreement, chattels leasing agreement or retention of title agreement, except with leave of the Court and subject to such terms as the Court may impose; and
- (c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with leave of the Court and subject to such terms as the Court may impose.

### **Effect of judicial management order**

**411.** (1) On the making of a judicial management order—

- (a) any receiver or receiver and manager shall vacate office; and
- (b) any application for the winding up of the company shall be dismissed.

(2) Where any receiver or receiver and manager has vacated office under paragraph (1)(a)—

- (a) the remuneration and expenses properly incurred by the receiver or receiver and manager; and
- (b) any indemnity to which the receiver or receiver and manager is entitled out of the assets of the company,

shall be charged on and, subject to subsection (4), paid out of any property which was in his custody or under his control at the time in priority to any security held by the person by or on whose behalf he was appointed.

(3) Neither a receiver nor a receiver and manager of a company who vacates office under paragraph (1)(a) shall be required to take steps to comply with any duty imposed on him by section 391 on or after so vacating office.

(4) During the period for which a judicial management order is in force—

- (a) no resolution shall be passed or order made for the winding up of the company;
- (b) no receiver or receiver and manager of the kind referred to in section 374 shall be appointed;
- (c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with the consent of the judicial manager or with the leave of the Court and, if the Court grants leave, subject to such terms as the Court may impose;
- (d) no steps shall be taken to enforce security over the company's property or to repossess any goods in the company's possession under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except with consent of the judicial manager or leave of the Court and subject to such terms as the Court may impose; and
- (e) no steps shall be taken to transfer any share of the company or to alter the status of any member of the company except with the leave of the Court and, if the Court grants leave, subject to such terms as the Court may impose.

### **Notification that a company is under judicial management order**

**412.** (1) Where a judicial manager has been appointed, every invoice, order for goods or services, business letter or order form whether in hard copy or electronic form issued by or on behalf of the company or the judicial manager and on which the name of the company appears, and every official website of the company where the name of the company appears shall contain a statement that the affairs, business and property of the company are being managed by the judicial manager.

(2) The company, the judicial manager and every officer who contravene this section commit an offence and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Vacancy in appointment of judicial manager**

**413.** If a vacancy occurs by death, resignation or otherwise in the office of a judicial manager of a company the Court may, on the application of the company or any creditor of the company, by order, fill the vacancy.

### **General powers and duties of judicial manager**

**414.** (1) On the making of a judicial management order, the judicial manager shall take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) During the period for which a judicial management order is in force, all powers conferred and duties imposed on the directors by this Act or by the constitution of the company shall be exercised and performed by the judicial manager and not by the directors, but nothing in this subsection shall require the judicial manager to call any meetings of the company.

(3) The judicial manager of a company shall—

(a) do all such things as may be necessary for the management of the affairs, business and property of the company; and

(b) do all such other things as the Court may order.

(4) Without prejudice to the generality of paragraph (3)(a), the powers conferred by that subsection shall include the powers specified in the Ninth Schedule.

(5) The judicial manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(6) Nothing in this section shall be taken as authorizing the judicial manager of a company to make any payment towards discharging any debt to which the company was subject on the making of the judicial management order unless—

- (a) the making of the payment is sanctioned by the Court or the payment is made under a compromise or arrangement so sanctioned; or
- (b) the payment is made towards discharging sums secured by a security or payable under a hire purchase agreement, chattels leasing agreement or retention of title agreement to which section 415 applies.

(7) If a request is made by or with the concurrence of the judicial manager for the giving of any of the supplies including water, electricity, gas and telecommunications, after the making of the judicial management order—

- (a) the supplier may make it a condition of the giving of the supply that the judicial manager personally guarantees the payment of any charges in respect of the supply given after the judicial manager's appointment; or
- (b) the supplier shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the making of the judicial management order are paid.

(8) The judicial manager of a company may summon a meeting of the company's creditors, if he thinks fit, and shall summon such a meeting if he is directed to do so by the Court.

(9) Any alteration in the constitution made by virtue of an order under paragraph (3)(b) is of the same effect as if duly made by resolution of the company, and the provisions of this Act apply to the constitution as so altered accordingly.

(10) The judicial manager shall deliver an office copy of an order sanctioning the alteration of the constitution under paragraph (3)(b) to the Registrar within fourteen days from the making of the order.

(11) A person dealing with the judicial manager of a company in good faith and for value shall not be concerned to inquire whether the judicial manager is acting within his powers.

**Power to deal with charged property, etc.**

**415.** (1) The judicial manager of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which, as created, was a floating charge.

(2) Where, on application by the judicial manager of a company, the Court is satisfied that the disposal, with or without other assets—

- (a) of any property of the company which is subject to a security other than a floating charge; or
- (b) of any goods under a hire purchase agreement, chattels leasing agreement or retention of title agreement,

would be likely to promote one or more of the purposes specified in the judicial management order, the Court may, by order, authorize the judicial manager to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire purchase agreement were vested in the company.

(3) The judicial manager shall send a copy of an order made under subsection (2) to the Registrar within fourteen days from the making of the order.

(4) The judicial manager making an application to the Court to dispose of property subject to a security under subsection (2) shall give notice of not less than seven days before the making of the application, to the security holder or to the owner of the goods which are subject to any of the agreements mentioned in that subsection and the security holder or the owner, as the case may be, may oppose the disposal of the property.

(5) Where any property is disposed of under subsection (1), the security holder shall have the same priority in respect of any property of the company disposed of as he would have had in respect of the property that is subject to the security.

(6) It shall be a condition of an order made under subsection (2) that the net proceeds of the disposal shall be applied towards discharging the sums secured by the security or payable under the hire purchase agreement, chattels leasing agreements or retention of title agreement and where the net proceeds of the disposal are less than the sums secured by the security or payable under any of those agreements, the holder of the security or the owner of the goods, as the case may be, may prove on a winding up for any balance due to him.

(7) Where a condition imposed under subsection (6) relates to two or more securities, that condition shall require the net proceeds of the disposal to be applied towards discharging the sums secured by those securities in the order of priorities of such securities.

(8) A judicial manager who, without reasonable excuse, contravenes subsections (6) and (7) commits an offence and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day the offence continues after conviction.

(9) Nothing in this section shall be regarded as prejudicing an application to the Court under section 425.

### **Agency and liability for contracts**

**416.** (1) The judicial manager or interim judicial manager of a company —

- (a) shall be deemed to be the agent of the company;
- (b) shall be personally liable on any contract, including any contract of employment, entered into or adopted by him in the carrying out of functions, except in so far as the contract or a notice under subsection (2) otherwise provides; and
- (c) shall be entitled to be indemnified in respect of that liability, and to have his remuneration and expenses defrayed, out of the property of the company which is in his custody or under his control in priority to all other debts except those subject to a security to which subsection 415(2) applies.

(2) Where a contract entered into by the company is adopted by the judicial manager or interim judicial manager, he may, by notice given to the other party, disclaim any personal liability under the contract.

(3) For the purposes of this section, the judicial manager or interim judicial manager is not to be taken to have adopted a contract entered into by the company by reason of anything done or omitted to be done within thirty days from the making of the judicial management order.

(4) Nothing in this section shall—

- (a) limit the right of a judicial manager or interim judicial manager to seek an indemnity from any other person in respect of contracts entered into by him that are approved by the Court; or
- (b) make the judicial manager or interim judicial manager personally liable for payment of rent under leases held by the company at the time of the appointment.

### **Vacation of office and release**

**417.** (1) The judicial manager of a company may—

- (a) at any time be removed from office by order of the Court;  
or
- (b) resign his office by giving notice of his resignation to the Court with leave of the Court and subject to such conditions as the Court may impose.

(2) The judicial manager of a company shall vacate office if—

- (a) being an insolvency practitioner at the time of his appointment, he ceases to be an insolvency practitioner;  
or
- (b) the judicial management order is discharged.



(3) Where at any time a person ceases to be a judicial manager of a company whether by virtue of this section or by reason of his death—

(a) any sums payable in respect of any debts or liabilities incurred while the person was a judicial manager under contracts entered into by him in the carrying out of his functions; and

(b) any remuneration and expenses properly incurred by him,

shall be charged on and paid out of the property of the company in his custody or under his control in priority to all other debts, except those subject to a security to which subsection 415(2) applies.

(4) Where a person ceases to be a judicial manager of a company, he shall, from such time as the Court may determine, be released from any liability in respect of any act or omission done by him in the management of the company or otherwise in relation to his conduct as a judicial manager.

(5) Nothing in this section shall relieve the person who ceases to be a judicial manager of a company from any liability referred to in subsection 424(5).

### **Information to be given by and to judicial manager**

**418.** (1) Where a judicial management order has been made, the judicial manager shall—

(a) send a copy of the order to the Registrar and the company within seven days of the making of the order;

(b) publish a notice of the order in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language; and

(c) send such a notice to all creditors of the company, so far as the judicial manager is aware of the addresses within thirty days from the making of the order, unless the Court otherwise directs.

(2) The company shall submit a statement as to the affairs of the company in accordance with section 419 within fourteen days from the receipt of the order referred to in paragraph (1)(a) or such longer period as may be allowed by the judicial manager which should not exceed sixty days.

(3) Any person who, without reasonable excuse, contravenes this section commits an offence and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Company's statement of affairs**

**419.** (1) The company's statement of affairs required to be submitted to the judicial manager under subsection 418(2) shall show as at the date of the judicial management order—

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by the creditors respectively;
- (d) the dates when the securities were respectively created;  
and
- (e) such other information as may be determined by the Registrar.

(2) The statement shall be submitted by, and be verified by affidavit of, at least one of the directors who was, at the date of the judicial management order, the director of the company and at least one other person approved by the judicial manager from the following categories:

- (a) person who is or has been an officer of the company;
- (b) person who has taken part in the formation of the company at any time within one year before the date of the judicial management order; or

- (c) person who is in the employment of the company including a person who is employed under a contract for services, or has been in the employment of the company within that year, and is in the opinion of the judicial manager capable of giving the information required.

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the judicial manager, out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the judicial manager may consider reasonable, subject to an appeal to the Court by the person making the statement.

(4) Any statement of affairs prepared under this section may be used in evidence against any person making or concurring in making the statement of affairs.

(5) The judicial manager shall lodge a copy of the statement of affairs with the Registrar within seven days from the receipt of such statement from the company.

(6) Any person who, without reasonable excuse, contravenes this section commits an offence and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Statement of proposals**

**420.** (1) Where a judicial management order has been made, the judicial manager shall, within sixty days or such longer period as the Court may allow, after the making of the order—

- (a) send a statement of his proposal for achieving one or more of the purposes mentioned in paragraph 405(1)(b) to the Registrar and to all creditors to their last known address; and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the period of not less than fourteen days' notice.

(2) The judicial manager shall also, within sixty days or such longer period as the Court may allow after the making of the order either—

- (a) send a copy of the statement to all members of the company to the last known address of all the members; or
- (b) publish a notice in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language stating an address to which members of the company should write for copies of the statement to be sent to the members free of charge.

### **Consideration of proposals by creditors' meeting**

**421.** (1) A meeting of creditors, summoned under paragraph 420(1)(b), shall decide whether to approve the judicial manager's proposal.

(2) The proposal shall be approved by seventy five per centum of the total value of creditors whose claims have been accepted by the judicial manager, present and voting at the meeting either in person or by proxy and the proposal may be approved with modifications subject to the consent of the judicial manager to each modification.

(3) Once approved by the required majority under subsection (2), the proposal, with or without modifications, shall be binding on all creditors of the company whether or not the creditors have voted in favour of the proposal.

(4) The judicial manager shall report the result of the meeting to the Court and shall give notice of that result to the Registrar and to such other persons or bodies as the Court may approve.

(5) If a report is given to the Court under subsection (4) that the meeting has declined to approve the judicial manager's proposal with or without modification, the Court may—

- (a) by order discharge the judicial management order;

- (b) make any consequential provision in the judicial management order as the Court thinks fit;
- (c) adjourn the hearing conditionally or unconditionally; or
- (d) make an interim order or any other order that the Court thinks fit.

(6) A copy of any order of the Court made under subsection (5) shall be published in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language.

(7) Where the judicial management order is discharged, the judicial manager shall send an office copy of the order to the Registrar within seven days from the order.

(8) A judicial manager who, without reasonable excuse, contravenes subsection (7) commits an offence and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Committee of creditors**

**422.** Where a creditors' meeting held under section 421 has approved the judicial manager's proposals with or without modifications the meeting may, establish a committee of creditors, which if it thinks fit may require the judicial manager to attend before the meeting and furnish the meeting with such information relating to the carrying out by the judicial manager of his functions as the meeting may reasonably require.

### **Duty to manage company's affairs, etc., in accordance with approved proposals**

**423.** (1) Where the judicial manager's proposal have been approved by a meeting of creditors held under section 421, and subject to any order under section 425, the judicial manager shall

have a duty to manage the affairs, business and property of the company in accordance with the proposal.

(2) Where the judicial manager proposes to make substantial revisions of an approved proposal, the judicial manager shall—

- (a) send a statement of the proposed revisions to all creditors of the company to the last known address of all the creditors; and
- (b) lay a copy of the statement before the creditor's meeting summoned of not less than fourteen days' notice.

(3) The judicial manager shall also either—

- (a) send a copy of the statement to all members of the company to the last known address of all the members; or
- (b) publish a notice stating an address to which the members of the company should write for copies of the statement to be sent to them free of charge in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language.

(4) The majority of seventy five per centum in value of creditors, present and voting at the creditor's meeting summoned under subsection (2) either in person or by proxy whose claims have been accepted by the judicial manager, may approve the proposed revisions with modifications but shall not do so unless the judicial manager consents each modification.

(5) After the conclusion of a meeting summoned under subsection (2), the judicial manager shall give notice of the result of the meeting to the Registrar or to such other persons or bodies as the Court may approve.

### **Duty to apply for discharge of judicial management order**

**424.** (1) The judicial manager of a company shall apply to the Court for the judicial management order to be discharged if it

appears to the judicial manager that the purpose specified in the order either has been achieved or is incapable of achievement.

(2) On the hearing of an application under this section, the Court may, by order—

- (a) discharge the judicial management order;
- (b) make any consequential provision as it thinks fit;
- (c) adjourn the hearing conditionally or unconditionally; or
- (d) make an interim order or any other order that the Court thinks fit.

(3) Where the judicial management order is discharged, the judicial manager shall lodge a copy of the order affecting the discharge with the Registrar within seven days of the making of the order of discharge.

(4) Where a judicial management order has been discharged under this Subdivision or where a person ceases to be a judicial manager under section 417, the judicial manager may apply to the Court for his discharge.

(5) Upon receipt of an application under subsection (4), the Court may, if it thinks fit—

- (a) make an order discharging him from liability in respect of any act or omission by him in the management of the company; or
- (b) make an order discharging him in relation to his conduct as judicial manager,

but any such discharge shall not relieve him from liability for any misapplication or retention of money or property of the company or for which the judicial manager has become accountable or from any law to which he would be subject in respect of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

**Protection of interests of creditors and members**

**425.** (1) At any time when a judicial management order is in force, a creditor or member of the company may apply to the Court for an order under this section on the ground that—

- (a) the company's affairs, business and property are being or have been managed by the judicial manager in a manner which is or was unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members, including at least the creditor or member himself, or of a single creditor that represents twenty five per centum in value of the claims against the company; or
- (b) any actual or proposed act or omission of the judicial manager is or would be so prejudicial.

(2) On an application under this section, the Court may, by order—

- (a) give relief in respect of the matters complained of;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make an interim order or any other order that the Court thinks fit.

(3) Subject to subsection (4), an order made by the Court under this section may—

- (a) regulate the future management of the company's affairs, business and property by the judicial manager;
- (b) require the judicial manager to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant had complained that the judicial manager has omitted to do;
- (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; or
- (d) discharge the judicial management order and make such consequential provision as the Court thinks fit.



(4) An order made under this section shall not prejudice or prevent the implementation of any composition or scheme approved under section 366.

(5) Where the judicial management order is discharged, the judicial manager shall lodge with the Registrar an office copy of the order within seven of days from the date of the discharged order.

(6) A judicial manager who, without reasonable excuse, contravenes subsection (5) commits an offence and in the case of continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Undue preference in judicial management**

**426.** (1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as the debts become due, from the company's own money in favour of any creditor or any person in trust of any creditor with the intention to give such creditor a preference over other creditors shall be void in the event of the company being placed under judicial management on an application for a judicial management order presented within six months from the date of making, taking, paying or suffering the transfer, mortgage, delivery of goods, payment, execution and every such act.

(2) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the company placed under the judicial management.

### **Delivery and seizure of property**

**427.** (1) Where any of the persons mentioned in subsection (2) has in his possession or control any property, books, papers or records to which the company appears to be entitled, the Court

may require that person immediately, or within such period as the Court may direct to pay, deliver, convey, surrender or transfer the property, books, papers or records to the judicial manager.

(2) The persons referred to in subsection (1) are as follows:

- (a) a contributory or member of the company;
- (b) any person who has previously held office as receiver or receiver and manager of the company's property;
- (c) any trustee for, or any banker, agent or officer of, the company; and
- (d) any other person who has in his possession or control any property, books, papers or records to which the company appears to be entitled.

(3) Where—

- (a) the judicial manager seizes or disposes of any property which is not the property of the company; and
- (b) at the time of seizure or disposal the judicial manager believes, and has reasonable grounds for believing, that the judicial manager is entitled, whether under an order of the Court or otherwise, to seize or dispose of that property,

the judicial manager shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the judicial manager and the judicial manager shall have a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

(4) Any person who, without reasonable excuse, contravenes any obligation imposed by this section commits an offence and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Duty to co-operate with judicial manager**

**428.** (1) The person who—

- (a) is or has at any time been an officer of the company;
- (b) has taken part in the formation of the company at any time within one year before the date of the judicial management order;
- (c) is in the employment of the company including a person who is employed under a contract for services, or has been in the employment of the company within that year; and
- (d) is in the opinion of the judicial manager capable of giving the information required shall—
  - (i) give to the judicial manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the judicial manager may at any time after the date of the judicial management order reasonably require; and
  - (ii) attend on the judicial manager at such times as the judicial manager may reasonably require.

(2) Any person who, without reasonable excuse, contravenes any obligation imposed by this section commits an offence and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Inquiry into company's dealings, etc.**

**429.** (1) The Court may, on the application of the judicial manager, summon to appear before it—

- (a) any officer of the company;

- (b) any person known or suspected to have in his possession any property of the company;
- (c) any person who is supposed to be indebted to the company;  
or
- (d) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company,

and the Court may require any such person referred to in paragraphs (a) to (d) to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (d).

(2) In a case where a person, without reasonable excuse, fails to appear before the Court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this section, the Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued—

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession,

and may authorize a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held until that person is brought before the Court under the warrant or until such other time as the Court may order.

(3) Any person who appears or is brought before the Court under this section may be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in paragraph (1)(d).

(4) If it appears to the Court, after considering any evidence obtained under this section that any person has in his possession any property of the company, the Court may, on the application of

the judicial manager, order that person to surrender the property to the judicial manager at such time, in such manner and on such terms as the Court thinks fit.

(5) If it appears to the Court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the Court may, on the application of the judicial manager, after examining that person on the matter, order that person to pay to the judicial manager, at such time and in such manner as the Court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

### **Application of provisions of winding up of a company under judicial management**

**430.** (1) At any time when a judicial management order is in force in relation to a company under judicial management sections 536, 537, 538 and 539 shall apply as if the company under the judicial management was a company being wound up and the judicial manager was the liquidator.

(2) Notwithstanding subsection (1), the Court shall have the power—

- (a) to order that that any other sections in Subdivision 4 of Division 2 of Part IV shall apply to a company under judicial management as if the sections in Subdivision 4 of Division 2 of Part IV apply in a winding up by the Court; and
- (b) any reference to the liquidator shall be taken as a reference to the judicial manager and any reference to a contributory shall be taken as a reference to a member of the company.

## PART IV

## CESSATION OF COMPANIES

## Division 1

*Voluntary and Compulsory Winding Up*

## Subdivision 1

*Preliminary***Application of winding up provisions**

**431.** The provisions of winding up in this Act shall apply to the winding up of a company for either mode specified in subsection 432(1), unless the context otherwise requires.

**Modes of winding up**

**432.** (1) The winding up of a company may be effected either—

- (a) by way of a winding up order made by the Court; or
- (b) by way of a voluntary winding up.

(2) A voluntary winding up may be effected by a resolution either—

- (a) by a members' voluntary winding up where the company is solvent and the liquidator is appointed by the members at the members' meeting; or
- (b) by a creditors' voluntary winding up where the company is insolvent and the liquidator is appointed by the creditors at the creditors' meeting.

**Qualification of liquidator**

**433.** (1) Subject to this section, a person other than the Official Receiver who is appointed interim liquidator or liquidator in a winding up by the Court shall not, except with the leave of the

Court, be qualified for an appointment as an interim liquidator or liquidator of a company if—

- (a) he is not an approved liquidator;
- (b) he is indebted to the company or to a corporation that is deemed to be related to the company by virtue of section 7 in an amount exceeding two thousand five hundred ringgit;
- (c) he is an officer of the company;
- (d) he is a partner, employer or employee of an officer of the company;
- (e) he is a partner or employee of an employee of an officer of the company;
- (f) he assigns his estate for the benefit of his creditors or has made an arrangement with his creditors under any law relating to bankruptcy;
- (g) if he becomes bankrupt; or
- (h) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more.

(2) Paragraphs (1)(a) and (c) shall not apply to—

- (a) a members' voluntary winding up; or
- (b) a creditors' voluntary winding up if, by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice has been given to every creditor stating the object of the meeting, it is determined that paragraphs (a) and (c) or either of that paragraph shall not apply.

(3) For the purposes of paragraph (1)(a), any person who is a member of a recognized professional body may apply to the Minister charged with the responsibility for finance to be approved as a liquidator for the purposes of this Act.

(4) The Minister may approve such person as a liquidator if satisfied with experience and capacity of the person and upon payment of the prescribed fee by such person.

(5) For the purposes of subsection (4), the Minister may, in consultation with the Minister charged with the responsibility for finance, prescribe a body to be a recognized professional body.

(6) For the purposes of subsection (1), a person shall be deemed to be an officer of a company if—

- (a) the person is an officer of a corporation that is deemed to be related to the company by virtue of section 7; or
- (b) the person has been an officer or promoter of the company or of such a corporation at any time within the preceding period of twenty-four months.

(7) A person shall not be appointed as liquidator of a company unless he has consented in writing prior to the appointment to act as such liquidator.

(8) Nothing in this section shall affect any appointment of a liquidator made before the commencement of this Act.

### **Government bound by certain provisions**

**434.** The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and effect of an arrangement with creditors shall bind the Government.

### **Subdivision 2**

#### ***Contributories***

### **Liability as contributories of present and past members**

**435.** (1) When a company is wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among the present and past members.



(2) Subject to subsection (3)—

(a) a past member shall not be liable to contribute under subsection (1)—

(i) if he has ceased to be a member for one year or more before the commencement of the winding up;

(ii) in respect of any debt or liability of the company contracted after he ceased to be a member, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by the existing members under this Act;

(b) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which the member is liable as a present or past member;

(c) in the case of a company limited by guarantee, no contribution shall, subject to subsection (5), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(d) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract where—

(i) the liability of the individual members on the policy or contract is restricted; or

(ii) the funds of the company are alone made liable in respect of the policy or contract;

(e) a sum due to any member in his capacity as a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among the members.

(3) In the winding up of a limited company, any director, whether past or present, whose liability is unlimited shall be liable to make a further contribution as if he were a member of an unlimited company in addition to his liability, if any, to contribute as an ordinary member.

(4) Notwithstanding anything in subsection (3)—

- (a) a past director shall not be liable to make a further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
- (b) a past director shall not be liable to make a further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and
- (c) subject to the constitution, a director shall not be liable to make a further contribution, unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

(5) On the winding up of a company limited both by shares and guarantee, every member shall be liable to contribute to the extent of any sums unpaid on any shares held by the member, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of it being wound up.

### **Nature of liability of contributory**

**436.** The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

### **Contributories in the case of death of member**

**437.** (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of the liability of the contributory and the personal representatives shall be the contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by the personal representatives, the proceedings may be taken for administering the estate of the deceased contributory and for compelling payment of the money due.

### **Contributories in case of bankruptcy of member**

**438.** If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after the contributory has been placed on the list of contributories—

- (a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and
- (b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

### Subdivision 3

#### *Voluntary Winding Up*

### **Circumstances in which company may be wound up voluntarily**

**439.** (1) A company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by the constitution expires, or the event, if any, occurs, on the occurrence of which the constitution provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or
- (b) if the company so resolve by special resolution.

(2) A company shall—

- (a) lodge a printed copy of the resolution with the Registrar within seven days from the passing of a resolution for voluntary winding up; and

- (b) give notice of the resolution in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language within ten days after the passing of the resolution.

(3) The company and every officer who contravene subsection (2) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Interim liquidators**

**440.** (1) Where the directors of a company have made a statutory declaration that—

- (a) the company cannot by reason of its liabilities continue its business; and
- (b) the meetings of the company and of its creditors have been summoned for a date within thirty days of the date of the declaration,

the directors shall forthwith appoint an approved liquidator to be the interim liquidator after the statutory declaration has been lodged with the Registrar and with the Official Receiver.

(2) An interim liquidator shall have all the functions and powers of a liquidator in a creditors' winding up subject to such limitations and restrictions as may be prescribed by the rules relating to winding up.

(3) The appointment of an interim liquidator under this section shall continue for thirty days from the date of his appointment or for such further period as the Official Receiver may allow in any particular case or until the appointment of a liquidator, whichever occurs first.

(4) Notice of the appointment of an interim liquidator under this section together with a copy of the declaration lodged with the Registrar shall be advertised within fourteen days of the appointment of the interim liquidator in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language.

(5) An interim liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed under the winding up rules.

### **Date of commencement of winding up**

**441.** (1) A voluntary winding up shall commence—

(a) where an interim liquidator has been appointed before the resolution for voluntary winding up is passed, at the time when the declaration referred to in section 440 is lodged with the Registrar; and

(b) in any other case, at the time of the passing of the resolution for voluntary winding up.

(2) A copy of the declaration referred to in paragraph (a) shall be lodged with the Official Receiver.

### **Effect of voluntary winding up**

**442.** (1) The company shall cease to carry on its business from the commencement of the winding up except so far as is required in the opinion of the liquidator for the beneficial winding up.

(2) Notwithstanding anything to the contrary in the constitution, the corporate state and corporate powers of the company shall continue until it is dissolved.

(3) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members made after the commencement of the winding up, shall be void.

### **Declaration of solvency**

**443.** (1) Where it is proposed to wind up a company voluntarily, the director or in the case of a company having more than one director, the majority of the directors may—

(a) make a written declaration to the effect that the directors have made an inquiry into the affairs of the company; and

- (b) at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the commencement of the winding up.

(2) The declaration in subsection (1) shall be made by the directors before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out to the members of a company.

(3) A statement of affairs of the company shall be attached to the declaration containing the particulars made up to the latest practicable date before the making of the declaration as follows:

- (a) the assets of the company, and the total amount expected to be realized;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up.

(4) The declaration made by the directors shall have no effect for the purposes of this Act unless it is—

- (a) made at the meeting of directors referred to in subsection (1);
- (b) made within five weeks immediately preceding the passing of the resolution for voluntary winding up; and
- (c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out to members of the company.

(5) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or to both and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(6) If the company is wound up under a resolution for voluntary winding up passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(7) The company and every officer who contravene paragraph (4)(c) commit an offence and shall, on conviction, be liable to a fine not exceeding two hundred fifty thousand ringgit and in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Distinction between “members” and “creditors” voluntary winding up**

**444.** A winding up in the case of which a directors’ declaration under section 443 has been made, is a “members’ voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors voluntary winding up”.

#### **Subdivision 4**

#### ***Members’ Voluntary Winding Up***

### **Appointment and removal of liquidator**

**445.** (1) In a members’ voluntary winding up, the company shall appoint one or more liquidators for the purpose of winding up the company’s affairs and distributing its assets in general meeting.

(2) On the appointment of a liquidator, all the powers of the directors cease, except so far as the company in general meeting with consent of the liquidator, or the liquidator sanctions the continuance of all the powers of the directors.

(3) The company may, in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators, remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court on the application of the liquidator or a creditor has ordered that the liquidator may not be removed.

**Power to fill vacancy in office of liquidator**

**446.** (1) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator appointed by the company, the company in a meeting of members may fill the vacancy, subject to any arrangement with its creditors.

(2) For the purposes of subsection (1), a meeting may be convened by any contributory or, if there is more than one liquidator, by the continuing liquidators.

(3) The meeting shall be held in a manner provided by this Act or by the constitution, or in such manner as may be determined by the Court, on application by any contributory or by the continuing liquidators.

**Duty of liquidator to call for creditors' meeting in case of insolvency**

**447.** (1) If the liquidator is of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 443, the liquidator shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon the creditors by subsection (2).

(2) The creditors may, at the meeting summoned under subsection (1), appoint—

(a) the liquidator appointed by the company; or

(b) any other person to be the liquidator,

for the purpose of winding up the affairs and distributing the assets of the company.

(3) Once a meeting of creditors is held under subsection (1), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.



(4) The liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice containing information as may be determined by the Registrar within seven days from a meeting has been held under subsection (1).

(5) Where a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under subsection (3) is held three months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this section to summon a meeting of creditors at the end of that year if the liquidator is the liquidator appointed by the company.

(6) The liquidator or the person appointed as a liquidator by the creditors who contravenes subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Conversion to creditors' voluntary winding up**

**448.** As from the day on which the creditors' meeting is held under section 449, this Act has effect as if—

- (a) the directors' declaration under section 443 had not been made; and
- (b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily,

and accordingly the winding up becomes a creditors' voluntary winding up.

## **Subdivision 5**

### ***Creditors' Voluntary Winding Up***

#### **Meeting of creditors**

**449.** (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the next day on

which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed.

(2) Where a meeting of the creditors is summoned under subsection (1), the company shall cause the notice of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

- (a) give notice by post of the meeting to the creditors at least seven clear days; and
- (b) send to each creditor together with the notice of meeting, a statement showing the names of all creditors and the amounts of their claims.

(4) The company shall cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language.

(5) The directors of the company shall—

- (a) cause a full statement of the company's affairs showing in respect of assets, the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and
- (b) appoint one of the directors to attend the meeting.

(6) The director so appointed under paragraph (5)(b) and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(7) The creditors may appoint one of the creditors or the director appointed under paragraph (5)(b) to preside at the meeting.

(8) The chairperson shall, at the meeting, determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(9) If the chairperson decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(10) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.

(11) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

### **Liquidators in creditors voluntary winding up**

**450.** (1) The company shall and the creditors may at their respective meetings nominate a person to be a liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator and if no person is nominated by the creditors, the person nominated by the company shall be liquidator.

(3) Notwithstanding subsections (1) and (2), where different persons are nominated, any director, member or creditor may apply to the Court for an order directing that the person nominated as liquidator by the company shall be the liquidator or jointly with the person nominated by the creditors within seven days from the date on which the nomination was made by the creditors.

(4) The liquidator may, or if requested by any creditor or contributory shall, summon separate meetings of the creditors and contributors for the purpose of determining whether or not the

creditors or contributories require the appointment of a committee of inspection as provided in Tenth Schedule, to act with the liquidator, and if so who are to be members of the committee.

(5) The committee of inspection, or if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator.

(6) On the appointment of a liquidator all the powers of the directors shall cease, except if the continuance of the powers is approved by—

(a) the committee of inspection; or

(b) if there is no such committee, the creditors.

(7) If a liquidator, other than a liquidator appointed by or by the direction of the Court dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for such purpose a meeting of the creditors may be summoned by any two of the creditors.

## **Property and proceedings**

**451.** (1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up shall be void.

(2) After the commencement of the winding up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

### **Subdivision 6**

#### *Provisions Applicable to Every Voluntary Winding Up*

## **Distribution of property of company**

**452.** Subject to the provisions relating to the preferential payments under this Act, the property of a company shall, on its winding up be applied equally in satisfaction of its liabilities, and shall

subject to that application, be distributed among the members according to their rights and interests in the company, unless the constitution otherwise provides.

### **Appointment or removal of liquidator by Court**

**453.** (1) Where there is no liquidator acting in a voluntary winding up, the Court may on application, appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

### **Remuneration of liquidators in voluntary winding up**

**454.** (1) A liquidator shall be entitled to receive salary or remuneration as prescribed in the rules.

(2) Any member, creditor or the liquidator may, at any time before the dissolution of the company, apply to the Court to review the amount of the remuneration of the liquidator and the decision of the Court on the matter shall be final and conclusive.

(3) Notwithstanding subsection 479(2), in the case of a company which is an insurer, no person, other than the Central Bank of Malaysia, may apply to the Court to review the remuneration of the liquidator and the Court shall determine the remuneration of the liquidator on the recommendation of the Central Bank of Malaysia.

### **Act of liquidator valid, etc.**

**455.** (1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall be valid in favour of any person taking such property in good faith and for value and without notice of such defect or irregularity notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to such person.

(4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.

### **Powers of liquidator in a voluntary winding up**

**456.** The liquidator may exercise any power and duty specified under the Eleventh Schedule in a voluntary winding up.

### **Power of liquidator to accept shares, *etc.*, as consideration for sale of property of company**

**457.** (1) Where it is proposed that the whole or part of the business or property of a company is to be transferred or sold to another corporation, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, the liquidator of the company may—

- (a) receive in compensation or part compensation for the transfer or sale of the shares, debentures, policies or other like interests in the corporation for distribution among the members of the company; or
- (b) enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition to the arrangement, participate in the profits of or receive any other benefit from the corporation,

and any such transfer, sale or arrangement shall be binding on the members of the company.

(2) If any member of the company expresses his dissent on matters referred to in subsection (1) in writing addressed to the liquidator and delivered to the registered office of the liquidator within seven days from the passing of the resolution, the member

may require the liquidator to either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by an agreement or by arbitration in the manner provided under this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution, the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section, the Arbitration Act 2005 [Act 646] shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party and the appointment of an arbitrator may be made by the liquidator, or if there is more than one liquidator then by any two or more of the liquidators.

(6) For the purpose of subsection (5), the Court may give any directions necessary for the initiation and conduct of the arbitration and any such directions shall be binding on the parties.

(7) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

### **Annual meeting of members and creditors**

**458.** (1) If the winding up continues for more than one year, the liquidator shall summon—

- (a) in the case of a members' voluntary winding up, a meeting of members of the company; and
- (b) in the case of a creditors' voluntary winding up, a meeting of members of the company and the meeting of creditors,

at the end of the first year from the commencement of the winding up and of each succeeding year or not more than three months after the succeeding year, and shall lay before the meeting an account of the acts of the liquidator and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be delivered by post to the creditors simultaneously with the delivery of the notices of the meeting of the company.

(3) Every liquidator who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Final meeting and dissolution**

**459.** (1) As soon as the affairs of the company are fully wound up, the liquidator shall—

- (a) prepare an account showing how the winding up has been conducted and the property of the company has been disposed of; and
- (b) call for a meeting of members of the company, or in the case of a creditor's voluntary winding up, a meeting of members of the company and the creditors,

for the purpose of laying before the meeting the account and for giving any explanation.

(2) The meeting shall be called by an advertisement published in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language, which the advertisement shall specify the time, place and object of the meeting and shall be published at least thirty days before the meeting.

(3) The liquidator shall lodge with the Registrar and with the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return, within seven days from the meeting.



(4) The quorum at a meeting of the company shall be two members and at a meeting of the company and the creditors shall be two members and two creditors and if a quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3), lodge a return with the account attached, that the meeting was duly summoned and that no quorum was present, and upon such a return being lodged, the provisions of subsection (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of three months after the lodging of the return with the Registrar and with the Official Receiver, the company shall be dissolved.

(6) Notwithstanding subsection (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made shall lodge with the Registrar and with the Official Receiver an office copy of the order within fourteen days from the making of the order and the person who fails so to do commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(8) If the return or copy of the account is not so lodged in accordance with subsection (3), the liquidator commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

(9) The liquidator who fails to call a meeting as required by this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Arrangement binding on creditors**

**460.** (1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on—

- (a) the company if sanctioned by a special resolution; and
- (b) the creditors if acceded to by three-fourth in value and one-half in number of the creditors, every creditor for under five hundred ringgit being reckoned in value only.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by the creditor and the amount of any debt or set off owing by the creditor to the debtor, appears to be the balance due to the creditor.

(3) Any dispute with regards to the value of any such security or lien or the amount of such debt or set off may be settled by the Court on the application of the company, liquidator or creditor.

(4) Any creditor or contributory may appeal to the Court against the arrangement, within three weeks from the completion of the arrangement, and the Court may amend, vary or confirm the arrangement as the Court thinks just.

**Application to Court to have questions determined or powers exercised**

**461.** (1) The liquidator or any contributory or creditor may apply to the Court—

- (a) to determine any question arising in the winding up of a company; or
- (b) to exercise all or any of the powers which the Court may exercise if the company is wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as the Court thinks fit or may make any other order on the application as the Court thinks just.

**Costs**

**462.** All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

**Limitation on right to wind up voluntarily**

**463.** Where a petition has been presented to the Court to wind up a company on the ground that it is unable to pay its debts, the company shall not resolve that it be wound up voluntarily without the leave of the Court.

## Subdivision 7

*Winding Up by Court***Petition of winding up**

**464.** (1) A company, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the petition of any one or more of the following:

- (a) the company;
- (b) any creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory or any person who is the personal representative of a deceased contributory or the trustee in bankruptcy or the Director General of Insolvency of the estate of a bankrupt contributory;
- (d) the liquidator;
- (e) the Minister on the ground specified in paragraph 465(1)(d) or (l);
- (f) in the case of a company which is a licensed institution under the Financial Services Act 2013 or the Islamic Financial Services Act 2013 and which is not a member institution under the Malaysia Deposit Insurance Corporation Act 2011 [Act 720], the Central Bank of Malaysia;

- (g) in the case of a company which is an operator of a designated payment system under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, the Central Bank of Malaysia;
  - (h) the Registrar on the ground specified in paragraph 465(1)(k); or
  - (i) in the case of a member institution under the Malaysia Deposit Insurance Corporation Act 2011, the Malaysia Deposit Insurance Corporation mentioned in section 99 of that Act.
- (2) Notwithstanding anything in subsection (1)—
- (a) a person referred to in paragraph (1)(c) may not present a petition on any of the grounds specified in paragraph 465(1)(a), (b), (d) or (g) unless the share in respect of which the contributor was a contributory or some of the shares were originally allotted to the contributor, or have been held by him and registered in his name for at least six months during the eighteen months before the presentation of the petition or have devolved on him through the death or bankruptcy of a former holder;
  - (b) a petition shall not be presented by any person except a contributory or the Minister if the ground of the petition is default in lodging the statutory declaration under subsection 190(3);
  - (c) the Court shall not hear the petition if presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court; and
  - (d) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless the Court is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

**Circumstances in which company may be wound up by Court**

**465.** (1) The Court may order the winding up if—

- (a) the company has by special resolution resolved that the company is to be wound up by the Court;
- (b) the company defaults in lodging the statutory declaration under subsection 190(3);
- (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;
- (d) the company has no member;
- (e) the company is unable to pay its debts;
- (f) the directors have acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole or acted in any other manner which appears to be unfair or unjust to members;
- (g) when the period, if any, fixed for the duration of the company by the constitution expires or the event, if any, occurs on the occurrence of which the constitution provide that the company is to be dissolved;
- (h) the Court is of the opinion that it is just and equitable that the company be wound up;
- (i) the company has held a licence under the Financial Services Act 2013 or the Islamic Financial Services Act 2013, and that the licence has been revoked or surrendered;
- (j) the company has carried on a licensed business without being duly licensed or the company has accepted, received or taken deposits in Malaysia, in contravention of the Financial Services Act 2013 or the Islamic Financial Services Act 2013, as the case may be;
- (k) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia; or

(l) the Minister has made a declaration under section 590.

(2) For the purpose of winding up actions commenced by the Registrar under paragraph (1)(k), the finding of the Registrar that a company is being used for unlawful purposes or any purpose prejudicial to national security or public interest or incompatible with peace, welfare, public order, security, good order or morality in Malaysia shall in all Courts and by all persons having power to take evidence for the purposes of this Act, be received as *prima facie* evidence until proven otherwise.

### **Definition of inability to pay debts**

**466.** (1) A company shall be deemed to be unable to pay its debts if—

- (a) the company is indebted in a sum exceeding the amount as may be prescribed by the Minister and a creditor by assignment or otherwise has served a notice of demand, by himself or his agent, requiring the company to pay the sum due by leaving the notice at the registered office of the company, and the company has for twenty-one days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

(2) A petition to wind up a company shall be filed in the Court within six months from the expiry date of the notice of demand issued under paragraph (1)(a).

**Commencement of winding up by the Court**

**467.** (1) Where before the presentation of the winding up petition a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the commencement of winding up shall be at the date of the winding up order.

**Payment of preliminary costs by petitioner**

**468.** (1) Where a person, other than a company itself or a liquidator, presents a petition under section 464 and a winding up order is made, that person shall at his own cost, conduct all the proceedings in the winding up until a liquidator has been appointed under this Division.

(2) The liquidator shall reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings unless the Court orders otherwise.

(3) Where the company has no assets or insufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation, the taxed costs or so much of the taxed costs as is not so reimbursed may be reimbursed to the petitioner out of moneys provided by the Parliament for the purpose, with the approval specified by the Minister in writing to an amount not exceeding three thousand ringgit.

(4) Where any winding up order is made upon the petition of the company or the liquidator the costs incurred shall, subject to any order of the Court, be paid out of the assets of the company in like manner as if they were the costs of any other petitioner.

**Powers of Court on hearing petition for winding up**

**469.** (1) On hearing the petition for winding up, the Court may, by order—

- (a) dismiss the petition with or without costs;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim or any other order that the Court thinks fit.

(2) The Court shall not refuse to make a winding up order solely on the ground only—

- (a) that the assets of the company have been mortgaged to an amount equal to or in excess of those assets;
- (b) that the company has no assets; or
- (c) in the case of a petition by a contributory, that there will be no assets available for distribution amongst the contributories.

(3) The Court may, at the hearing of the petition or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—

- (a) direct that any notice be given or any steps is taken before or after the hearing of the petition;
- (b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court;
- (c) direct that oral evidence be taken on the petition or any matter relating to the petition;
- (d) direct a speedy hearing or trial of the petition or any issue or matter;
- (e) allow the petition to be amended or withdrawn; and



- (f) give such directions as to the proceedings as the Court thinks fit.

(4) Where the petition is presented on the ground of default in lodging the statutory report, the Court may instead of making a winding up order, direct that the statutory report shall be lodged and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

### **Power of Court to stay or restrain proceedings against company prior to order of winding up**

**470.** (1) At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court for an order to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the action or proceeding accordingly on such terms as it thinks fit.

(2) The applicant shall lodge with the Registrar the office copy of the order within fourteen days from the making of such order under subsection (1).

### **Action or proceeding stayed after winding up order**

**471.** (1) When a winding up order has been made or an interim liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and in accordance with such terms as the Court imposes.

(2) The application for leave under subsection (1) shall be made in the Court granting the winding up order and shall be served on the liquidator.

(3) The office copy of the order for leave under subsection (1) shall be lodged by the applicant referred to in subsection 470(1) with the Registrar and with the Official Receiver within fourteen days from the making of the order.

**Avoidance of dispositions of property or certain attachment, etc.**

**472.** (1) Any disposition of the property of the company, other than an exempt disposition, including any transfer of shares or alteration in the status of the members of the company made after the presentation of the winding up petition shall, unless the Court otherwise orders, be void.

(2) In subsection (1), “exempt disposition” means a disposition made by a liquidator, or by an interim liquidator of the company in exercise of the power conferred on him under Part I of Twelfth Schedule or the rules that appointed him or an order of the Court.

(3) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the presentation of the winding up petition shall be void.

**Petition to be *lis pendens***

**473.** Any petition for winding up a company shall constitute a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

**Lodgement of winding up order**

**474.** (1) The petitioner shall, within seven days from the making of a winding up order, notify the Registrar, Official Receiver and liquidator—

(a) the order and its date; and

(b) the name and address of the liquidator.

(2) The petitioner shall within seven days from receiving the copy of the winding up order—

(a) lodge an office copy of the order with the Registrar and with the Official Receiver;

(b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the Court directs; and

- (c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

(3) A petitioner who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Effect of winding up order**

**475.** An order for winding up a company shall operate in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor and of a contributory.

## **Subdivision 8**

### *Provisions Relating to Liquidators in Winding Up by Court*

#### **Interim liquidator**

**476.** (1) The Court may appoint the Official Receiver or an approved liquidator as an interim liquidator at any time after the presentation of a winding up petition and before the making of a winding up order.

(2) The interim liquidator shall have and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be prescribed in the rules or as the Court may specify in the order appointing him.

#### **Appointment, style, etc., of liquidators**

**477.** (1) The following provisions with respect to liquidators shall have effect on a winding up order being made:

- (a) if an approved liquidator other than the Official Receiver is not appointed to be the liquidator of the company, the Official Receiver shall by virtue of his office become the interim liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

- (b) if there is no liquidator appointed, the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
- (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order as the Court may think fit;
- (d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;
- (e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
- (f) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;
- (g) a liquidator shall be described, where a person other than the Official Receiver is the liquidator, by the style of “the liquidator”, and, where the Official Receiver is the liquidator, by the style of “the Official Receiver and liquidator”, of the particular company in respect of which he is appointed, and not by his individual name.

### **Appointment of other person as liquidator other than Official Receiver**

**478.** (1) Where a person other than the Official Receiver is an appointed interim liquidator or liquidator in a winding up of a company by the Court, that person—

- (a) shall not act as such until he has given—
  - (i) written notice of his appointment to the Registrar and the Official Receiver; and

(ii) security in the prescribed manner to the satisfaction of the Official Receiver; and

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books of the company, and any assistance as may be required for enabling that officer to perform his duties under this Act.

(2) If two or more liquidators are appointed by the Court, unless the Court expressly provides otherwise—

(a) the functions or the powers of the liquidators may be performed or exercised by any one of them or by both or all of them jointly; and

(b) a reference to the liquidator shall be a reference to any one of the liquidators.

(3) Subject to this Act, the act of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

### **Remuneration of liquidators in winding up by Court**

**479.** (1) An interim liquidator other than the Official Receiver shall be entitled to receive the salary or remuneration by way of percentage or otherwise as is determined by the Court.

(2) A liquidator other than the Official Receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by—

(a) an agreement between the liquidator and the committee of inspection, if any;

(b) where there is no agreement or where there is no committee of inspection, a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the liquidator by a notice to each

creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

- (c) if the agreement or determination under paragraph (a) or (b) fails, the Court.

(3) Where the salary or remuneration of a liquidator other than the Official Receiver is determined in the manner specified in paragraph (2)(a) the Court may, on the application of a member whose shareholding represent in the aggregate not less than ten per centum of the issued capital of the company, confirm or vary the determination.

(4) Where the salary or remuneration of a liquidator other than the Official Receiver is determined in the manner specified in paragraph (2)(b) the Court may, on the application of the liquidator or a member referred to in subsection (3), confirm or vary the determination.

(5) Subject to any order of the Court, the Official Receiver when acting as a liquidator or interim liquidator of a company shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

### **Control of approved liquidator by Official Receiver**

**480.** (1) Where a person other than the Official Receiver is the liquidator in a winding up of a company by Court, the Official Receiver shall take cognizance of his conduct and—

- (a) if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties; or
- (b) if any complaint is made to the Official Receiver by any creditor or contributory in regard to performance of his duties,

the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) In addition to subsection (1) the Official Receiver may, at any time—

- (a) require the liquidator to answer any inquiry and provide any information or documents in relation to any winding up in which he is engaged and may apply to the Court to examine him or any other person on oath concerning the winding up of the company; or
- (b) direct a local investigation to be made of the books and vouchers of the liquidator.

### **Control of Official Receiver by Minister**

**481.** The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receiver who are concerned in the liquidation of companies, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Minister by any creditor or contributory in regard to the performance of his duties, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a investigation to be made of the books and vouchers of that person.

### **Resignation or removal of liquidator in winding up by Court**

**482.** A liquidator or interim liquidator appointed by the Court may—

- (a) resign from office in accordance with the rules; or
- (b) on cause shown, be removed from office by the Court.

### **Custody and vesting of company's property**

**483.** (1) Where an interim liquidator has been appointed or a winding up order has been made, the interim liquidator or liquidator shall forthwith take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) On the application of the liquidator, the Court may order that all or any part of the property belonging to the company or held by trustees on behalf of the company shall vest in the liquidator and the property shall, subject to subsection (3), vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action which relates to that property or of which is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under subsection (2), every liquidator in relation to whom the order is made shall within seven days of the making of the order—

- (a) lodge an office copy of the order with the Registrar; and
- (b) where the order relates to land, lodge an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(4) No vesting order referred to in this section shall have any effect to transfer or otherwise vest any land until the appropriate entries are made with respect to the transferring or vesting by the appropriate authority.

(5) A liquidator who contravenes the requirement of subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Submission of statement of affairs of company**

**484.** (1) A statement as to the affairs of the company as at the date of the winding up order showing—

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by the creditors respectively;



- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the liquidator requires,

shall be made by one or more persons in subsection (2) and verified in the manner as may be determined by the Registrar and submitted to the liquidator.

(2) The statement in subsection (1) shall be made and submitted by one or more of the persons who are at the date of the winding up order, the directors and by the secretary of the company, or by any of the following persons as the liquidator may require, subject to the direction of the Court:

- (a) a person who is or has been an officer of the company;
- (b) a person who has taken part in the formation of the company, at any time within one year before the date of the winding up order; or
- (c) a person who is or has been within that period, officers of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement in subsection (1) shall be submitted within fourteen days from the date of the winding up order or within such extended time as the liquidator or the Court for special reasons specified.

(4) Within seven days from the receipt of the statement in subsection (2)—

- (a) the liquidator including the Official Receiver shall cause a copy of the statement to be filed with the Court and lodged with the Registrar; and
- (b) where the Official Receiver is not the liquidator, the liquidator shall cause a copy of the statement to be lodged with the Official Receiver.

(5) Any person making or concurring in making the statement required by this section may, subject to the rules, be allowed and be paid out of the assets of the company such costs and expenses incurred in the preparation and the making of the statement as the liquidator considers reasonable subject to an appeal to the Court.

(6) Any person who contravenes the requirements of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred thousand ringgit or to both and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Report by liquidator**

**485.** (1) The liquidator shall, as soon as practicable from the receipt of the statement of affairs, submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) In addition to subsection (1), the liquidator may, as he thinks fit, make further reports stating—

- (a) the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation;
- (b) whether any officer of the company has contravened or failed to comply with this Act; and

- (c) specifying any other matter which in his opinion is desirable to be brought to the notice of the Court.

### **Powers of liquidator in winding up by Court**

**486.** (1) Where a company is being wound up by the Court, the liquidator may—

- (a) without the authority under paragraph (b), exercise any of the general powers specified in Part I of the Twelfth Schedule; and
- (b) with the authority of the Court or the committee of inspection, exercise any of the powers specified in Part II of the Twelfth Schedule.

(2) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section is subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

### **Exercise and control of liquidator's powers**

**487.** (1) Subject to this Division, the liquidator shall, in the administration of the assets of the company and in the distribution among its creditors, have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall override any directions given by the committee of inspection in case of conflict.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than ten per centum in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Division, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

### **Liquidator to pay moneys received into bank account**

**488.** (1) Every liquidator shall, in the manner and at the time prescribed by the rules, pay the money received by him into such bank account as is prescribed by the rules or as is specified by the Court.

(2) If any liquidator retains for more than ten days a sum exceeding ten thousand ringgit, or such other amount as the Court in any particular case authorizes him to retain, then unless he explains the retention to the satisfaction of the Court he shall pay interest on the amount so retained in excess computed from the expiration of the ten days until he has complied with subsection (1) at the rate of twenty per centum per annum, and shall be liable—

- (a) to disallowance of all or such part of his remuneration as the Court thinks just;
- (b) to be removed from his office by the Court; and
- (c) to pay any expenses occasioned by reason of his default.

(3) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) commits an offence.

### **Settlement of list of contributories and application of assets**

**489.** (1) As soon as practicable after the making of a winding up order by the Court, the liquidator shall—

- (a) cause the company's property to be collected and applied to discharging the company's liabilities; and
- (b) consider whether subsection (2) requires the settlement of a list of contributories.

(2) A liquidator of a company that is being wound up by the Court shall, settle a list of contributories if it appears to the liquidator it is likely that—

(a) either—

- (i) there are persons liable as members or past members to contribute to the company's property on the winding up; or
- (ii) there will be a surplus available for distribution; and

(b) it will be necessary—

- (i) to make calls on contributories; or
- (ii) to adjust the right of the contributories among themselves.

(3) A liquidator may rectify the register of members in all cases where rectification is required under this Division.

(4) In settling the list of contributories, the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(5) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named in the list as contributories.

### **Release of liquidators and dissolution of company**

**490.** A liquidator may apply to the Court—

- (a) for an order that he be released and that the company be dissolved, if he has—
  - (i) realised all the property of the company or so much as in his opinion can be realised without needlessly protracting the liquidation;

- (ii) distributed a final dividend, if any, to the creditors;
  - (iii) adjusted the rights of the contributories among themselves; and
  - (iv) made a final return, if any, to the contributories, or
- (b) for an order that he be released, if he has resigned or been removed from his office.

### **Orders of release or dissolution**

**491.** (1) Where an order is made that the company be dissolved, the company shall from the date of the order, be dissolved accordingly.

(2) The Court—

- (a) may cause a report on the accounts of a liquidator, other than the Official Receiver, to be prepared by the Official Receiver or by a qualified auditor appointed by the Court;
- (b) after the liquidator has complied with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and
- (c) shall either grant or withhold the release accordingly.

(3) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks appropriate charging the liquidator for any act or default done or made contrary to his duties.

(4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed, the liquidator's release shall operate as a removal from office.

(6) Where the Court has made—

(a) an order that the liquidator be discharged; or

(b) an order that the liquidator be discharged and the company be dissolved,

an office copy of the order shall, within fourteen days from the making of the order lodged by the liquidator with the Registrar and the Official Receiver.

(7) Any liquidator who contravenes the requirements of subsection (6) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

## Subdivision 9

### *General Powers of Court in Winding Up by Court*

#### **Power of Court to stay winding up**

**492.** (1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up of the company ought to be stayed, make an order staying the winding up of the company for a specified time on such terms and conditions as the Court thinks fit.

(2) Where the Court makes an order under subsection (1), the liquidator shall cease to conduct any further action on behalf of the company from the date of such order .

**Power of Court to terminate winding up**

**493.** (1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all the proceedings in relation to the winding up of the company ought to be terminated, make an order terminating the winding up of the company as the Court thinks fit.

(2) In making an order under subsection (1), the Court may take into consideration, but not limited to, the following facts—

- (a) the satisfaction of the debts;
- (b) any agreement by the liquidators, creditors, contributories and other interested parties; or
- (c) other facts that the Court considers appropriate.

(3) Where the Court makes an order under subsection (1), the company ceases to be in liquidation and the liquidator ceases to hold office and be released from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, with effect from the making of the order or such other date as may be specified in the order.

**Matters relating to stay and termination of winding up**

**494.** (1) On any application under sections 492 and 493, the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(2) The Court may, on making an order under sections 492 and 493 or at any time after making the order, make such other order as it thinks fit in connection with the staying or termination of the winding up.

(3) Where the Court has made an order terminating the winding up under section 493, the Court may give such directions as it thinks fit for the resumption of the management and control of the company to elect directors of the company to take office upon the termination of the winding up.



(4) The costs of proceedings before the Court under sections 492 and 493 and the costs incurred in convening a meeting of members of the company in accordance with an order of the Court under section 493, if the Court so directs, forms part of the costs, charges and expenses of the winding up.

(5) An office copy of every order made under sections 492 and 493 shall be lodged by the company with the Registrar and the Official Receiver and if the application is made by a creditor or contributory, serve to the liquidator within fourteen days from the making of the order.

(6) The company and every officer who contravenes this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Debts due by contributory to company and extent of set off**

**495.** On an application by the liquidator, the Court may make an order directing any contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents exclusive of any money payable by him or the estate by virtue of any call under this Act, and may—

- (a) in the case of an unlimited company, allow the contributory by way of set off any money due to him or to the estate which he represents from the company on any independent dealing or contract but not any money due to him as a member of the company in respect of any dividend or profit;
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate similar allowance as referred to in paragraph (a); and
- (c) in the case of any company whether limited or unlimited, when all the creditors are paid in full, allow any money due on any account whatever to a contributory from the company may be by way of set off against any subsequent call.

**Power of Court to make calls**

**496.** (1) The Court may either before or after it has ascertained the sufficiency of the assets of the company—

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made.

(2) In making the call under subsection (1), the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**Payment of moneys due to company into named bank**

**497.** (1) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the bank named in the order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into any bank under this Division shall be subject to the order of the Court.

**Order on contributory conclusive evidence**

**498.** An order made by the Court under sections 495, 496 and 497 shall, subject to any right of appeal, be conclusive evidence that the money, if any, appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

**Appointment of special manager**

**499.** (1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court for an appointment of a special manager of the estate or business to act during such time as the Court directs with such powers including any of the powers of a receiver or receiver and manager as are entrusted to the liquidator by the Court.

(2) The special manager—

- (a) shall give such security and account in such manner as the Court directs;
- (b) shall receive such remuneration as is fixed by the Court; and
- (c) may at any time resign after giving not less than thirty days notice in writing to the liquidator of his intention to resign, or on cause shown, be removed by the Court.

**Claims of creditors and distribution of assets**

**500.** (1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which the creditors will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to the surplus.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks fit.

**Inspection of books and papers by creditors and contributories**

**501.** The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly.

**Power to summon persons connected with company**

**502.** (1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

(2) The Court may examine the officer or person on oath concerning the matters mentioned in subsection (1) either orally or by way of written interrogatories and may reduce his oral statement into writing and require him to sign the written statement which may be used in evidence in any legal proceedings against the officer or person.

(3) The Court may require the officer or person to produce any books and papers in his custody or power relating to the company, but if the officer or person claims any lien on books or papers, the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

(4) An examination under this section or section 503 may, if the Court so directs and subject to the rules referred to in section 616, be held before any Sessions Court Judge named for the purpose by the Court, and the powers of the Court under this section and section 503 may be exercised by such Sessions Court Judge.

(5) If any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the Court at the time appointed without having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

**Power to order public examination of promoters, directors, etc.**

**503.** (1) A liquidator appointed in a winding up of a company may make a report to the Court stating that, in his opinion—

- (a) a fraud has been committed;
- (b) any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation; or
- (c) any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company.

(2) After considering the report under subsection (1), the Court may direct—

- (a) the person or officer, or any other person who was previously an officer of the company, including any banker, advocate or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company; or
- (b) any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company,

to appear before the Court on a date appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer, as to his conduct and dealings as an officer of the company.

(3) The liquidator and any creditor or contributory may take part in the examination either personally or by an advocate.

(4) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(6) A person ordered to be examined under this section shall, before his examination, be furnished with a copy of the liquidator's report.

(7) Where a person is directed to attend before the Court under subsection (2) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to the liquidator to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application and the Court may allow the applicant such costs as in its discretion it thinks fit.

(8) Notes of the public examination—

- (a) shall be reduced to writing;
- (b) shall be read over to or by and signed by the person examined;
- (c) may thereafter be used in evidence in any legal proceedings against the person; and
- (d) shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The Court may, if it thinks fit, adjourn the public examination from time to time.

### **Power to arrest absconding contributory**

**504.** The Court at any time before or after making a winding up order, on proof of probable cause for believing that a contributory, director or former director of the company—

- (a) is in hiding;
- (b) has absconded;
- (c) is about to leave Malaysia or otherwise to abscond;
- (d) is about to remove any of his property; or

(*e*) is about to conceal any of his property,

for the purpose of—

- (i) evading payment of calls;
- (ii) avoiding examination respecting the affairs of the company; or
- (iii) avoiding, delaying or embarrassing proceedings in the winding up,

may cause the contributory, director or former director to be arrested and his books and papers and movable personal property to be seized and safely kept until such time as the Court orders.

### **Delegation of powers of Court to liquidator**

**505.** Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Division in respect of—

- (*a*) the holding and conduct of meetings to ascertain the wishes of creditors and contributories;
- (*b*) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (*c*) the making of calls and the adjusting of the rights of contributories; and
- (*d*) the fixing of a time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without the special leave of the Court, rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

**Powers of Court cumulative**

**506.** (1) Any powers by this Act conferred on the Court shall be in addition to and not in derogation of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

(2) Subject to the rules referred to in section 616, an appeal from any order or decision made or given in the winding up of a company shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

**Division 2***Provisions Applicable to Every Winding Up***Subdivision 1***General***Investment of surplus funds on general account**

**507.** (1) Subject to the direction in writing of the committee of inspection, or if there is no committee of inspection, by the liquidator himself, whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which is required for the time being to answer demands in respect of the estate of the company, the excess sum may—

(a) be invested in securities issued by the Government of Malaysia; or

(b) be placed on deposit at interest or with return with any bank.

(2) On the application by any creditor who is not satisfied with the direction or decision relating to the investment made under subsection (1), the Court may direct otherwise if it thinks fit.

(3) Any interest received in respect of the investment shall form part of the assets of the company.



(4) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realization of such part of the securities referred to in paragraph (1)(a) as is necessary.

### **Unclaimed assets to be paid to receiver of revenue**

**508.** (1) Where a liquidator has in his hands or under his control—

- (a) any unclaimed dividend or other moneys which have remained unclaimed for more than six months from the date when the dividend or other moneys became payable; or
- (b) after making final distribution, any unclaimed or undistributed moneys arising from the estate of the company,

the liquidator shall forthwith pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account and whose receipt shall be an effectual discharge in respect of the unclaimed moneys.

(2) The Court may on application of the Official Receiver—

- (a) order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit of the account; and
- (b) direct the liquidator to pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) The interest or return arising from the investment of the moneys standing to the credit of the Companies Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section, the Court may exercise all the powers conferred by this Act with respect to the discovery

and realization of the property of the company and the provisions of this Act with respect to the discovery and realization shall, with such adaptations as are prescribed, apply to the proceedings under this section.

(5) Unless expressly provided for in this Act, this section shall not deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the Official Receiver upon being satisfied that the claimant is the owner of the money—

(a) shall authorize payment to be made to him out of the Account; or

(b) if it has been paid into the Consolidated Fund, may authorize payment of the same amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made under subsection (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Consolidated Fund under subsection (6), but may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the Companies Liquidation Account to the extent to which the said moneys have not been paid out of the Account under this section shall, on the lapse of six years from the date of the payment of the moneys to the credit of the Account, be paid into the Consolidated Fund.

### **Books and papers to be kept by liquidator**

**509.** Every liquidator shall keep proper books and papers in which he shall cause to be made entries or minutes of proceedings at

meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect the proper books and papers.

### **Control of Court over liquidators**

**510.** (1) The Court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard to the conduct, the Court shall inquire into the matter and take such action as the Court thinks fit.

(2) The Registrar or the Official Receiver may report to the Court any matter which in the opinion of the Registrar or the Official Receiver is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the property of the company has sustained and make such other order as the Court thinks fit.

(3) The Court may at any time require any liquidator to answer any inquiry in relation to the winding up and may examine the liquidator or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

### **Delivery of property to liquidator**

**511.** The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or interim liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the company is *prima facie* entitled.

### **Powers of Official Receiver where no committee of inspection**

**512.** (1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection the Official Receiver may, on the application of the liquidator, do any act or

thing or give any direction or permission which is authorized or required by this Act to be done or given by the Committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is required to be done by this Act, or subject to any direction or permission given by the Committee.

### **Notice of appointment and address of liquidator**

**513.** (1) A liquidator or an interim liquidator shall lodge a notice of his appointment, the address of his office and any change of the address with the Registrar and the Official Receiver in the form and manner determined by the Registrar within fourteen days from the appointment or the change of address.

(2) Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator or interim liquidator given in any such notice lodged with the Registrar shall be deemed to be good service upon the liquidator and upon the company.

(3) A liquidator or an interim liquidator shall, within fourteen days from his resignation or removal from office, lodge with the Registrar and with the Official Receiver a notice of that fact in the form and manner as may be determined by the Registrar.

(4) A liquidator or an interim liquidator who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Liquidator's accounts**

**514.** (1) Every liquidator shall, within thirty days from the expiration of the period of six months from the date of the liquidator's appointment and of every subsequent period of six

months and in any case within thirty days after the liquidator ceases to act as a liquidator shall immediately after obtaining an order of release, lodge with the Registrar and with the Official Receiver, an account of the liquidator's receipts and payments and a statement of the position in the winding up and verified by statutory declaration in a manner as may be determined by the Registrar.

(2) The Official Receiver may cause the account of any liquidation to be audited by an approved company auditor.

(3) For the purpose of audit referred to in subsection (2), the liquidator shall furnish the auditor with such vouchers and information as the auditor requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(5) The liquidator shall—

- (a) give notice that the account has been made up to every creditor and contributory when forwarding any report, notice of meeting, notice of call or dividend; and
- (b) in the notice, notify creditors and contributories at what address and between what hours the account may be inspected.

(6) The costs of an audit under this section shall be fixed by the Official Receiver and shall be part of the expenses of winding up.

(7) A liquidator who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Liquidator to make good defaults**

**515.** (1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which the liquidator is by law required to lodge, make or give, fails to make good the default within fourteen days from the service of notice requiring the liquidator to do so, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in subsection (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default.

**Notification that a company is in liquidation**

**516.** (1) Where a company is being wound up, the words “in liquidation” shall be added after the name of the company in every invoice, order for goods or business letter issued by or on behalf of the company, a liquidator of the company, a receiver or manager of the property of the company.

(2) The company and every officer of the company or liquidator and every receiver or manager who contravene this section and who knowingly and wilfully authorize or permit the contravention commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

**Appeal against decision of liquidator**

**517.** Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

**Books and papers of company**

**518.** (1) Where a company is being wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall be *prima facie* evidence of the truth of all matters recorded in the books or papers in respect of the contributories and the company.

(2) When a company has been wound up, the liquidator shall retain the books and papers referred to in subsection (1) for a period of five years from the date of the dissolution of the company and at the expiration of that period, may destroy the books and papers.

(3) Notwithstanding subsection (2), when a company has been wound up, the books and papers referred to in subsection (1) may be destroyed within a period of five years after the dissolution of the company—

- (a) in the case of a winding up by the Court, in accordance with the directions of the Court;
- (b) in the case of a members' voluntary winding up, as the company by resolution directs; and
- (c) in the case of a creditors' voluntary winding up, as the committee of inspection, or, if there is no such committee, as the creditors of the company direct.

(4) The company or the liquidator shall not be responsible to any person claiming to have interest in any book or paper destroyed in accordance with this section.

(5) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

**Expenses of winding up where assets insufficient**

**519.** (1) Unless expressly directed to do so by the Court, a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

(2) On the application of a creditor or a contributory, the Court may direct a liquidator to incur a particular expense on the condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and if the Court so directs, gives such security to secure the amount of the indemnity as the Court thinks reasonable.

### **Resolutions passed at adjourned meetings of creditors and contributories**

**520.** Subject to subsection 449(10), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### **Meetings to ascertain wishes of creditors or contributories**

**521.** (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to the Court by any sufficient evidence, and may if the Court thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairperson of any such meeting and to report the result of the meeting to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the constitution.

### **Special commission for receiving evidence**

**522.** (1) The Sessions Court Judges shall be the commissioners for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to any person appointed as commissioner.



(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a Sessions Court Judge, have in the matter so referred to him the same powers as the Court to—

- (a) summon and examine witnesses;
- (b) require the production or delivery of documents;
- (c) punish defaults by witnesses; and
- (d) allow costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court, the taking of evidence by the commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

## Subdivision 2

### *Proof and Ranking of Claims*

#### **Description of debts provable in winding up**

**523.** (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in winding up.

(2) A person having notice of any winding up order in a winding up by the Court or a resolution has been passed in a voluntary winding up shall not prove under the winding up for any debt or liability contracted by the company subsequent to the date of his so having notice.

(3) Save as provided in subsections (1) and (2), all debts and liabilities present or future, certain or contingent, to which the company is subject at the date of the winding up order or the resolution, or to which the company may become subject before dissolution by reason of any obligation incurred before the date of the winding up order shall be deemed to be debts provable in winding up.

(4) An estimation shall be made by the liquidator of the value of any debt or liability provable under subsection (3) which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(5) Any person aggrieved by the estimate made under subsection (4) may appeal to the Court.

(6) If in the opinion of the Court, the value of the debt or the liability is incapable of being fairly estimated, the Court may make an order to that effect, and the debt or liability shall for the purposes of this Act be deemed to be a debt not provable in winding up.

(7) If in the opinion of the Court the value of the debt or liability is capable of being fairly estimated, the Court may assess the same and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in winding up.

### **Rights and duties of secured creditors**

**524.** (1) A secured creditor may—

- (a) realise a property subject to a charge, if entitled to do so;
- (b) value the property subject to the charge and claim in the winding up as an unsecured creditor for the balance due, if any; or
- (c) surrender the charge to the liquidator for the general benefit of creditors and claim in the winding up as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the power referred to in paragraph (1)(a) whether or not the secured creditor has exercised the power referred to in paragraph (b).

(3) A secured creditor who realises a property subject to a charge under paragraph (1)(a)—

- (a) may, unless the liquidator has accepted a valuation and claim by the secured creditor under subsection (7),

claim as an unsecured creditor for any balance due after deducting the net amount realised;

- (b) shall account to the liquidator for any surplus remaining from the net amount realised after the satisfaction of the debt, including interest payable but which shall not exceed six months, in respect of that debt up to the time of its satisfaction, and after making any proper payments to the holder of any other charge over the property subject to the charge.

(4) If a secured creditor values the security and claims as an unsecured creditor for the balance due under paragraphs (1)(a) and (b), if any, the valuation and any claim shall be made in the manner to be determined by the Registrar and—

- (a) contain full particulars of the valuation and any claim;
- (b) contain full particulars of the charge including the date on which it was given; and
- (c) identify any documents that substantiate the claim and the charge.

(5) The liquidator may require the production of any document referred to in paragraph (4)(c).

(6) Where a claim is made by a secured creditor under subsection (4), the liquidator shall—

- (a) accept the valuation and claim; or
- (b) reject the valuation and claim in whole or in part, but—
  - (i) where a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within fourteen days of receiving notice of the rejection; and
  - (ii) the liquidator may, if he subsequently considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.

(7) Where the liquidator—

- (a) accepts a valuation and claim under paragraph (6)(a);
- (b) accepts a revised valuation and claim under subparagraph (6)(b)(i); or
- (c) accepts a valuation and claim on revoking or amending a decision to reject a claim under subparagraph (6)(b)(ii),

the liquidator may, unless the secured creditor has realised the property, at any time, redeem the security on payment of the assessed value.

(8) The liquidator may at any time, by notice in writing, require a secured creditor, within twenty one days from the receipt of the notice, to—

- (a) elect which of the powers referred to in subsection (1) the creditor wishes to exercise; and
- (b) if the creditor elects to exercise the power referred to in paragraph (1)(b) or (c), exercise the power within that period.

(9) A secured creditor on whom notice has been served under subsection (8) who fails to comply with the notice is to be taken as having surrendered the charge to the liquidator under paragraph (1)(c) for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.

(10) A secured creditor who has surrendered a charge under paragraph (1)(c) or who is taken as having surrendered a charge under subsection (9) may, with the leave of the Court or the liquidator and subject to such terms and conditions as the Court or the liquidator thinks fit, at any time before the liquidator has realised the property charged—

- (a) withdraw the surrender and rely on the charge; or
- (b) submit a new claim under this section.

(11) Every person who—

- (a) makes, or authorize the making of, a claim under subsection (4) that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorize the omission, from a claim under that subsection of any matter knowing that the omission makes the claim false or misleading in a material particular,

commits an offence and shall, on conviction, be liable to a fine not less than one million ringgit or to imprisonment for a term not exceeding five years or to both.

### **Rights and duties of unsecured creditors**

**525.** (1) Every creditor shall prove his debt immediately after the making of a winding up order.

(2) A debt may be proved by delivering or sending an affidavit through the post in a prepaid letter to the liquidator.

(3) The affidavit shall —

- (a) verify the debt;
- (b) be made by the creditor himself or by any person authorized by or on behalf of the creditor or his estate and if made by a person so authorized, it shall state his authority and means of knowledge;
- (c) contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the statement of account can be substantiated; and

(d) state whether the creditor is or is not a secured creditor.

(4) The liquidator may at any time call for the production of the vouchers or books of account.

(5) A creditor shall bear the cost of proving the creditor's debt unless the court otherwise specially orders.

(6) Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

(7) A creditor proving his debt shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he has agreed to allow for payment in cash.

### **Mutual credit and set-off**

**526.** (1) This section applies where before the commencement of the winding up there have been mutual credits, mutual debts or other mutual dealings between the company and any of the company's creditor proving or claiming to prove for a winding up of debts.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the company to another party shall not be included in the account taken under subsection (2) if that other party had notice at the time the sums owed became due that a meeting of creditors has been summoned or a petition for the winding up of the company was pending.

### **Priorities**

**527.** (1) Subject to this Act, in a winding up there shall be paid in priority to all other unsecured debts—

- (a) firstly, the costs and expenses of the winding up including the taxed costs of a petitioner payable under section 468, the remuneration of the liquidator and the costs of any audit carried out under section 514;
- (b) secondly, all wages or salary, whether or not earned wholly or in part by way of commission, including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating

conditions of employment, of any employee not exceeding fifteen thousand ringgit or such other amount as may be prescribed whether for time or piecework in respect of services rendered by him to the company within a period of four months before the commencement of the winding up;

- (c) thirdly, all amounts due in respect of worker's compensation under any written law relating to worker's compensation accrued before the commencement of the winding up;
- (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before the commencement of the winding up;
- (e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the company as the employer of any person under any written law relating to employees social security contribution and superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the federal law relating to income tax; and
- (f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The debts in each class specified in subsection (1) shall rank in the order specified but debts of the same class shall rank *pari passu* and shall be paid in full, unless the property of the company is insufficient to meet the debts, in which case the payment shall be reduced and the rate of reduction shall be in equal proportion.

(3) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been

diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(4) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subparagraphs (1)(b), (d) and (e) and any amount payable in priority by virtue of subsection (3), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(5) Where the company is under a contract of insurance, entered into before the commencement of the winding up, insured against liability to third parties, then if any such liability is incurred by the company, either before or after the commencement of the winding up, and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in the amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(6) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing in subsection (5) shall limit the rights of the third party in respect of the balance.

(7) Subsections (5) and (6) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(8) Notwithstanding subsection (1)—

(a) paragraph (c) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has



on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workers compensation; and

- (b) where a company has given security for the payment or repayment of any amount to which paragraph(1)(f) relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting from the balance the net amount realized from such security.

(9) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator, have been recovered, the Court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by the creditors in so doing.

(10) Subject to this Act, all debts proved in a winding up shall be paid *pari passu*.

### Subdivision 3

#### *Effect on Other Transactions*

#### **Undue preference**

**528.** (1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts, as the debts become due, from its own money in favour of any creditor or any person in trust for any creditor shall be deemed to have given such creditor a preference over other creditors in the event of the company being wound up on a winding up petition presented within six months from the date of making or doing the same and every such act shall be deemed fraudulent and void.

(2) The date of presentation of the winding up petition shall be—

(a) in the case of winding up by Court—

- (i) the date of the presentation of petition; or
- (ii) where prior to the presentation of the petition a resolution has been passed by the company for voluntary winding up, the date upon which the resolution to wind up the company voluntarily is passed; and

(b) in the case of voluntary winding up, the date upon which the winding up is deemed by this Act to have commenced.

(3) Any transfer or assignment by a company of all its property to the trustees for the benefit of all its creditors shall be void.

(4) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company in contravention of this section shall be void except if it is in favour of any person dealing with the company for valuable consideration and without any actual notice of the contravention.

(5) For the purposes of this section, “valuable consideration” means a consideration fair and reasonable money value in relation to—

- (a) the value of the property conveyed, assigned or transferred;  
or
- (b) the known or reasonably anticipated benefits of the contract, dealing or transaction.

(6) For the purposes of this section, “notice” includes knowledge of inability to pay a debt by the company or any winding up proceedings against the company or of the facts sufficient to indicate to the person dealing with the wound up company.

**Effect of floating charge**

**529.** A floating charge on the undertaking or property of the company created within six months of—

- (a) the presentation of the winding up petition in the case of winding up by Court; or
- (b) the passing of the resolution in the case of voluntary winding up,

shall be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest or return on that amount at the rate of five per centum per annum unless it is proved that the company is solvent immediately after the creation of the charge.

**Liquidator's right to recover in respect of certain sales to or by company**

**530.** (1) Where any property, business or undertaking has been acquired by a company for a cash consideration, the liquidator may recover any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition from—

- (a) a person who was at the time of the sale, a director of the company or a person connected with a director; or
- (b) a company of which, at the time of the sale, a person was a director who was also a director of the first-mentioned company or a person connected with a director.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration, the liquidator may recover any amount by which the value of the property, business or undertaking exceeded the cash consideration at the time of its sale from—

- (a) a person who was at the time of the sale a director of the company or a person connected with a director; or

- (b) a company of which, at the time of the sale, a person was a director who was also a director of the first-mentioned company or a person connected with a director.

(3) The amount to be recovered in subsection (1) or (2) shall refer to the acquisition or sale, as the case may be, made within a period of two years before—

- (a) in the case of a winding up by Court, the presentation of the winding up petition against the company; or
- (b) in the case of a voluntary winding up, the passing of the resolution to wind up the company.

(4) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(5) In this section, “cash consideration”, in relation to an acquisition or sale by a company, means consideration for the acquisition or sale payable otherwise than by the issue of shares in the company.

### **Disclaimer of onerous property**

**531.** (1) Where any part of the property of a company consists of—

- (a) any estate or interest in land which is burdened with onerous covenants;
- (b) shares in corporations;
- (c) unprofitable contracts; or
- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor of the property to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or

exercised any act of ownership in relation to the property, may, with the leave of the Court or committee of inspection and subject to this section, in writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property.

(2) Where any such property under subsection (1) has not come to the knowledge of the liquidator within thirty days from the commencement of the winding up, the power of disclaiming may be exercised at any time within twelve months after he has become aware of the property or such extended period as is allowed by the Court.

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) The Court or committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order on the matter as the Court or committee thinks just.

(5) The liquidator shall not be entitled to disclaim if an application in writing has been made to the liquidator by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty eight days from the receipt of the application or such further period as is allowed by the Court or committee, given notice to the applicant that he intends to apply to the Court or committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.

(6) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to the payment by or to either party of damages for the non-performance of the contract,

or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(7) The Court may, on the application of a person who either—

- (a) claims any interest in any disclaimed property; or
- (b) is under any liability not discharged by this Act in respect of any disclaimed property,

and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled to the property, or to whom it seems just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the Court thinks just.

(8) On the lodgement of an office copy of the vesting order with the Registrar and with the Official Receiver and if the order relates to land, with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised in the order shall vest accordingly in the person named in the order in that behalf without any further conveyance, transfer or assignment.

(9) Notwithstanding anything in subsections (7) and (8), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting

order upon those terms shall be excluded from all the interest in and the security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon those terms, the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all the estates, encumbrances and interest created in the vesting order by the company.

(10) Any person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the grievances, and may accordingly prove the amount as a debt in the winding up.

### **Interpretation**

**532.** For the purposes of sections 533 and 534—

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” includes all movable property.

### **Restriction of rights of creditor as to execution or attachment**

**533.** (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor had notice shall for the purposes of this section be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution

has been levied shall in all cases acquire a good title to the goods against the liquidator; and

- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this section—

- (a) an execution against goods is completed by seizure and sale;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

### **Duties of bailiff as to goods taken in execution**

**534.** (1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale of the goods or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part of the goods, for the purpose of satisfying that charge.

(2) Subject to subsection (4), where under an execution in respect of a judgment for a sum exceeding one hundred ringgit, the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days.



(3) If within the period of execution notice is served on the bailiff of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(4) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

### **Power of Court to declare dissolution of company void**

**535.** (1) Where a company has been dissolved, the Court may, at any time within two years after the date of dissolution, on an application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made, shall, within seven days from the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver an office copy of the order and the person who fails so to do commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

## **Subdivision 4**

### *Offences*

### **Offences by officers of companies in liquidation**

**536.** (1) Every person who, is or was an officer or a contributory of a company which is being wound up, commits an offence if he—

- (a) does not disclose to the liquidator all the property of the company, and how and to whom and for what consideration and when the company disposed of any part of the property of the company, except such part as

has been disposed of in the ordinary way of the business of the company;

- (b) does not deliver up to the liquidator, whether or not being directed to do so by the liquidator—
  - (i) all the movable and immovable property of the company in his custody or under his control and which he is required by law to deliver up; or
  - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within twelve months before the commencement of the winding up or at any time after the commencement—
  - (i) has concealed any part of the property of the company to the value of fifty ringgit or upwards, or has concealed any debt due to or from the company;
  - (ii) has fraudulently removed any part of the property of the company to the value of fifty ringgit or upwards;
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
  - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
  - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
  - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

- (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or
  - (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary way of the business of the company;
  - (d) makes any material omission in any statement relating to the affairs of the company;
  - (e) fails to inform the liquidator of a false debt within thirty days from the date he knows or believes that the false debt has been proved by any person;
  - (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
  - (g) within twelve months before the commencement of the winding up or at any time after the commencement has attempted to account for any part of the property of the company by fictitious losses or expenses; or
  - (h) within twelve months before the commencement of the winding up or at any time after the commencement, has been convicted of false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up.
- (2) For the purposes of this section, the date of the commencement of winding up shall be—
- (a) in the case of a winding up by Court, the presentation of the winding up petition against the company; or
  - (b) in the case of a voluntary winding up, the passing of the resolution to wind up the company.

(3) A person commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

(4) It shall be a defence to a charge under paragraph (1)(a), (b) or subparagraph (c)(i), (vii) or (viii) or paragraph (d) if the person proves that he had no intent to defraud, and to a charge under subparagraph (1)(c)(iii) or (iv) or paragraph (f) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (1)(c)(viii), every person who takes in pawns or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Inducement to be appointed as liquidator, *etc.***

**537.** Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred thousand ringgit or to both.

### **Falsification of books, *etc.***

**538.** Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

**Liability where proper accounts not kept**

**539.** (1) If, on an investigation under any other Part or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or the winding up or the period between the incorporation of the company and the commencement of the investigation or winding up, whichever is the lesser, every officer, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand ringgit or to both.

(2) For the purposes of this section, proper books or accounts shall be deemed not to have been kept in the case of any company if—

- (a) the books or accounts have not been kept as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and sellers of the goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or
- (b) the books or accounts have not been kept in such manner as to enable the books or accounts to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3) If in the course of winding up of a company or in any proceedings against a company, an officer of the company who knowingly was a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.

**Responsibility for fraudulent trading**

**540.** (1) If in the course of the winding up of a company or in any proceedings against a company it appears that any business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person or for any fraudulent purpose, the Court on the application of the liquidator or any creditor or contributory of the company, may, if the Court thinks proper so to do declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2) Where a person has been convicted of an offence under subsection 539(3) in relation to the contracting of such a debt as is referred to in that section, the Court on the application of the liquidator or any creditor or contributory of the company may, if the Court thinks proper so to do, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) When the Court makes any declaration under subsection (1) or (2), the Court may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to the person, or on any charge or any interest in any charge on any assets of the company held by or vested in the person or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purposes of subsection (3), “assignee” includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration and consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one million ringgit or to both.

(6) This section shall have effect notwithstanding that the person concerned is criminally liable under this Act in respect of the matters on the ground of which the declaration is made.

(7) On the hearing of an application under subsection (1) or (2), the liquidator may give evidence or call witnesses himself.

**Power of Court to assess damages against delinquent officers, etc.**

**541.** (1) If in the course of winding up it appears that—

(a) any person who has taken part in the formation or promotion of the company; or

(b) any past or present liquidator or officer,

has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may, on the application of the liquidator or of any creditor or contributory examine into the conduct of that person, liquidator or officer and compel him to repay or restore the money or property or any part of the money with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the two years preceding the commencement of the winding up whether by way of salary or otherwise which appears to the Court to be unfair or unjust to other members of the company.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

### **Prosecution of delinquent officers and members of company**

**542.** (1) If it appears to the Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either to prosecute the offender himself or to refer the matter to the Minister.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.

(3) If it appears to the liquidator in the course of any winding up that the company which is being wound up will be unable to pay its unsecured creditors more than fifty cents in the ringgit, the liquidator shall forthwith report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any documents as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3), the Minister may, if he thinks fit, investigate the matter and may apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and subject to the previous approval of the Court, the liquidator may himself take proceedings against the offender.



(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as mentioned in subsection (2) and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, this section shall have effect as though the report has been made under subsection (2).

(6) Where any matter is reported or referred to the Minister or Official Receiver under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Minister or Official Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purposes of subsection (6), “agent”, in relation to a company, includes any banker or advocate of the company and any person employed by the company as auditor, whether or not an officer of the company.

(8) If any person fails or neglects to give assistance in manner required by subsection (6), the Court may, on the application of the Minister or Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this section shall be defrayed out of the moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up.

## Division 3

*Winding Up of Unregistered Companies***Provisions of Division cumulative**

**543.** The provisions of this Division shall be in addition to and not in derogation of any provisions contained in this or any other Act with respect to winding up companies by the Court and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Court or liquidator in winding up companies.

**Unregistered company**

**544.** For the purposes of this Division, “unregistered company” includes a foreign company and any partnership, association or company consisting of more than five members but does not include a company incorporated under this Act or under any corresponding previous written law.

**Winding up of unregistered companies**

**545.** (1) In respect of any unregistered company, the provisions of this Part shall apply with the following modifications:

- (a) the principal place of business of the company in Malaysia shall for all the purposes of the winding up be the registered office of the company;
- (b) no such company shall be wound up voluntarily; and
- (c) the circumstances in which the company may be wound up are—
  - (i) if the company is dissolved or has ceased to have a place of business in Malaysia or has a place of business in Malaysia only for the purpose of winding up its affairs or has ceased to carry on business in Malaysia;
  - (ii) if the company is unable to pay its debts;

- (iii) if the Court is of the opinion that it is just and equitable that the company should be wound up; and
- (iv) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia.

(2) An unregistered company shall be deemed to be unable to pay its debts if—

- (a) the company is indebted in a sum exceeding the amount as may be prescribed by the Minister by an assignment or otherwise has served a notice of demand requiring the company to pay the sum due—
  - (i) by leaving it at its principal place of business in Malaysia;
  - (ii) by delivering it to the secretary, director, manager or principal officer of the company; or
  - (iii) by serving in any manner as the Court approves or directs,

and the company has failed to pay, secure or compound for the sum to the satisfaction of the creditor within three weeks after the service of the notice;

- (b) any action or other proceeding has been instituted against any member for any debt, demand due or claimed to be due from the company or the member in his capacity as a member, and, notice in writing of the institution of the action or proceeding has been served on the company—
  - (i) by leaving it at its principal place of business in Malaysia;
  - (ii) by delivering it to the secretary, director, manager or principal officer of the company; or
  - (iii) by serving in any manner as the Court approves or directs,

and the company has failed to pay, secure or compound for the debt or demand or to procure the action or proceeding to be stayed or to indemnify the defendant to his satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him within ten days after the service of the notice;

(c) the execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, any member or any person authorized to be sued as nominal defendant on behalf of the company is returned unsatisfied; or

(d) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(3) A company incorporated outside Malaysia may be wound up as an unregistered company under this Division notwithstanding that it is being wound up, has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

(4) In this section, “to carry on business” has the meaning assigned to it in section 561.

### **Contributories in winding up of unregistered company**

**546.** (1) Where an unregistered company is being wound up, a contributory shall be—

(a) a person who is liable to pay or contribute to the payment of—

(i) any debt or liability of the company;

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of winding up; or

(b) where the company has been dissolved in the place in which it is formed or incorporated, a person who immediately before the dissolution was a contributory,

and shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory, the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories shall apply.

### **Power of Court to stay or restrain proceedings**

**547.** (1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(2) Where an order has been made for the winding up of an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court imposes.

### **Outstanding assets of a dissolved unregistered company**

**548.** (1) Where an unregistered company, of which the place of incorporation or origin of which is in a designated country, has been dissolved and there remains in Malaysia any outstanding property, movable or immovable, including things in action which at the time it was dissolved—

- (a) was vested in the company;
- (b) the company entitled to it; or
- (c) the company had a disposing power,

but which was not acquired, realized upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall be and become vested in such person as is entitled according to

the law of the place of incorporation or origin of the company, in respect of the estate and interest, legal or equitable, of the company or its liquidator at the date the company was dissolved.

(2) Where the place of origin of an unregistered company is Malaysia, sections 556 to 560 shall, with such adaptations as may be necessary, apply in respect of that company.

(3) Where it appears to the Minister that any law in force in any other country contains provisions similar to the provisions of this section, he may, by notice published in the *Gazette*, declare that other country to be a designated country for the purposes of this section.

#### Division 4

#### *Striking Off and Management of Assets of Dissolved Companies*

##### Subdivision 1

##### *Striking Off*

#### **Power of Registrar to strike off company**

**549.** Notwithstanding any provision in this Act, the Registrar may strike a company off the register, if—

- (a) the company is not carrying on business or is not in operation;
- (b) the company has contravened this Act;
- (c) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia;
- (d) in any case where the company is being wound up and the Registrar has reasonable cause to believe that—
  - (i) no liquidator is acting;

- (ii) the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or
- (iii) the affairs of the company has been fully wound up under a Court winding up and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the court dissolving the company.

### **Application to strike off company**

**550.** Subject to section 549, the Registrar may strike a company off the register either on his own motion or upon an application by a director, member or liquidator of the company.

### **Notice of intention to strike off company**

**551.** (1) Before the name of a company can be struck off from the register under section 549, the Registrar may serve on the company or the liquidator, a notice, stating that if an answer showing cause to the contrary is not received within thirty days from the date of the notice, a notification to the public will be published in the manner determined by the Registrar, with a view to striking the name of the company off the register.

(2) The Registrar may strike the name of the company off the register after the expiration of thirty days of the publication of the notification in subsection (1) if he—

- (a) receives a confirmation that the company is no longer carrying on business or is not in operation;
- (b) receives no reply from the company to the notice referred to in subsection (1);
- (c) receives no objection to the notice and public notification referred to in subsection (1); or
- (d) is not satisfied with the reasons as to why the company should not be struck off.

(3) The Registrar shall publish the name of the company which has been struck off in the *Gazette* and upon publication in the *Gazette*, the company shall be dissolved.

(4) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to an officer of the company, or if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who formed the company, addressed to him at the last known address.

### **Objection to striking off**

**552.** (1) Where a notice of intention to strike off a company from the register is given under subsection 551(1), any person may, together with the payment of a prescribed fee, lodge with the Registrar, within thirty days from the date specified in the notice, an objection to the striking off of the company on any of the following grounds:

- (a) that the company is still carrying on business or there is other reason for it to continue in existence;
- (b) that the company is a party to legal proceedings;
- (c) that the company is in receivership or liquidation, or both;
- (d) that the person is a creditor or a member or a person who has an undischarged claim against the company;
- (e) that the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Division 6 of Part III; or
- (f) that, for any other reason, it would not be just and equitable to remove the company from the register.



(2) For the purposes of paragraph (1)(d)—

(a) a claim by a creditor against a company is not an undischarged claim if—

(i) the claim has been paid in full; or

(ii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or

(iii) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and

(b) a claim by a member or any other person against a company is not an undischarged claim if—

(i) payment has been made to the shareholder or that person in accordance with a right under the constitution or this Act to receive or share in the company's surplus assets; or

(ii) a receiver or liquidator has notified the member or that person that the company has no surplus assets.

(3) The Registrar shall not proceed with the striking off unless the Registrar is satisfied that—

(a) the objection has been withdrawn;

(b) any facts on which the objection is based are not, or are no longer correct; or

(c) the objection is frivolous and vexatious.

(4) The Registrar shall send a notification to the objector and the company if he decides to suspend or to continue with the process of striking off the company.

**Withdrawal of striking off application**

**553.** Subject to a payment of a prescribed fee, an applicant referred to in section 550 may withdraw the application under section 549 by lodging a notice of withdrawal to the Registrar.

**Effect of striking off**

**554.** (1) Where a company is struck off from the register under section 549, the company shall be dissolved, but—

- (a) the liability, if any, of every director or officer and member of the company continues and may be enforced as if the company had not been dissolved; and
- (b) nothing in section 550 shall affect the power of the Court to wind up a company, the name of which has been struck off from the register provided that there is proof that the company has a property which can be realised.

(2) Where the Court issued a winding up order under paragraph (1)(b), the liquidator shall only be required to discover and realise any assets of the company.

**Power of Court to reinstate struck off company into register**

**555.** (1) Any person who is aggrieved by the decision of the Registrar to strike off the company may, within seven years after the name of the company has been struck off, apply to the Court to reinstate the name of the company into the register.

(2) If the Court is satisfied that the company was at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be reinstated in the register, the Court may order that—

- (a) the name of the company be reinstated; and
- (b) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(3) Upon an office copy of the order is lodged with the Registrar, the company shall be deemed to have continued in existence as if its name had not been struck off.

## Subdivision 2

### *Management of Assets of Dissolved Companies*

#### **Power of Registrar to represent dissolved company in certain circumstances**

**556.** (1) Where after a company has been dissolved, it is proved to the satisfaction of the Registrar—

- (a) that the company if still existing would be legally or equitably bound to carry out, complete or give effect to some dealing transaction or matter; and
- (b) that in order to carry out, complete or give effect to some purely administrative act, should have been done by or on behalf of the company if still existing,

the Registrar may in representing the company or its liquidator under this section do or cause to be done any such act.

(2) The Registrar may execute or sign any relevant instrument or document stating that he has done so under this section, and the execution or signature shall have the same force, validity and effect as if the company, if existing, had duly executed such instrument or document.

#### **Outstanding assets of dissolved or struck off company to vest in Registrar**

**557.** (1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether within or outside Malaysia which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved —

- (a) was vested in the company;
- (b) the company entitled to it ; or

(c) the company had a disposing power,

but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall, for the purposes of the following sections of this Subdivision and notwithstanding any other written law to the contrary, be vested in the Registrar for all the estate and interest, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator had at that time.

(2) For the purposes of subsection (1), where any claim, right or remedy of the liquidator may, under this Act, be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Registrar may make, exercise or avail himself of that claim, right or remedy without that approval or concurrence.

### **Disposal of outstanding interests in property**

**558.** (1) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of section 557 or of any corresponding previous written law or of a law of a designated country corresponding with section 548, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Registrar may sell or otherwise dispose of or deal with such estate or interest or any part of the estate or interest in property as he deems fit.

(2) The Registrar may sell or otherwise dispose of or deal with the property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Registrar shall be remunerated by the commission, whether by way of percentage or otherwise, as prescribed in respect of the exercise of the powers conferred upon him by subsection (1).

(4) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental to the dissolution to any payment authorized by this Subdivision and the surplus, if any, shall be dealt with as if they were unclaimed moneys under the laws relating to unclaimed moneys.

### **Liability of Registrar and Government as to property vested in Registrar**

**559.** (1) Property vested in the Registrar by operation of this Subdivision or by operation of any corresponding previous written law shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting the property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the company.

(2) Notwithstanding subsection (1), there shall not be imposed on the Registrar or the Government any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as the charges, claims or liabilities are in the opinion of the Registrar properly available for and applicable to the payment.

### **Accounts and audit**

**560.** (1) The Registrar shall—

- (a) record in the register a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings;
- (b) keep accounts of all moneys arising and of how the moneys have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to the property and moneys.

(2) The Auditor General shall have all the powers in respect of those accounts as are conferred upon him by any Act relating to audit of public accounts.

## PART V

### MISCELLANEOUS

#### Division 1

#### *Foreign Companies*

#### **Prohibition on carrying on business in Malaysia**

**561.** (1) A foreign company shall not carry on a business in Malaysia unless the foreign company is registered as a foreign company under this Act.

(2) A foreign company shall not be regarded as carrying on business in Malaysia for the reasons only that it carries on activities as specified in the Thirteenth Schedule within Malaysia.

(3) For the purposes of this section, “carrying on business” includes establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Malaysia as an agent, legal personal representative, or trustee, whether by servants or agents or otherwise.

(4) The foreign company and every officer who contravene this section commit an offence.

#### **Registration of foreign companies**

**562.** (1) For the purpose of registration under this Act, a foreign company shall provide to the Registrar the following information:

- (a) the name, identification, nationality and the ordinary place of residence of every shareholder in Malaysia and, if any of these persons is a body corporate, the corporate name, place of incorporation, registration number and the registered office of the body corporate;

- (b) the name, identification, nationality and the ordinary place of residence of every person who is appointed as a director of the foreign company in Malaysia;
- (c) the list of its shareholders or members at its place of origin;
- (d) in the case of a foreign company with share capital, the details of class and number of shares at its place of origin;
- (e) in the case of a foreign company limited without share capital, the amount up to which the member undertakes to contribute to the assets of the foreign company at its place of origin in the event of its being wound up;
- (f) the name and address of a person who is a resident in Malaysia, who is appointed by the foreign company as its agent under a memorandum of appointment or power of attorney; and
- (g) such other information that the Registrar may require.

(2) The application made under subsection (1) shall be accompanied with a statement by the agent of the foreign company confirming his consent for the appointment.

(3) Upon being satisfied that the requirements of this Act have been complied with and on payment of the prescribed fee, the Registrar shall—

- (a) register the foreign company and allocate a registration number for the foreign company; and
- (b) issue a notification of registration in the form and manner as the Registrar may determine and the notification shall be conclusive evidence that the requirements as to registration have been complied with.

(4) For the purposes of paragraph (1)(c), “list of shareholders or members” means a list of all of the shareholders or members of the foreign company, provided that if the number of its shareholders or members exceeds five hundred —

- (a) a list of its twenty largest shareholders or members; and

- (b) a certificate by the agent stating that the foreign company has more than five hundred shareholders or members and the full list of shareholders or members is kept at the registered office of the foreign company and also kept at the registered office of the foreign company in Malaysia.

### **Requirement for foreign companies to have agent**

**563.** (1) A foreign company shall at all times appoint an agent in Malaysia who, until he ceases to be an agent in accordance with subsection (5), shall—

- (a) continue to be the agent of the foreign company;
- (b) be answerable for all such acts, matters and things that are required to be done by the foreign company under this Act; and
- (c) be personally liable to all penalties imposed on the foreign company for any contravention of this Act unless the agent satisfies the Court hearing the matter that the agent should not be liable.

(2) For the purposes of subsection (1), the foreign company shall notify the Registrar of any changes relating to the registered particulars of agent within fourteen days of the change.

(3) A foreign company or its agent shall lodge with the Registrar a notice in writing stating that the agent has ceased or will cease to be the agent on a date specified in the notice.

(4) The agent in respect of whom the notice has been lodged shall cease to be an agent—

- (a) on the expiry of twenty one days from the date of lodgement of the notice with the Registrar or on the date of lodgement of the memorandum of appointment of another agent in accordance with subsection (5), whichever is the earlier; or



- (b) if the notice states a date on which the agent is to cease and the date is later than the expiration of that period, on that later date.

(5) If an agent ceases to be an agent and the foreign company continues to carry on business or has a place of business in Malaysia, the foreign company shall appoint another agent within twenty one days from the date the previous agent ceases to be an agent.

### **Name of foreign company and its publication**

**564.** (1) A foreign company shall be registered under the name as registered in its place of origin subject to the name being available under section 26.

(2) Any change in the name of a foreign company shall not be registered if the name is not available under section 26.

(3) No foreign company to which this Part applies shall use in Malaysia any name other than that under which it is registered under this Division.

(4) The foreign company and every officer or agent who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Obligation to state name of foreign company, whether limited, and place where incorporated**

**565.** (1) A foreign company shall—

- (a) conspicuously exhibit its name and the place where the foreign company is formed or incorporated in romanised letters outside its registered office and every place of business established by it in Malaysia;

(b) cause its name, company number and the place where the foreign company is formed or incorporated to be stated in legible romanised letters on the following:

- (i) its business letters, notices and other official publications, including in electronic medium;
- (ii) its websites;
- (iii) its bills of exchange, promissory notes, endorsements and order forms;
- (iv) cheques purporting to be signed by or on behalf of the company;
- (v) orders, invoices and other demands for payment, receipts and letters of credit purporting to be issued or signed by or on behalf of the company; and
- (vi) all other forms of its business correspondence and documentation.

(c) if the liability of its members is limited, unless the last word of its name is the word “*Berhad*” or “*Limited*” or the abbreviation “*Bhd.*” or “*Ltd.*”, cause notice of that fact—

- (i) to be stated in legible characters in every prospectus issued by the foreign company and all circumstances referred to in paragraph (b); and
- (ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by the banking corporation in Malaysia.

(2) The requirement under subsection (1) relating to the exhibition or statement of its name shall be deemed not to have been complied with if—

- (a) the name of a foreign company is indicated on the outside of its registered office;

- (b) any place of business established by it in Malaysia; or
- (c) on any of the documents referred to in subsection (1) in characters or in any other way than by the use of romanised letters,

unless the name of the foreign company is exhibited outside its registered office or place of business or stated on the document in romanised letters, at least of equal size with all of the characters exhibited or stated on the relevant office, place of business or document.

(3) In this section, “company number” means the number allocated by the Registrar to a foreign company on its registration.

### **Requirement to have a registered office**

**566.** (1) A foreign company shall, at all times, have a registered office within Malaysia—

- (a) to which all communications and notices may be addressed; and
- (b) which shall be open and accessible to the public during ordinary business hours.

(2) Every foreign company shall, within thirty days from it establishes a place of business or commences to carry on business within Malaysia, lodge with the Registrar of the situation of its registered office in Malaysia and, unless the office is open and accessible to the public during ordinary business hours, the days and hours during which it is open and accessible to the public.

### **Return to be filed where documents, *etc.*, altered**

**567.** (1) If any change or alteration is made in—

- (a) the charter, statutes, constitution, memorandum or articles of the foreign company or other instrument lodged with the Registrar;

- (b) the directors of the foreign company or in the name or address of any director;
- (c) the agent of the foreign company or the name or address of any agent;
- (d) the situation of the registered office of the foreign company in Malaysia or the days or hours during which the registered office of the foreign company is open and accessible to the public;
- (e) the address of the registered office of the foreign company in its place of incorporation or origin;
- (f) the name of the foreign company; or
- (g) the powers of any directors resident in Malaysia who are members of the local board of directors of the foreign company,

the foreign company shall, within fourteen days or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as may be determined by the Registrar.

(2) Subject to this Act, the Registrar shall register the change or alteration as provided for under subsection (1) upon receipt of the particulars of the change or alteration.

(3) If a foreign company increases its share capital or authorized share capital, the foreign company shall lodge with the Registrar notice of the amount from which and the amount to which the share capital has been increased within thirty days or within such further period as the Registrar in special circumstances allows after the increase.

(4) If a foreign company not having a share capital increases the number of its members beyond the registered number, the foreign company shall lodge with the Registrar notice of the increase within thirty days or within such further period as the Registrar in special circumstances allows after the increase was resolved on or took place.

(5) If any order is made by a Court under any law which corresponds to section 366 in force in the country in which a foreign company is incorporated, the foreign company shall lodge with the Registrar an office copy of that order within thirty days or within such further period as the Registrar in special circumstances allows after the order was made.

### **The branch register**

**568.** (1) Subject to this section, a foreign company which has a share capital and has any member who is resident in Malaysia shall keep a branch register for the purpose of registering shares of the members resident in Malaysia who apply to have the shares registered at its registered office in Malaysia or at some other place in Malaysia.

(2) The company shall not be obliged to keep a branch register under subsection (1) until after the expiration of sixty days from the receipt by the company of an application in writing by a member resident in Malaysia for registration in its branch register in Malaysia of the shares held by the member.

(3) This section shall not apply to any foreign company which by its constitution prohibits any invitation to the public to subscribe for shares in the foreign company.

(4) Every such register as aforesaid shall be kept in the manner provided by Division 8 of Part II as though the register were the register of a company and transfers shall be effected on the register in the same manner and at the same charges as on the principal register of the company and transfer lodged at its registered office in Malaysia shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in Malaysia.

(5) If a foreign company opens a branch register in Malaysia, the foreign company shall lodge with the Registrar a notice of that fact specifying the address where the register is kept within fourteen days from the opening of the branch.

(6) If any change is made in the place where the register is kept or where the register is discontinued, the foreign company shall lodge notice of the change or discontinuance with the Registrar within fourteen days of the change or discontinuance.

(7) If a foreign company or corporation is entitled under a law of the place of incorporation corresponding with section 371 to give notice to a dissenting shareholder in that foreign company, that the foreign company desires to acquire any of his shares registered on a branch register kept in Malaysia, this section shall cease to apply to that foreign company until—

(a) the shares have been acquired; or

(b) that company or corporation has ceased to be entitled to acquire the shares.

(8) The foreign company, every officer and agent who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Registration of shares in branch register**

**569.** Subject to this Act, on an application in that behalf by a member resident in Malaysia, the foreign company shall register in a branch register of the foreign company, the shares held by a member which are registered in any other register kept by the company.

### **Removal of shares from branch register**

**570.** Subject to this Act, on application in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the particulars relating to the shares from the branch register and register the shares in such other register within Malaysia as is specified in the application.

**Index of members, inspection and closing of branch registers**

**571.** Sections 50, 51, 52, 53, 54 and 55 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register.

**Transfer of shares and rectification**

**572.** Sections 105, 106, 107 and 602 shall apply with necessary adaptations with respect to the transfer of shares and the rectification of the branch register of a foreign company.

**Branch register to be *prima facie* evidence**

**573.** A branch register shall be *prima facie* evidence of—

- (a) any matters directed or authorized by this Subdivision to be inserted in the branch register; and
- (b) the title of the member to the shares and the registration of the shares in the branch register.

**Accounts to be kept by foreign companies**

**574.** (1) Every foreign company, the directors and managers shall cause—

- (a) to be kept accounting and other records in Malaysia as will sufficiently explain the transactions and financial position of the foreign company, arising out of its operations in Malaysia; and
- (b) the records under paragraph (a) to be kept in such a manner as to enable the records to be conveniently and properly audited.

(2) The records referred to in subsection (1) shall be audited by a person approved under section 263.

(3) Every foreign company, the directors and managers of the foreign company shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which the entries relate.

(4) Subsections 245(3), (4), (7) and (8) shall apply to foreign companies as if for references to a “company” there were substituted references to a “foreign company”.

### **Financial statements**

**575.** (1) Subject to this section, a foreign company shall, within two months of its annual general meeting, lodge with the Registrar a copy of its financial statement made up to the end of its last financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its financial statement by the law for the time being applicable to that company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(2) The Registrar may, if he is of the opinion that the financial statement and other documents referred to in subsection (1) do not sufficiently disclose the company’s financial position, require the company to lodge a financial statement within such period, in such form and containing such particulars and to annex thereto such documents as the Registrar by notice in writing to the company requires, but this subsection does not authorize the Registrar to require a financial statement to contain any particulars or the company to annex, attach or to send any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(3) The foreign company shall comply with the requirements set out in the notice.

(4) Where a foreign company is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a financial statement, the foreign company shall prepare and lodge with the Registrar a financial statement within such period, in such form and containing such particulars and to annex such documents as the directors of the foreign



company would have been required to prepare or obtain if the foreign company were a public company incorporated under this Act.

(5) In addition to the financial statement and other documents required to be lodged with the Registrar by subsections (1) to (4), a foreign company shall lodge with the Registrar—

- (a) a duly audited financial statements and other documents required to be attached with the financial statements; and
- (b) a duly audited statement showing the foreign company assets used in and liabilities arising out of its operations in Malaysia as at the date to which its financial statement was made up,

which so far as is practicable, complies with the applicable approved accounting standards and which gives a true and fair view of the foreign company's operations in Malaysia for the last preceding financial year of the company.

(6) Subject to subsection (5), the foreign company shall be entitled to make such allotment of expenses incurred in connection with the operations or administration affecting both Malaysia and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Malaysia.

(7) The Registrar may waive compliance with subsection (5) in relation to any foreign company if the Registrar is satisfied that—

- (a) it is impractical to comply with this subsection having regard to the nature of the company's operations in Malaysia;
- (b) it would be of no real value having regard to the amount involved;
- (c) it would involve expense unduly out of proportion to its value; or

- (d) it would be misleading or harmful to the business of the company or to any company which is deemed by virtue of section 7 to be related to the company.

(8) Financial statements shall be deemed to have been duly audited for the purposes of subsection (5) if the financial statement is —

- (a) accompanied by a report by an approved company auditor in accordance with section 266; and
- (b) accompanied with a statutory declaration by the agent or, where the agent is not primarily responsible for the financial management of the company, by the person so responsible setting forth his opinion as to the correctness or otherwise of the statement and profit and loss account.

### **Annual return**

**576.** (1) A foreign company shall lodge with the Registrar, once in every calendar year, an annual return in the form and manner as the Registrar may determine.

(2) The annual return shall contain the following particulars:

- (a) the address of its registered office;
- (b) the address of its business place including branch, if any;
- (c) the address at which its register of members is kept, if not kept at the registered office;
- (d) the address at which its financial records are kept, if not kept at the registered office;
- (e) in the case of a company with a share capital, the summary of its shareholding structure, including debentures;
- (f) the total amount of its indebtedness in Malaysia;
- (g) the particulars of directors, officers, auditors and agents in Malaysia;
- (h) the list of its shareholders or members; and

- (i) such other information as the Registrar may require from time to time.

(3) The return shall be lodged not later than thirty days from the anniversary of its registration date or within such further period as the Registrar in special circumstances allows.

### **Service of notice**

**577.** Any document required to be served on a foreign company shall be sufficiently served—

- (a) if the document is addressed to the foreign company and left at or sent by post to its registered office in Malaysia;
- (b) if the document is addressed to an agent of the company and left at or sent by post to his registered address; or
- (c) in the case of a foreign company which has ceased to maintain a place of business in Malaysia, if the document is addressed to the foreign company and is left at or sent by post to its registered office in the place of its incorporation or origin.

### **Cessation of business in Malaysia**

**578.** (1) If a foreign company ceases to have a place of business or to carry on business in Malaysia, the foreign company shall, within seven days from ceasing, lodge with the Registrar notice to that fact, and as from the day on which the notice is lodged, its obligation to lodge any document, other than a document that ought to have been lodged before that day, shall cease.

(2) The Registrar shall remove the name of that foreign company from the register upon the expiration of twelve months after the lodging of the notice.

(3) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin—

- (a) any person who, immediately prior to the commencement of the liquidation proceedings, was an agent shall, within thirty days from the commencement of the liquidation

or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of his appointment; and

- (b) the liquidator shall have the powers and functions of a liquidator until a liquidator for Malaysia is duly appointed by the Court.

(4) A liquidator of a foreign company appointed for Malaysia by the Court or a person exercising the powers and functions of a liquidator—

- (a) shall, before any distribution of the assets of the foreign company is made, by advertisement in a newspaper widely circulated in each country where the foreign company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;

- (b) shall not pay out any creditor to the exclusion of any other creditor of the foreign company without obtaining an order of the Court except as otherwise provided in subsection (7); and

- (c) shall, unless otherwise ordered by the Court—

- (i) only recover and realize the assets of the foreign company in Malaysia; and

- (ii) subject to subsection (7), pay the net amount so recovered and realized to the liquidator of that foreign company for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Malaysia by the foreign company.

(5) Where a foreign company has been wound up, so far as its assets in Malaysia are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under subsection (3).

(6) Upon receipt of a notice from a compliance officer that the foreign company has been dissolved, the Registrar shall remove the name of the company from the register.

(7) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Malaysia, the provisions of this Act relating to the striking off the register of the names of defunct companies shall, with such modifications as are necessary, extend and apply accordingly.

(8) Section 527 shall apply to a foreign company wound up or dissolved under this section as if for references to a “company” were substituted references to a “foreign company”.

### **Power of foreign companies to hold immovable property**

**579.** Subject to and in accordance with any written law, a foreign company registered under this Subdivision shall have the power to hold any immovable property in Malaysia.

## **Division 2**

### *Enforcement and Sanctions*

#### **Subdivision 1**

### *Enforcement of the Act*

### **As to rights of witnesses to legal representation**

**580.** Any person summoned for examination under section 502 or 503 may at his own cost appoint an advocate and solicitor who shall be at liberty to put to him such questions as the Court, Sessions Court Judge or Magistrate deems just, for the purpose of enabling him to provide explanation or qualify any answers given by him.

### **Power to grant relief**

**581.** (1) In any proceeding for negligence, default, breach of duty or breach of trust against any person to whom this section applies, if it appears to the Court before which the proceedings

are taken that a person is or may be liable, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.

(2) If any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) This section applies to—

- (a) an officer of a corporation;
- (b) a person employed by a corporation as an auditor, whether he is or is not an officer of the corporation;
- (c) an expert within the meaning of this Act;
- (d) a liquidator or person who is appointed by the Court, receiver, receiver and manager or judicial manager that carries out any duty under this Act in relation to a corporation; and
- (e) a nominee appointed under a voluntary arrangement to carry out any duty under this Act in relation to a corporation.

### **Irregularities in proceedings**

**582.** (1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of the opinion that substantial injustice has been or may be caused which cannot be remedied by any order of the Court.

(2) The Court may, if it thinks fit, make an order declaring that the proceeding is valid notwithstanding any such defect, irregularity or deficiency.

(3) Without affecting the generality of subsections (1) and (2) or any other provision of this Act, where any omission, defect, error or irregularity, including the absence of a quorum at any meeting of the company or of the directors has occurred in the management or administration of a company whereby—

- (a) any breach of this Act has occurred;
- (b) there has been default in the observance of the constitution of the company; or
- (c) any proceedings at or in connection with any meeting of the company or of the directors or any assembly purporting to be such a meeting have been rendered ineffective including the failure to make or lodge any declaration of solvency under section 443,

the Court—

- (i) may, either of its own motion or on the application of any interested person, make such order as the Court thinks fit to—
  - (A) rectify or cause to be rectified or to negate or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity; or
  - (B) validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;
- (ii) shall, before making any such order, satisfy itself that such an order would not do injustice to the company or to any member or creditor;
- (iii) where any such order is made, may give such ancillary or consequential directions as the Court thinks fit; and
- (iv) may determine notice or summons to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether

and how the notice or summons should be given or served and whether the notice or summons should be advertised in any newspaper.

(4) The Court, whether the company is in process of being wound up or not, may enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act upon such terms, if any, as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

### **Disposal of shares of shareholder whose whereabouts unknown**

**583.** (1) If by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than ten years, the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of thirty days from the date of the advertisement intends to transfer the shares to the Minister charged with responsibility for finance.

(2) The company may transfer the shares held by the shareholder in the company to the Minister charged with responsibility for finance and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Minister charged with the responsibility for finance if after the expiration of thirty days from the date of the advertisement the whereabouts of the shareholder remain unknown.

(3) The Minister charged with the responsibility for finance shall sell or dispose of any shares received in such manner and at such time as the Minister thinks fit and shall deal with the proceeds of the sale or disposal as if the shares were moneys paid to him under the law relating to unclaimed moneys.

(4) The Minister charged with the responsibility for finance may transfer any shares received to the owner of the shares if there are claims to the shares held by the Minister, which has yet to be sold or disposed of.



**Furnishing of information and particulars of shareholding**

**584.** (1) The Registrar may at any time by notice in writing require any company, person or individual to furnish all the necessary information and particulars of any share acquired or held directly or indirectly either for his own benefit or for any other company, person or individual and have the information and particulars verified by statutory declaration.

(2) Any company, person or individual served with the notice under subsection (1) shall furnish the Registrar all the necessary information and particulars of any share acquired or held and duly verified by statutory declaration within seven days of the receipt of such notice.

(3) A company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding 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.

(4) Any person or individual who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to 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.

**Court may compel compliance**

**585.** If an officer or former officer of a company or any other person failed or omitted to do any act, matter or thing which by or under this Act he is or was required or directed to do, including to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may by order require that officer or former officer or person to do the act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order the former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

**Translations of instruments**

**586.** (1) If under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy of the instrument, certificate, contract or document that is not written in the national language or in the English language, the corporation shall lodge at the same time with the Registrar a certified translation either in the national language or in the English language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document that is not written in the national language or in the English language, the corporation shall keep at its registered office in Malaysia a certified translation of instrument, certificate, contract or document either in the national language or in the English language.

(3) If any financial statements, minute books or other records of a corporation required by this Act to be kept, are not kept in the national language or in the English language, the directors of the corporation shall cause a true translation of such financial statements, minute books and other records to be made from time to time at intervals of not more than seven days and shall cause such translations to be kept with the original financial statements, minute books and other records for so long as the original financial statements, minute books and other records are required to be kept by this Act.

(4) Notwithstanding subsections (1), (2) and (3), the Registrar may require any company to file any instrument, certificate, contract or document including any financial statements, minute books or other records of a corporation or a certified copy in the national language.

**Protection to certain officers who make disclosures**

**587.** (1) Where an officer of a company in the course of performance of his duties has reasonable belief of any matter which may or will constitute a breach or non-observance of any requirement or provision of this Act or its regulations, or has reason to believe that a serious offence involving fraud or dishonesty, as defined in paragraph 266(11)(b) has been, is being or is likely to be committed against the company or this

Act by other officers of the company, he may report the matter in writing to the Registrar.

(2) The company shall not remove, demote, discriminate against, or interfere with the lawful employment or livelihood of such officer of the company by reason of the report submitted under subsection (1).

(3) No officer of a company shall be liable to be sued in any court or be subject to any tribunal process, including disciplinary action for any report submitted by the officer under subsection (1) in good faith and in the intended performance of his duties as an officer of the company.

### **General penalty provisions**

**588.** (1) A person commits an offence under this Act if he—

- (a) does that which by or under this Act he is prohibited to do;
- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act.

(2) A person who is guilty of an offence under this Act shall, on conviction, be liable to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not mentioned—

- (a) in the case of a person who is an individual, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both;
- (b) in the case of a person other than an individual, to a fine not exceeding fifty thousand ringgit.

(3) For the purposes of this section, “individual” means a natural person.

**Proceedings how and when taken**

**589.** (1) The Registrar or any person shall not institute any proceeding for any offence under this Act except with the written consent of the Public Prosecutor.

(2) The Registrar or any officer authorized by the Public Prosecutor in writing shall have the right to appear and be heard before a Magistrate's Court or a Sessions Court in any proceedings for an offence under this Act.

(3) Proceedings for any offence under this Act other than an offence punishable with imprisonment for a term exceeding five years may be prosecuted in a Magistrate's Court and in the case of an offence punishable with imprisonment for a term of five years or more shall be prosecuted in the Sessions Court.

**Investigation of affairs of company at direction of Minister**

**590.** (1) The Minister may, either of his own motion or on the application of—

(a) in the case of a company having a share capital—

(i) not less than two hundred members or members holding at least ten per centum of the issued shares; or

(ii) debenture holders holding not less than twenty per centum of the value of the issued debentures; or

(b) in the case of a company not having a share capital, not less than twenty per centum of the total members,

declare the affairs of the company or foreign company to be investigated under this section.

(2) The Minister may make the declaration on his own motion under subsection (1) if he is satisfied that—

(a) a *prima facie* evidence has been established that for the protection of the public, the interest holders of a scheme under the Interest Schemes Act 2015, the members

or creditors of a company or a foreign company, an investigation to be carried out under this section;

- (b) it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of a company or a foreign company be investigated under this section;
- (c) for any other reason it is in the public interest that the affairs of the company or foreign company be investigated under this section; or
- (d) in the case of a foreign company, the appropriate authority of another country has requested that a declaration be made under this section.

(3) An application under this section shall be supported by evidence as the Minister requires and the reasons of the applicants in requiring the investigation.

(4) Before declaring that an investigation to be carried out under this section, the Minister may require the applicants to give security to such amount as he thinks fit for the costs of the investigation.

(5) On or after the commencement of an investigation under this section until the expiration of three months after a final report is presented to the Minister as to the findings of the investigation, no proceedings or actions shall be commenced or proceeded in any Court without the consent of the Minister—

- (a) by the company in respect to or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless at the time of the negotiation, transfer, issue, endorsement or delivery, the holder or other person—

- (i) has given adequate pecuniary consideration; and

- (ii) at any time within three years before, was not a member, officer, agent or employee of the company or the wife or husband of a member officer, agent or employee of the company.

(6) For the purposes of this section—

“affairs of the company” includes—

- (a) the promotion, formation, membership, control, trading, dealings, business and property of the company;
- (b) the ownership of shares in, debentures of or participatory interests issued by the company;
- (c) the ascertainment of the persons who are or have been financially interested in the success or failure or apparent success or failure of the company or are or have been able to control or materially to influence the policy of the company; and
- (d) the circumstances under which a person acquired or disposed of or becomes entitled to acquire or dispose of shares in, debentures of or participatory interests issued by the company;

“officer or agent”, in relation to a corporation, includes—

- (a) a director, banker, advocate or auditor of the corporation;
- (b) a person who at any time—
  - (i) has been a person referred to in paragraph (a);  
or
  - (ii) has been otherwise employed or appointed by the corporation;

(c) a person who—

(i) has in his possession any property of the corporation;

(ii) is indebted to the corporation; or

(iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

(d) where there are reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c), that person.

(7) Any person who with intent to defeat the purposes of this section, or to delay or obstruct the carrying out of an investigation under this section—

(a) destroys or alters any book, document or record of or relating to a company or foreign company declared under this section; or

(b) sends or attempts to send or conspires with any other person to send out of Malaysia any such book, document or record or any property of any description belonging to or in the disposition or under the control of the company or foreign company,

commits an offence and shall, on conviction, be liable to a term of imprisonment not exceeding five years or to a fine not exceeding one million ringgit or to both.

## Subdivision 2

### *General Offences*

#### **False and misleading statements**

**591.** (1) Every corporation which advertises, circulates or publishes any return, report, certificate, financial statement or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or

thing which makes the document misleading in a material respect and every officer of the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication commits an offence, and shall, on conviction—

- (a) in the case of a corporation, be liable to a fine not exceeding three million ringgit; and
- (b) in the case of officer of the corporation, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

(2) Every person who in any return, report, certificate, financial statement or other document required by or for the purposes of this Act—

- (a) makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false; or
- (b) misleads or intentionally omits or authorizes the omission or accession of any matter or thing making the document misleading in a material respect,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(3) If a person at a meeting votes in favour of the making of a statement referred to in this section knowing it to be false, he shall be deemed to have authorized the making of that statement.

### **False reports**

**592.** (1) An officer of a corporation who, with intent to deceive, makes or furnishes or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report to—

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;



- (b) in the case of a corporation that is a subsidiary, an auditor of the holding company;
- (c) a stock exchange whether in or outside Malaysia or an officer of the stock exchange; or
- (d) the Securities Commission,

relating to the affairs of the corporation commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

(2) In subsection (1), “officer”, in addition to the definition under section 2, includes a person who at the time the offence was committed is an officer of the corporation.

### **False report or statement to the Registrar**

**593.** A person who makes or furnishes, or knowingly authorizes or permits the making or furnishing of, any false or misleading statement, information or report to the Registrar relating to—

- (a) the affairs of a corporation;
- (b) any matter or thing required by the Registrar for the implementation of this Act; or
- (c) the enforcement of this Act,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

### **Fraudulently inducing persons to invest money**

**594.** (1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive or by any dishonest concealment of material facts or by the reckless making

of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into—

- (a) any agreement for or with a view of acquiring, disposing of, subscribing in or underwriting marketable securities or lending or depositing money to or with any corporation; or
- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of marketable securities or by reference to fluctuations in the value of marketable securities,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(2) Every officer or agent of any corporation by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that corporation or to himself or any other person for the use of benefit or on account of that corporation commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(3) The opinion of any properly qualified auditor or accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognized audit practice shall be admissible during the proceedings as evidence, either for the prosecution or for the defence of the financial position of the company at that time or during that period notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

### **Fraud by officer**

**595.** (1) Every officer of a company who—

- (a) by deceitful or fraudulent or dishonest means or by means of any other fraud induced any person to give credit to the company;

- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(2) In subsection (1), “officer” in addition to the definition under section 2 includes a person who at the time the offence was committed is an officer of the corporation.

**Restriction on offering shares, debentures, *etc.*, for subscription or purchase**

**596.** (1) A person shall not, whether by appointment or otherwise, go from place to place—

- (a) offering shares for subscription or purchase to the public or any member of the public; or
- (b) seeking or receiving offers to subscribe for or to purchase shares from the public or from any member of the public.

(2) Subsection (1) shall not apply—

- (a) to an offer for subscription or purchase or invitation to subscribe for or purchase or recommendation to which the Capital Markets and Services Act 2007 applies; and
- (b) in the case of shares of any corporation—
  - (i) notice of intention to apply for exemption from subsection (1) in the form and manner as determined by the Registrar has been advertised in one widely

circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in English language; and

- (ii) the exemption from the application of subsection (1) has been obtained from the Minister upon the recommendation of the Registrar.

(3) For the purposes of subsection (1), a person shall not in relation to a corporation be regarded as not being a member of the public by reasons only that he is a shareholder in the corporation or a purchaser of goods from the corporation.

(4) A person shall not make any oral invitation or offer to the public or to any member of the public to subscribe for or to purchase shares.

(5) A person shall not make an offer to purchase any shares to the public or to any member of the public who is not a person whose ordinary business is to buy or sell shares, whether as principal or agent.

(6) Subsection (5) shall not apply—

- (a) where the shares to which the offer relates are shares of a class which are quoted on, or in respect of which permission to deal has been granted by, a stock exchange and the offer states and specifies the stock exchange;
- (b) where the shares to which the offer relates are shares which a corporation has allotted or agreed to allot with a view to shares being offered for sale to the public and the offer is accompanied with a document that complies with this Act and any other written law relating to prospectus;
- (c) to any application for shares in or debentures of a corporation or to any invitation to deposit money with or lend money to a corporation which is issued, circulated, distributed or made subject to and in accordance with Subdivision 9 of Division 1 of Part III or in accordance with the provisions of Division 3 of Part VI of the Capital Market and Services Act 2007;

- (d) where the offer relates to an interest to which the Interest Schemes Act 2015 applies and is accompanied with a statement in writing as required by that Act;
- (e) to deposits or loans to a corporation referred to in section 158; or
- (f) to any advice as to the price at which a management company is prepared to buy or sell any interest to which the Interest Schemes Act 2015 applies, given or sent by the management company to any person to whom the management company has given or sent a statement in writing relating to that interest which complies with the Interest Schemes Act 2015 within the period of six months immediately preceding the giving or sending of the advice.

(7) Every person who acts, or incites, causes or procures any person to act, in contravention of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

(8) Where a person convicted of an offence under this section is a corporation, every officer concerned in the management of the corporation shall be guilty of a similar offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(9) Where any person is convicted of having made an offer in contravention of this section, the Court before which he is convicted may order that any contract made as a result of the offer shall be void and may give such consequential directions as the Court thinks proper for the repayment of any money or the retransfer of any shares.

(10) In this section, “shares” means shares of a corporation whether a corporation in existence or to be formed and includes debentures and units and without affecting the generality of the expression “debentures”, all such documents, including those referred to as “bonds”, as confer or purport to confer on the holder any claim against a corporation, whether the claim is present or

future or certain or contingent or ascertained or sounding only in damages and also includes any interest as referred to in the Interest Schemes Act 2015.

(11) In this section, a reference to an offer or offering of shares for subscription or purchase or for purchase shall be construed as including an offer of shares by way of barter or exchange and a reference to an offer of shares shall subject to subsection (12), be construed as including an offer by means of broadcasting, television or cinematograph.

(12) If an offer is made by means of broadcasting, television or cinematograph, the prospectus by which the offer is required to be accompanied under this section shall be deemed to accompany the offer if—

- (a) the prospectus is prepared by the person on whose behalf the offer is made;
- (b) the public are informed at the same time and by the same means as that by which the offer is made that a copy of the prospectus will be supplied on request being made at a specified address;
- (c) if request for a copy of a prospectus is made at that address within thirty days from the offer was made the person making the request is supplied with a copy within seven days from the request was made; and
- (d) the offer contains no more information or matter than the information or matter referred to in paragraph 163(1)(a).

**Restriction on the use of words “Limited”, “Berhad” and “Sendirian”**

**597.** (1) Any person carrying on business under any name or title of which “Berhad” or “Bhd.” or “Limited” or “Ltd.” is the final word or abbreviation, the person, unless duly incorporated with limited liability, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(2) A company shall not use the word “*Sendirian*” or “*Sdn.*” as part of its name if the company does not fulfil the requirements required by this Act to be fulfilled by private companies.

(3) A company and every officer of a company who contravene this section commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(4) Subject to Division 9 of Part II and for the purpose of this section, “carrying on business” includes the use of any name or title of which “*Berhad*” or “*Bhd.*” or “*Limited*” or “*Ltd.*” or the word “*Sendirian*” or “*Sdn.*” is part of the name or title in any documents, books or publication.

### **Prosecution of delinquent officers of company**

**598.** (1) This section applies where a moratorium has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or voluntary arrangement, as the case may be, for which he is criminally liable, the nominee or supervisor shall within fourteen days—

(a) report the matter to the Registrar; and

(b) provide the Registrar with such information and give the Registrar such access to and facilities for inspecting and taking copies of documents, being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question, as the Registrar requires.

(3) If a report is made to the Registrar under subsection (2), the Registrar may require an investigation to be carried out for the purpose of investigating the matter reported to the Registrar and such other matters relating to the affairs of the company.

(4) If the Registrar or any person institutes criminal proceedings following any report under subsection (2), the nominee or supervisor,

and every past and present officer and agent of the company shall give the Registrar all assistance in connection with the criminal proceedings which the past and present officer and agent of the company is reasonably able to give.

(5) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five hundred thousand ringgit or to both.

(6) For the purposes of this section, “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

### Division 3

#### *General Provisions*

#### **Evidentiary value of copies certified by Registrar**

**599.** (1) A copy or extract from any document filed or lodged at the office of the Registrar certified to be a true copy or extract signed and sealed by the Registrar shall be admissible in evidence in any proceedings as of equal validity with the original document.

(2) The reference in subsection (1) to a document includes, if a reproduction or transparency of that document has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency.

#### **Evidence of statutory requirements**

**600.** In any legal proceedings—

- (a) a certificate signed and sealed by the Registrar that at a date or during a period specified in the certificate, no company was registered under this Act or corresponding previous written law by a name specified in the certificate shall be admissible as *prima facie* evidence that at the date or during that period, as the case may be, no company was registered by that name under this Act or corresponding previous written law; and



(b) a certificate signed and sealed by the Registrar that a requirement of this Act specified in the certificate—

(i) had or had not been complied with at a date or within a period specified in the certificate; or

(ii) had been complied with at a date specified in the certificate but not before that date,

shall be admissible as *prima facie* evidence of matters specified in the certificate.

### **Registers and inspection of Register**

**601.** (1) Subject to this Act, the Registrar shall keep registers as the Registrar considers necessary in such forms as the Registrar thinks fit.

(2) Any person may, on payment of the prescribed fee—

(a) inspect any document filed or lodged with the Registrar not being a document that has been destroyed or otherwise disposed of under section 603;

(b) require a notification of the incorporation of any company or any other certificate issued under this Act; or

(c) require a copy or extract from any document that he is entitled to inspect under paragraph (a) or any notification or certificate referred to in paragraph (b) to be given and certified by the Registrar.

(3) If a reproduction or transparency of a document, notification or certificate is produced for inspection, a person is not entitled to require the reproduction of the original of that document or certificate under paragraph (2)(a).

(4) The reference in paragraph (2)(c) to a document or certificate includes, if a reproduction or transparency of that document or certificate has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency and if such a reproduction or transparency has been incorporated, a person is not entitled under that paragraph to a copy or extract from the original of that document or certificate.

**Rectification of registers**

**602.** (1) A person may apply to the Registrar for the rectification of a register if an entry in the register—

- (a) contains any matter contrary to law;
- (b) contains any matter that, in a material particular, is false or misleading in the form or context in which the matter is included;
- (c) by reason of an omission or misdescription has not been duly completed; or
- (d) is incorrect or erroneous.

(2) Upon receipt of the application under subsection (1), in order for the Registrar to decide whether to approve or refuse the application, the Registrar may—

- (a) require the applicant to produce any document or to furnish any information as the Registrar thinks necessary in order for the Registrar to rectify the entry; or
- (b) require the applicant to give notice of that application to such other person as the Registrar may specify, being a person who appears to the Registrar to be concerned or to have an interest in the business.

(3) Notwithstanding subsection (1), the Registrar may refuse any application if the error, mistake or omission does not arise in the ordinary course of the discharge of the duties of the Registrar.

(4) Any person aggrieved with the decision of the Registrar under this section may appeal to the Court.

(5) Any order made by the Court shall be lodged with the Registrar and where the Court makes an order of rectification, the Registrar shall rectify the register accordingly on receipt of the order.

(6) The Registrar may, without an application being made under subsection (1), rectify the register if, in his view, an entry—

- (a) contains any matter contrary to law;
- (b) contains any matter that, in a material particular, is false or misleading in the form or context in which it is included;
- (c) by reason of an omission or misdescription has not been duly completed; or
- (d) is incorrect or erroneous.

### **Disposal of old records**

**603.** The Registrar may, if in his opinion it is no longer necessary or desirable to retain the old records, destroy or give to the National Archives—

- (a) in the case of a corporation—
  - (i) any return of allotment of shares for cash which has been lodged or filed for not less than seven years;
  - (ii) any annual return or financial statement that has been lodged or filed for not less than seven years or any document creating or evidencing a charge or the complete or partial satisfaction of a charge where a memorandum of satisfaction of a charge has been registered for not less than seven years; or
  - (iii) any other document, other than the constitution or any other document affecting the corporation, which has been lodged, filed or registered for not less than seven years;
- (b) in the case of a corporation that has been dissolved or has ceased to be registered for not less than seven years, any document lodged, filed or registered; or

- (c) any document which has been incorporated in a register kept by the Registrar in whatever form.

### **Electronic lodgement of documents**

**604.** (1) The Registrar may provide a service for the electronic lodgement of documents required by this Act to be lodged with the Registrar.

(2) A document electronically lodged under this section shall be deemed to have satisfied the requirement for lodgement if the document is communicated or transmitted to the Registrar in such manner as may be determined by the Registrar.

(3) A document that is required to be stamped, signed or sealed shall, if the document is to be electronically lodged, be certified to be true copy or authenticated in such manner as may be determined by the Registrar.

(4) Where a document that is required to be signed and attested under this Act is to be filed electronically, the requirement for attestation of the signature does not apply.

(5) If a document is electronically lodged with the Registrar, the Registrar shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however arising appearing in any document obtained by any person under the service referred to in subsection (1), if such error or omission occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service or without the knowledge of the Registrar.

### **Issuing document electronically**

**605.** The Registrar may, by electronic means, issue a document which is to be issued by the Registrar under this Act.

**Electronic information, etc. certified by Registrar admissible in evidence**

**606.** Any information, document, a copy or extract from any document electronically lodged with the Registrar issued by the Registrar shall be a true extract from any documents lodged with or submitted to the Registrar under section 604 or issued by the Registrar under section 605 shall be admissible as *prima facie* evidence of matters specified in that information, document, copy or extract.

**Enforcement of duty to make returns**

**607.** (1) If a corporation or person, having made default in complying with—

- (a) any provision of this Act or any other law which requires the lodging or filing in any manner with the Registrar or Official Receiver of any return, account or other document or the giving of notice to the Registrar or Official Receiver of any matter; or
- (b) any request of the Registrar or the Official Receiver to amend or complete and re-submit any document or to submit a fresh document,

fails to make good the default within fourteen days from the service on the corporation or person of a notice requiring it to make good the default to be done, the Court or any Sessions Court may, on an application by any member or creditor of the corporation or by the Registrar or Official Receiver, make an order directing the corporation and any officer of the corporation or that person to make good the default within such time as is specified in the order.

(2) The order may provide that all costs incidental to the application shall be borne by the corporation or by any officers of the corporation or the person responsible for the default.

(3) Nothing in this section shall limit the operation of any written law imposing penalties on a corporation or its officers or that person in respect of any such default.

**Relodging of lost or destroyed documents**

**608.** (1) If the Registrar has reasonable cause to believe that a document in relation to a corporation which originally is lodged under this Act has been lost or destroyed, the Registrar may by notice in writing direct the corporation to relodge a copy of the document in the manner and form as may be determined by the Registrar.

(2) The corporation or any officer of the corporation shall comply with the direction of the Registrar within fourteen days from the service of the notice under subsection (1) or such longer period as the Registrar may allow.

(3) Upon the relodgement under subsection (1), the copy of the document shall, for all purposes, have the same force and effect as the originally lodged document.

(4) No fee shall be payable upon the relodging of a document under this section.

(5) The corporation and any officer of the corporation who fails to comply with the direction of the Registrar under subsection (1) commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

**Time for lodging documents and extension of time**

**609.** (1) If a document is required to be lodged under this Act and the period of time for the document to be lodged is not prescribed, the document shall be lodged within thirty days or, in the case of a document required to be lodged by a foreign company, within such further period as the Registrar in special circumstances allows, after the happening of the event to which the document relates.

(2) The Registrar shall have the power and upon payment of the prescribed fee, to extend any period of time relating to the lodgement of any document required to be lodged under this Act to such further period as the Registrar deems just and expedient, and the Registrar may require additional information and impose any terms and conditions as the Registrar deems fit.

**Particulars and manner of information required to be lodged under this Act**

**610.** (1) In addition to the requirements under this Act, if a document is required to be lodged under this Act, the Registrar shall have the power to determine the particulars, form and manner of information contain in such document.

(2) In determining whether a document is to be accepted for lodgement under this Act, the Registrar may require a person who submits the document to—

- (a) comply with the particulars, form or manner for the lodgement; or
- (b) produce other document or information as the Registrar thinks necessary.

**Time for compliance with the requirements under this Act**

**611.** If any action or document is required to be in compliance with this Act and the period for compliance is not prescribed, the time to comply shall be within thirty days from the action or document is required to be complied with.

**Methods of communication between company and members**

**612.** (1) The communication between a company and its members on matters relating to meetings and resolutions, supply of information or documents or otherwise for the purpose of complying with this Act, may be—

- (a) in hard copy;
- (b) in electronic form; or
- (c) by other methods agreed between the company and the members.

(2) A communication in hard copy for matters specified in subsection (1) shall be valid if—

- (a) addressed to the company at the registered office; or

(b) addressed to the members at the last known address.

(3) A communication in electronic form for matters specified in subsection (1) shall be valid if—

(a) addressed to the company at an address provided for that purpose; or

(b) addressed to the members at the last known address provided for that purpose.

(4) Notwithstanding subsections (2) and (3) and subject to the constitution, the company may use any method of communication specified in subsection (1) and determine the manner and procedures to be adopted.

### **Power to make regulations**

**613.** (1) The Minister may make regulations for or with respect to—

(a) the fees and charges under this Act, which include exempt payment of any fees and charges on such terms and conditions as the Minister thinks fit;

(b) any matters relating to any practicing certificate issued under section 241 including but not limited to renewal, revocation and suspension;

(c) the manner in which the Registrar may deal with the property vested in him under section 557; and

(d) all matters and things required or authorized by this Act to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

(2) Any subsidiary legislation made under this Act may provide for any act or omission in contravention of the subsidiary legislation and may provide for penalties of a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.



**Power to impose terms and conditions**

**614.** In exercising his powers to approve any application or any issuance of licence under this Act, the Minister may impose any term and condition as he thinks fit.

**Exemption**

**615.** (1) The Minister may, upon the recommendation of the Commission, by order exempt any person, corporation or class of corporations from all or any of the provisions of this Act.

(2) In exercising his power under this section, the Minister may—

- (a) form a committee to assist him in reaching the decision;
- (b) request information or documentation or personal representation from any person, the corporation or class of corporations in order for him to be satisfied with the recommendation; and
- (c) impose any terms and conditions that he thinks fit.

**Rules**

**616.** The Rules Committee constituted under the Courts of Judicature Act 1964 [*Act 91*] may, subject to and in accordance with the provisions of that Act relating to the making of rules, make rules—

- (a) with respect to the proceedings and the practice and procedure of the Court under this Act;
- (b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules;
- (c) without limiting the generality of the provisions of this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court; and
- (d) generally with respect to the winding up of companies.

**Power to amend Schedules**

**617.** The Minister may, by order published in the *Gazette*, vary, delete, add to, substitute or otherwise amend the Schedules to this Act.

## Division 4

*Saving and Transitional***Transitional provisions relating to abolition of nominal value**

**618.** (1) Where a share is issued before the commencement of section 74—

- (a) the amount paid on the share shall be the sum of all amounts paid to the company at any time for the share, but not including any premium; and
- (b) the amount unpaid on the share shall be the difference between the price of issue of the share, but not including any premium, and the amount paid on the share.

(2) Upon the commencement of section 74, any amount standing to the credit of a company's share premium account and capital redemption reserve shall become part of the company's share capital.

(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.

(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.

(5) Notwithstanding subsection (2), any company carrying out the business of insurance or takaful in Malaysia immediately before the commencement of section 74, may apply the amount standing to the credit of its share premium account immediately before such date by appropriation or transfer to any fund established and maintained under the Financial Services Act 2013 or Islamic Financial Services Act 2013.

(6) Notwithstanding subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before the commencement of section 74, whether on account of the par value of the shares or by way of premium, shall not be affected by the shares ceasing to have a par value.

(7) For the purpose of interpreting and applying, upon the commencement of section 74, a contract, including the constitution

of the company, entered into before such date or a trust deed or other document executed before such date—

- (a) a reference to the par or nominal value of a share shall be a reference to—
  - (i) if the share is issued before such date, the par or nominal value of the share immediately before such date;
  - (ii) if the share is issued upon such date but shares of the same class were on issue immediately before such date, the par or nominal value that the share would have had if it had been issued then; or
  - (iii) if the share is issued upon such date and shares of the same class were not on issue immediately before such date, the par or nominal value determined by the directors;
  - (iv) and a reference to share premium shall be construed as a reference to any residual share capital in relation to the share;
- (b) a reference to a right to a return of capital on a share shall be construed as a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value; and
- (c) a reference to the aggregate par or nominal value of the company's issued share capital shall be construed as a reference to that aggregate as it existed immediately before that date as—
  - (i) increased to take account of the par or nominal value as defined in paragraph (a) of any shares issued upon that date; and
  - (ii) reduced to take account of the par or nominal value as defined in paragraph (a) of any shares cancelled upon that date.

(8) A company may file with the Registrar a notice of its share capital—

(a) at any time before—

(i) the date it is required to lodge its annual return after the end of the period referred to under subsection (3);

(ii) the expiry of 180 days after the end of the period referred to under subsection (3); or

(iii) whichever is the earlier; or

(b) within such longer period as the Registrar may, if he thinks fit in the circumstances of the case, allow.

(9) Notwithstanding subsection (8), a company may file with the Registrar a notice of its share capital earlier than the periods referred to in paragraph (8)(a) if the company—

(a) has no amount standing to the credit of its share premium account; or

(b) it has utilised the amount standing to the credit of its share premium accounts under subsection (3).

(10) Unless a company has filed a notice of its share capital under subsection (8) or (9), the Registrar may for the purposes of the records maintained by the Registrar adopt, as the share capital of the company, the aggregate value of the shares issued by the company as that value appears in the Registrar's records immediately after the end of the period referred to in paragraph (8)(a).

### **General transitional provisions**

**619.** (1) Any person appointed under the corresponding previous written law and holding office at the commencement of this Act, shall remain in office as if he had been appointed under this Act.

(2) Any act made, executed, issued or passed under the corresponding previous written law and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made executed, issued or passed under this Act.

(3) The memorandum of association and articles of association of an existing company in force and operative at the commencement of this Act, and the provisions of Table A under the Fourth Schedule of the Companies Act 1965 if adopted as all or part of the articles of association of a company at the commencement of this Act, shall have effect as if made or adopted under this Act, unless otherwise resolved by the company.

(4) All proceedings, judicial or otherwise commenced before and pending immediately before the commencement of this Act under the Companies Act 1965 shall be deemed to have commenced and may be continued under that Act.

(5) A company or foreign company registered under any corresponding previous written law shall be deemed to have been registered under this Act and the Act shall extend and apply to the company accordingly and any reference to this Act, express or implied, to the date of registration of the company shall be construed as a reference to the date upon which the company was registered under the corresponding previous written law.

(6) A company which is in the course of winding up immediately before the commencement of this Act shall continue to be wound up under the relevant provisions in the Companies Act 1965.

(7) Section 308 of the Companies Act 1965 shall continue to apply to a company which is in the course of being struck off the register by the Registrar immediately before the commencement of this Act.

(8) The Minister may direct the Commission to issue guidelines, circulars or practice notes to provide for any matters in force before the commencement of this Act to be dealt with in such manner to bring them in conformity with this Act.

**Repeal and savings**

**620.** (1) The Companies Act 1965 is repealed.

(2) Notwithstanding subsection (1)—

- (a) any fee, charge or any sum paid or unpaid under the repealed Companies Act 1965 on the date immediately before the coming into operation of the relevant provision of this Act shall, in respect of the corresponding period, be deemed to have been paid or unpaid under the provisions of this Act;
- (b) any pending application to the Minister or the Registrar under the Companies Act 1965 immediately before the commencement of this Act shall be treated as though this Act has not been enacted;
- (c) any approval, direction, decision, notification, exemption and other executive acts, howsoever called, made, given or done under or in accordance with, or by virtue of the corresponding provisions of this Act by the Minister, the Commission or the Registrar, and shall continue to remain in full force and effect in relation to the persons to whom the approval, direction, decision, notification, exemption and other executive acts applied until amended, repealed, rescinded, revoked or replaced under, in accordance with or by virtue of, the corresponding provisions of this Act.

(3) Nothing in the Companies Act 1965 or this Act shall affect any person's liability to be prosecuted or punished for offences or breaches committed before the commencement of this Act or any proceeding brought, sentence imposed or action taken before that day in respect of such offence or breach.

(4) Any right, privilege, obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act has not been enacted.

## FIRST SCHEDULE

## [Section 159]

## FORM AND CONTENTS OF PROSPECTUS

## Part I

*General*

1. A prospectus shall be printed in a size not smaller than the type known as eight point Times unless the Registrar, before the issuing, advertising, circulating or distributing of the prospectus in Malaysia, certifies in writing that the type and size of letters are legible and satisfactory.
2. A prospectus shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus.
3. To state that a copy of the prospectus has been lodged with and registered by the Registrar.
4. Immediately after the statement under paragraph 3 is made, the prospectus shall state that the Registrar takes no responsibility as to the contents of the prospectus.
5. To state that no shares or debentures or that no shares and debentures, as the case may be, shall be allotted on the basis of the prospectus later than six months after the date of the issue of the prospectus, unless otherwise specified by the Registrar.
6. If a prospectus contains any statement made by an expert whose consent is required under section 160, the prospectus shall state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus.
7. A prospectus shall not contain the name of any person as a trustee for debenture holders or as an auditor or a banker or an advocate of the corporation or proposed corporation or for or in relation to the issue or proposed issue of shares or debentures unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and, in the case of a company or proposed company, a copy verified in a manner determined by the Registrar has been lodged with the Registrar.
8. In addition to paragraph 7, where the prospectus offers shares in or debentures of a foreign company incorporated or to be incorporated, the prospectus shall state the particulars in relation to—
  - (a) the instrument constituting or defining the constitution of the company;
  - (b) the enactments or provisions having the force of an enactment by or under which the incorporation of the company was effected or is to be effected;



- (c) an address in Malaysia where the instrument, enactments or provisions or certified copies may be inspected;
- (d) the date on which and the place where the company was or is to be incorporated; and
- (e) whether the company has established a place of business in Malaysia and, if so, the address of its principal office in Malaysia.

9. The matters stated in a prospectus must be within the knowledge of the directors, promoters, principal advisers, auditors, advocates, valuers and other professional advisers or experts or any other persons named in the prospectus, and the following should be considered by the company.

- (a) the nature of the business of the company;
- (b) the persons likely to consider acquiring shares or debentures;
- (c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers whom potential investors may reasonably expect to consult; and
- (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the issuer and, if they are, to what extent relevant information has previously been given to them by the issuer under any law, if applicable.

10. Full accountability for the accuracy of all information in the prospectus and the responsibility to ensure that there is no omission of facts which would make any of the statements misleading, remains with the promoters or directors of the issuer or any other person who is a party to the preparation of the prospectus or any of its relevant portions.

11. For the purposes as to form and contents of a prospectus, the company and every person named in the prospectus shall comply with any guidelines or furnish any information or documents as specified by the Registrar.

## Part II

### *Matters to be stated*

12. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders of those shares in the property and profits of the company.

13. The number of shares, if any, fixed by the constitution as the qualification of a director, and any provision in the constitution as to the payment to the directors.

14. The names, descriptions and addresses of all the directors or proposed directors.

15. Where the prospectus relates to shares, particulars as to—

- (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part of the sum is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of—
  - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
  - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
  - (iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters; and
- (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

16. The nature of the company's business and the names of all corporations which are by virtue of section 7 deemed to be related to the company.

17. The time of the opening of the subscription lists.

18. The amount payable on application and allotment on each share or where that amount may vary during the currency of the offer, the basis of calculation of the amount so payable and, in the case of a second or subsequent offer of shares, the number, description and amount offered for subscription on each previous allotment made within the two preceding years, the number actually allotted, and the amount, if any, paid on the shares so allotted.

19. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option:

- (a) the period during which the option is exercisable;
- (b) the price to be paid for shares or debentures subscribed for under the option;
- (c) the consideration, if any, given or to be given for the option or for the right to the option; and
- (d) the names and addresses of the persons to whom the option or the right to the option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

20. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

21. (a) With respect to any property to which this paragraph applies—

- (i) the names and addresses of the vendors;
- (ii) the amount payable in cash, shares, or debentures to the vendor and, where there is more than one separate vendor, or the corporation is a sub-purchaser, the amount so payable to each vendor; and
- (iii) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the corporation or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the corporation had any interest, direct or indirect.

(b) The property to which this paragraph applies is property purchased or acquired by the corporation or by any subsidiary of the corporation or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property the contract for the purchase or acquisition whereof was entered into in the ordinary course of the corporation's or the subsidiary's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract.

22. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last preceding paragraph applies, specifying the amount, if any, payable for goodwill.

23. The amount, if any, paid within the two preceding years, or payable, as commission, but not including commission to sub-underwriters, for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the corporation, or the rate of any such commission, and the names of any directors or promoters or experts or proposed directors who are entitled to receive any such commission and the amount or rate of the commission.

24. The amount or estimated amount of preliminary expenses and the persons by whom any of these expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

25. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

26. The dates of, parties to, and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the corporation or a contract entered into more than two years before the date of issue of the prospectus.

27. The names and addresses of the auditors of the corporation.

28. Full particulars of the nature and extent of the interest, direct or indirect, if any, of every director and of every expert in the promotion of, or in the property proposed to be acquired by, the corporation including other information on any beneficial interest in shares or debentures of a corporation which is by virtue of section 7 deemed to be related to that first mentioned corporation.

29. Where the prospectus relates to shares, if the share capital of the corporation is divided into different classes of shares, the right of voting at meetings of the corporation conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

30. In the case of a corporation which has been carrying on business, or of a business which has been carried on, for less than three years, the length of time during which the business of the corporation or the business to be acquired, as the case may be, has been carried on.

31. Where the prospectus relates to invitation to the public to deposit money or lend money to a corporation, the prospectus shall include—

(a) for the purposes of subsection 158(5), a copy of a written valuation of the corporation's interest in the land so mortgaged showing the nature and extent of the corporation's interest made not more than six months before the date of the prospectus by a person competent and qualified to make the valuation in the place where the land is situated who is not an officer or employee of the corporation or of any of its guarantor corporations or of any corporation that by virtue of section 7 is deemed to be related to either the first-mentioned corporation or any of its guarantor corporations;

(b) for the purposes of subsection 158(6), a summary made by the auditor who has made for inclusion in the prospectus the report required by Part III of this Schedule; and

(c) any other additional information as specified by the Registrar.

### Part III

#### *Reports to be set out*

32. The prospectus shall set out the reports of the approved company auditor named in the prospectus, the directors or proposed directors of the corporation and if necessary, any expert named in the prospectus, containing the information and details as specified by the Registrar.

## SECOND SCHEDULE

## [Section 189]

## STATEMENT IN LIEU OF PROSPECTUS

## Part I

*Statement in lieu of prospectus lodged for registration  
by [insert name of company]*

The share capital of the company	RM	
Divided into	Shares of RM	each: RM
	Shares of RM	each: RM
	Shares of RM	each: RM
Amount, if any, of the above capital which consists of redeemable preference shares	Shares of RM	each: RM
The date on or before which these shares are, or are liable, to be redeemed		
Names, descriptions and addresses of directors or proposed directors		
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively		
Number and amount of shares and debentures issued within the two years preceding the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash	1. shares of RM	fully
	2. shares upon which	paid
	RM per share credited as paid	
	3. debentures RM	
The consideration for the issue or intended issue of those shares and debentures	4. Consideration:	
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale	1. shares of RM and debentures	

- Period during which option is exercisable
2. Until
- Price to be paid for shares or debentures subscribed for or acquired under option
3. RM
- Consideration for option or right to option
4. Consideration:
- Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures
5. Names and addresses

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material

Amount, in cash, shares, or debentures, payable to each separate vendor

Amount, if any, paid or, in cash, shares or debentures, for any such property, specifying amount, if any, paid or payable for goodwill	Total purchase price	RM
	Cash	
	Shares	RM
	Debentures	RM
	Goodwill	RM
		RM

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect

Amount, if any, paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Amount paid: RM  
Amount payable: RM

Rate of the commission	per cent
Amount or rate of brokerage	RM
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely	
Amount or estimated amount of preliminary expenses	RM
By whom those expenses have been paid or are payable	
Amount paid or intended to be paid to any promoter	Name of promoter: Amount: RM
Consideration for the payment	Consideration:
Any other benefit given or intended to be given to any promoter	Name of promoter: Nature and value of
Consideration for giving of benefit	Consideration:
Dates of, parties to, and general nature of every material contract, other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement	
Time and place at which the contracts or copies of the contract or –	
(1) in the case of a contract not reduced into writing, a memorandum giving full particulars of the contract; and	
(2) in the case of a contract wholly or partly in a language other than the national language or English, a copy of a certified translation of the contract in the national language or English or embodying a translation in the national language or English of the parts in a language other than the national language or English, as the case may be, may be inspected	

Names and addresses of the auditors of the company

Full particulars of the nature and extent of the interest, direct or indirect, of every director and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm or corporation and where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or to the firm or corporation in cash or shares, or otherwise, by any person, in the case of a director, either to induce him to become, or to qualify him as, a director, or otherwise for service rendered by him or by the firm or corporation in connection with the promotion or formation of the company, in the case of an expert, for services rendered by him or the firm or corporation in connection with the promotion or formation of the company. For the purposes of this paragraph, a director or expert shall be deemed to have an indirect interest in a corporation if he has any beneficial interest in shares or debentures in a corporation which is by virtue of section 7 deemed to be related to that first mentioned corporation

*And also, in the case of a statement to be lodged by a private company on becoming a public company, the following items:*

Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter



Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years

Part II

*Reports to be set out*

1. Where it is proposed to acquire a business, a report by an approved company auditor, who shall be named in the statement, with respect to—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the lodging of the statement with the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made.

2. (1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence of the acquisition or in connection with it will become a subsidiary of the company, a report by an approved company auditor, who shall be named in the statement, with respect to the profits and losses and assets and liabilities of the other corporation in accordance with subparagraph (2) or (3), as the case may be, indicating how the profits or losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to the assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other corporation has no subsidiaries, the report referred to in subparagraph (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made.

(3) If the other corporation has subsidiaries, the report referred to in subparagraph (1) shall—

- (a) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by subparagraph (2), and in addition the deal referred to in either—
  - (i) as a whole with the combined profits or losses of its subsidiaries;
  - or

- (ii) individually with the profits or losses of each subsidiary, or, instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and
- (b) with regard to assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by subparagraph (2), and, in addition, the deal either—
  - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or
  - (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate, in respect of the profits or losses and the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

NOTE—Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect giving the reasons of the non-requirement shall be furnished.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing)

Date:

### Part III

#### *Provisions applying to Parts I and II of this Schedule*

1. In this Schedule, the expression “vendor” includes any person who is a vendor for the purposes of the First Schedule.
2. If in the case of a business which has been carried on, or of a corporation, which has been carrying on business, for less than five years, the accounts of the business or corporation have only been made up in respect of four years, three years, two years, or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.
3. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those in respect of and indicate that adjustments have been made.

THIRD SCHEDULE

[Section 212]

PROCEEDINGS OF THE BOARD

*Chairperson*

1. The directors may elect one of their number as chairperson of the Board and determine the period for which he is to hold office.
2. If no chairperson is elected, or if at any meeting of the Board the chairperson is not present within fifteen minutes after the time appointed for the commencement of the meeting, the directors present may choose one of the numbers to be chairperson of the meeting.

*Notice of meeting*

3. A director or, if requested by a director to do so, a secretary, may convene a meeting of the Board by giving notice in accordance with paragraph 4.
4. A notice of a meeting of the Board shall be sent to every director who is in Malaysia, and the notice shall include the date, time, and place of the meeting and the matters to be discussed.
5. An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without objection to the irregularity.

*Methods of holding meetings*

6. A meeting of the Board may be held either—
  - (a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

*Quorum*

7. A quorum for a meeting of the Board shall be fixed by the Board and if not so fixed shall be a majority of the directors.
8. No business may be transacted at a meeting of the Board if a quorum is not present.

*Voting*

9. Every director has one vote.
10. The chairperson shall have a casting vote.
11. A resolution of the Board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
12. A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he expressly dissents from or votes to object against the resolution at the meeting.

*Minutes*

13. The Board shall ensure that the minutes of all proceedings at meetings of the Board are kept.

*Resolution passed at adjourned meetings*

14. Where a resolution is passed at an adjourned meeting of the Board, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not to be deemed to have been passed on any earlier date.

*Resolution in writing*

15. A resolution in writing, signed or assented to by all directors then entitled to receive notice of meeting of the Board, is as valid and effective as if it had been passed at a meeting of the Board duly convened.
16. Any such resolution may consist of several documents, including facsimile or other similar means of communication, in similar form and each document shall be signed or assented to by one or more directors.
17. A copy of any such resolution shall be entered in the minute book of Board proceedings.

*Other proceedings*

18. Except as provided in this Schedule, the Board may regulate its own proceedings.

*Committees of the Board*

19. The Board may delegate any of its powers to committees consisting of such member or members of its body as the Board thinks fit and any committee so formed shall in the exercise of the powers so delegated conform to any terms or conditions that may be imposed on it by the Board.

20. A committee may elect a chairperson of its meetings and may determine its own proceedings.

21. Any questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

*Managing Directors*

22. The Board may, from time to time, appoint one or more of its body to the office of managing director for such period and on such terms as the Board thinks fit and may revoke any such appointment.

23. A director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

24. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission, or participation in profits, or partly in one way and partly in another, as the Board may determine.

25. The Board may entrust to and confer upon a managing director any of the powers exercisable by the Board upon such terms and conditions and with such restrictions as the Board may think fit, and either collaterally with or to the exclusion of the Board's own powers, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.

*Associate Directors*

26. The Board may, from time to time, appoint any person to be an associate director and may from time to time revoke any such appointment.

27. The Board may fix, determine and vary the powers, duties and remuneration of any person so appointed, but a person so appointed shall not have any right to attend or vote at any meeting of the Board except by the invitation and with the consent of the Board.

FOURTH SCHEDULE  
[Paragraph 235(2)(a)]

APPROVED BODIES

1. Malaysian Institute of Chartered Secretaries and Administrators
2. Malaysian Institute of Accountants
3. Malaysian Bar
4. Malaysian Association of Company Secretaries
5. Malaysian Institute of Certified Public Accountants
6. Sabah Law Association
7. Advocates Association of Sarawak

FIFTH SCHEDULE  
[Section 253]

DIRECTORS' REPORT

Part I

*Contents of Directors' Report*

1. Each report to which section 252 relates, shall state the following details:
  - (a) the net amount of the profit or loss of the company for the financial year after provision for income tax;
  - (b) the amounts and particulars of any material transfers to or from reserves or provisions;
  - (c) where, during the financial year, the company has issued any shares or debentures—
    - (i) the purposes of the issue, the classes of shares or debentures issued;
    - (ii) the number of shares of each class and the amount of debentures of each class; and
    - (iii) the terms of issue of the shares and debentures of each class;

(d) whether at the end of that financial year—

- (i) there is a subsist arrangements to which the company is a party, being arrangements with the objects of enabling directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate; or
- (ii) there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party,

and if so, the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired under the arrangements;

(e) in respect of each person who, at the end of the financial year, was a director of the company—

- (i) whether or not, according to the register kept by the company for the purposes of section 59 relating to the obligation of a director of a company to notify such company of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, he was at the end of that year, interested in shares in, or debentures of the company or any other body corporate and, if he was so interested, the number and amount of shares in, and debentures of, each body in which, according to that register, he was then interested;
  - (ii) whether or not, according to that register, he was, at the beginning of that year or, if he was not then a director, when he became a director, interested in shares in, or debentures of, the company or any other such body corporate and, if he was so interested, the number and amount of shares in, and debentures of, each body in which according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director; and
  - (iii) the total number of shares in or debentures of the company or any other such body corporate bought and sold by him during that financial year;
- (f) the amount, if any, which the directors recommended should be paid by way of dividend, and any amount which have been paid or declared by way of dividend since the end of the previous financial year, indicating which of those amounts, if any, have been shown in a previous report under this subsection or under a corresponding repealed provision of this Act;

- (g) whether the directors, before the financial statements were prepared, took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provision for doubtful debts, and satisfied themselves that all known bad debts had been written off and that adequate provision had been made for doubtful debts;
- (h) whether at the date of the report the directors are aware of any circumstances which would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent and, if so, giving particulars of the circumstances;
- (i) whether the directors, before the financial statements were prepared, have taken reasonable steps to ensure that any current assets which were unlikely to be realized in the ordinary course of business including the value of current assets as shown in the accounting records of the company have been written down to an amount which the current assets might be expected so to realize;
- (j) whether at the date of the report the directors are aware of any circumstances—
  - (i) which would render the values attributed to current assets in the accounts misleading; and
  - (ii) which have arisen which would render adherence to the existing method of valuation of assets or liabilities of the company misleading or inappropriate, and, if so, giving particulars of the circumstances;
- (k) whether there exists at the date of the report—
  - (i) any charge on the assets of the company which has arisen since the end of the financial year which secures the liabilities of any other person and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured; and
  - (ii) any contingent liability which has arisen since the end of the financial year and, if so, stating the general nature of the liability and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect of the liability;
- (l) whether any contingent or other liability has become enforceable, or is likely to become enforceable, within the period of twelve months after the end of the financial year which, in the opinion of the directors, will or may affect the ability of the company to meet its obligations when they fall due and, if so, giving particulars of any such liability;



- (m) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading and, if so, giving particulars of the circumstances;
  - (n) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect of the item, transaction or event, if known or reasonably ascertainable; and
  - (o) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the company's operations for the financial year in which the report is made and, if so, giving particulars of the item, transaction or event; and
  - (p) any other details as determined by the Registrar.
2. The report shall state, in respect of the directors or past directors of the company, the amounts of—

- (a) fees and other benefits distinguished separately, paid to or receivable by them from the company or its subsidiary companies as remuneration for their services to the company or its subsidiary companies, inclusive of all fees, percentages, bonuses, commissions, compensation for loss of office, any contribution in respect of them under any pension or retirement benefit scheme and inclusive of commission paid or payable for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or of its holding company or any subsidiary of the company:

Provided that where a director or any firm of which the director is a member, acts for the company in a professional capacity, the amount paid to the director or to his firm for services rendered to the company in that capacity shall not be included in all fees, percentages, bonuses, commissions, compensation for loss of office, any contribution in respect of them under any pension or retirement benefit scheme and inclusive of commission paid or payable for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or of its holding company or any subsidiary of the company but shall be shown separately whether by way of note or otherwise;

- (b) by way of a note or otherwise, the estimated money value of any other benefits received or receivable by them otherwise than in cash from the company or from any of its subsidiary companies;

- (c) the total of the amount paid to or receivable by any third party in respect of the services provided to the company or any of its subsidiary companies by any director or past director of the company;
  - (d) the total amount, if any, of any indemnity given to or insurance effected for, any director, officer or auditor of the company.
- 3. The directors of a company shall state in the report whether he has, since the end of the previous financial year, received or become entitled to receive a benefit, other than a benefit included in the aggregate amount of remuneration received or due and receivable by the directors shown in the accounts or the fixed salary of a full-time employee of the company, by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.
- 4. Where at the end of a financial year a company is the subsidiary of another corporation, the directors of the company shall state in, or by way of note as a statement annexed to, the company's accounts the name of the corporation regarded by the directors as being the company's ultimate holding company and if known to them, the country in which it is incorporated.
- 5. Where any option has been granted during the period covered by the profit and loss account to take up unissued shares of a company, the directors' report shall state—
  - (a) the number and class of shares in respect of which the option has been granted;
  - (b) the date of expiration of the option;
  - (c) the basis upon which the option may be exercised; and
  - (d) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.
- 6. The directors' report shall specify—
  - (a) particulars of shares issued during the period to which the report relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period; and
  - (b) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.
- 7. The director's report shall specify clearly either in the profit and loss account of the holding company or consolidated profit and loss account of

the holding company and of its subsidiary companies the name, place of incorporation, principal activities, and percentage of issued share capital held by the holding company in each subsidiary to which that profit and loss account or other document relates.

8. If the auditor's report on the accounts of a subsidiary company is qualified in any way, the consolidated balance sheet of the holding company, as the case may be, shall contain particulars of the manner in which the report is qualified in so far as the matter which is the subject of the qualification is not covered by the holding company's own accounts and is material from the point of view of its members.

9. The auditor's report shall be shown under separate headings in the balance sheet of every subsidiary company the extent of its holding of shares in the holding company and in other related corporations.

10. The total amount paid to or receivable by the auditors as remuneration for their services as auditors, inclusive of all fees, percentages or other payments or consideration given by or from the company or by or from any subsidiary of the company.

## Part II

### *Contents of business review*

1. Each report prepared under section 252 may include a business review.
2. The business review may, to the extent necessary for an understanding of the development, performance or position of the company's business, contain—
  - (a) a fair review of the company's business;
  - (b) a description of the principal risks and uncertainties facing the company;
  - (c) a balanced and comprehensive analysis of—
    - (i) the development and performance of the company's business during the financial year;
    - (ii) the position of the company's business at the end of that year, consistent with the size and complexity of the business; and
    - (iii) the key performance indicators of the company;
  - (d) information about—
    - (i) environmental matters, including the impact of the company's business on the environment;
    - (ii) the company's employees; and
    - (iii) social and community issues,

including information about any policies of the company in relation to those matters and the effectiveness of those policies; and

- (e) subject to paragraph 7 of this Part, information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

3. If the review does not contain any of the information mentioned in subparagraphs 2(a), (b), (c) and (d), it shall state which of the information it does not contain.

4. The review may, where appropriate, include references to, and additional explanations of, amounts included in the company's financial statements.

5. In relation to a group directors' report this Part has effect as if the references to the company include references to its subsidiary included in the consolidation.

6. Nothing in this Part requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be prejudicial to the interests of the company.

7. Nothing in subparagraph 2(e) requires the disclosure of information about a person if the disclosure would, in the opinion of the directors, be prejudicial to that person and contrary to the public interest.

8. For the purposes of this Part, "key performance indicators" means factors by reference to which the development, performance or position of the company's business can be measured effectively.

#### SIXTH SCHEDULE

##### [Section 383]

#### POWERS OF RECEIVER OR RECEIVER AND MANAGER

1. Subject to the provisions of this Schedule, a receiver or receiver and manager of the property of a company has the powers to do all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

2. Without limiting the generality of paragraph 1, but subject to any provision of the Court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver or receiver and manager's powers in any way, a receiver or receiver and manager of the property of the company has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver or receiver and manager was appointed—

- (a) to take possession and control of the property of the company in accordance with the terms of that order or instrument;

- (b) to lease, let on hire or dispose of the property of the company;
- (c) to grant options over the property of the company on such conditions as the receiver thinks fit;
- (d) to borrow money on the security of the property of the company;
- (e) to insure the property of the company;
- (f) to repair, renew or enlarge the property of the company;
- (g) to convert the property of the company into money;
- (h) to carry on any business of the company;
- (i) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a the business of the company;
- (j) to demand and recover, by action or otherwise, income of the property in receivership;
- (k) to issue receipts for income recovered;
- (l) to inspect at any reasonable time books or documents that relate to the property in receivership and that are in the possession or under the control of the company;
- (m) to exercise, on behalf of the company, the right to inspect books or documents that relate to the property in receivership and that are in the possession or under the control of a person other than the company;
- (n) to change the registered office or address for service of the company;
- (o) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the company;
- (p) to draw, accept, make and endorse a bill of exchange or promissory note;
- (q) to use a seal of the company;
- (r) to engage or discharge employees on behalf of the company;
- (s) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver or receiver and manager;
- (t) to appoint an agent to do any business that the receiver or receiver and manager is unable to do, or that it is unreasonable to expect the receiver to do, in person;

- (u) where a debt or liability is owed to the company, to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection with the bankruptcy, insolvency or winding up, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;
  - (v) to make or defend an application for the winding up of the company; and
  - (w) to refer to arbitration any question affecting the company.
3. The conferring by this Schedule on a receiver or receiver and manager of powers in relation to the property of the company does not affect any rights in relation to that property of any person other than the company.
4. In this Schedule, a reference, in relation to a receiver or receiver and manager, to property of a company is, unless the context otherwise requires, a reference to the property of the company in relation to which the receiver or receiver and manager was appointed.

#### SEVENTH SCHEDULE

[Sections 394 and 401]

##### POWERS AND DUTIES OF NOMINEE FOR CORPORATE VOLUNTARY ARRANGEMENTS

1. During a moratorium, a nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—
- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented; and
  - (b) the company is likely to have sufficient funds available for the company during the proposed moratorium to enable the company to carry on its business.
2. The nominee may request from the directors or Official Receiver and the directors or Official Receiver shall submit to the nominee, any information necessary to enable the nominee to comply with paragraph 1.
3. The nominee is entitled to rely on information submitted to him under paragraph 2 in forming his opinion on matters required under paragraph 1 unless he has reason to doubt its accuracy.
4. The reference in subparagraph 1(b) to the company's business is to that business as the company proposes to carry on during the moratorium.

5. The nominee shall withdraw his consent to act if, at any time during a moratorium—

- (a) he forms the opinion that—
  - (i) the proposed voluntary arrangement no longer has a reasonable prospect of being approved or implemented; or
  - (ii) the company will not have sufficient funds available for the company during the remainder of the moratorium to enable the company to carry on its business;
- (b) he becomes aware that, on the date of filing of documents under section 398, the company was not eligible for a moratorium; or
- (c) the directors or Official Receiver fail to comply with their duty under paragraph 2.

#### EIGHTH SCHEDULE

##### [Section 398]

#### MORATORIUM FOR CORPORATE VOLUNTARY ARRANGEMENT

##### *Eligibility for moratorium for corporate voluntary arrangement*

1. A company is eligible for a moratorium for corporate voluntary arrangement proposed by directors if:

- (a) the company is a private company;
- (b) the company is not a licensed institution or operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia; or
- (c) the company is not a financial market institution under the Capital Markets and Services Act 2007.

2. A company is eligible for a moratorium for corporate voluntary arrangement proposed by judicial manager or liquidator if—

- (a) the company is being wound up;
- (b) the company is under a judicial management order;
- (c) the company is not a licensed institution or operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia; or
- (d) the company is not a financial market institution under the Capital Markets and Services Act 2007.

*Duration and extension of moratorium*

3. A moratorium shall remain in force for a period of twenty eight days from the time it commences under paragraphs 1 and 2 but a meeting summoned under paragraph 4 may, subject to consent given by the nominee and members of the company, and obtaining seventy-five per centum majority in value of creditors who are present and voting either in person or by proxy at the meeting, extend this period for not more than sixty days.
4. At any meeting where it is proposed to extend the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting of the actions he has taken in order to comply with his duty under the Seventh Schedule and the costs incurred as a result of his actions for the company, and of any plans he intends to do to continue to comply with that duty if the moratorium is extended and the expected costs of his actions for the company.
5. A moratorium shall end at the end of the day of the meeting summoned under section 399, unless it is extended under paragraph 3.
6. If a moratorium is extended under paragraph 3, it shall end at the end of the day to which it is extended.
7. If no meeting under paragraph 4 is summoned by the nominee within the period of twenty-eight days as required under paragraph 3, the moratorium ends at the last day of that period.
8. A moratorium shall come to an end if a nominee withdraws his consent to act under the Seventh Schedule.

*Notification of commencement of moratorium*

9. The directors of a company or Official Receiver shall, within seven days after the commencement of a moratorium, notify the nominee of the commencement.
10. After being notified under paragraph 9, the nominee shall, within seven days of the commencement of the moratorium period—
  - (a) notify the Registrar of the fact of the commencement of the moratorium;
  - (b) notify the company and any petitioning creditor of the company of whose claim he is aware of the fact of the commencement of the moratorium; and
  - (c) advertise the fact in the website of the Commission and in one widely circulated newspaper in Malaysia in the national language or one widely circulated Malaysian newspaper in the English language.
11. For the purposes of this Schedule, “petitioning creditor” means a creditor by whom a winding up petition has been presented before the commencement of moratorium, as long as the petition has not been dismissed or withdrawn.



*Notification of end of moratorium*

12. A nominee shall, within seven days after a moratorium comes to an end—

- (a) advertise the fact in the website of the Commission and in one widely circulated newspaper in Malaysia in the national language or one widely circulated newspaper in Malaysia in the English language; and
- (b) notify the Court, the Registrar, the company and any creditor of the company of whose claim he is aware, of the fact of the end of the moratorium.

*Moratorium committee*

13. A meeting summoned under paragraph 4 to resolve that the period of moratorium be extended may, with the consent of the nominee, establish a moratorium committee to exercise the function conferred on it by the meeting.

14. The meeting under paragraph 13 shall approve an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

15. Any expenses, not exceeding the amount of the approved estimate under paragraph 14 incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

16. The committee shall cease to exist when the moratorium comes to an end.

*Effects of moratorium*

17. During the period for which a moratorium is in force—

- (a) no petition may be presented for the winding up of the company;
- (b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the court and subject to, where the court gives leave, such terms as the court may impose;
- (c) no resolution may be passed or order made for the winding up of the company;
- (d) no application for judicial management order may be made against the company;
- (e) no judicial manager of the company may be appointed under Subdivision 2 of Division 8 of Part III;

- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the Court and subject to such terms as the Court may impose;
- (g) no other steps may be taken to impose any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the Court and subject to such terms as the Court may impose;
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the Court and subject to such terms as the Court may impose; and
- (i) no steps shall be taken to transfer any share of the company or to alter the status of any member of the company except with the leave of the Court and, where the Court gives leave, subject to such terms as the Court may impose.

18. Notwithstanding subparagraph 17(a), a secured creditor may appoint receiver to deal with the charged property of a company.

*Company invoices, orders for goods, etc.*

19. At a time when a moratorium is in force in relation to a company, the nominee's name and a statement that a moratorium is in force for the company shall appear on—

- (a) its business letters, notices and other official publications, including in electronic mediums;
- (b) its websites;
- (c) its bills of exchange, promissory notes, endorsements and order forms;
- (d) cheques purporting to be signed by or on behalf of the company;
- (e) orders invoices and other demands for payment, receipts and letters of credit purporting to be issued or signed by or on behalf of the company; and
- (f) all other forms of its business correspondence and documentation.

## NINTH SCHEDULE

## [Subsection 414(4)]

## POWERS OF JUDICIAL MANAGER

The judicial manager may exercise all or any of the following powers:

- (a) to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as he seems expedient;
- (b) to sell or otherwise dispose of the property of the company by public auction or private contract;
- (c) to borrow money and grant security for the borrowing over the property of the company;
- (d) to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;
- (e) to bring or defend any action or other legal proceedings in the name and on behalf of the company;
- (f) to refer to arbitration any question affecting the company;
- (g) to effect and maintain insurances in respect of the business and property of the company;
- (h) to use the company's seal;
- (i) to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;
- (j) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
- (k) to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees;
- (l) to do all such things, including the carrying out of works, as may be necessary for the realisation of the property of the company;
- (m) to make any payment which is necessary or incidental to the performance of his functions;
- (n) to carry on the business of the company;
- (o) to establish subsidiaries of the company;

- (p) to transfer to subsidiaries of the company the whole or any part of the business and property of the company;
- (q) to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company;
- (r) to make any arrangement or compromise on behalf of the company;
- (s) to call up any uncalled capital of the company;
- (t) to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person;
- (u) to make or defend an application for the winding up of a company;
- (v) to do all other things incidental to the exercise of the foregoing powers.

#### TENTH SCHEDULE

##### [Subsection 450(4)]

#### COMMITTEE OF INSPECTION

##### *Appointment of committee of inspection in winding up by Court*

1. The liquidator may, and shall if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so elect members of the committee.
2. If there is a difference between the determination of the meetings of the creditors and contributories, the Court shall decide the difference and make such order as the Court thinks fit.

##### *Appointment of committee of inspection in voluntary winding up*

3. The creditors at the meeting summoned under section 447 or 449 or at any subsequent meeting may, if the creditors think fit, appoint a committee of inspection consisting of not more than five persons, whether creditors or not and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently after the resolution for winding up is passed in a general meeting, appoint any not more than five persons as the company thinks fit to act as members of the committee.

4. Notwithstanding paragraph 3, the creditors may, if the creditors think fit, resolve that all or any of the persons appointed by the company ought not to be a member of the committee of inspection and if the creditors resolve as such the person mentioned in the resolution shall not, unless the Court otherwise directs, act as member of the committee, and on any application to the Court under this paragraph the Court may, if the Court thinks fit, appoint other persons to act as a member in place of the person mentioned in the resolution.

#### *Constitution*

5. The committee of inspection shall consist of creditors or contributories of the company or persons holding—

- (a) general powers of attorney from creditors or contributories; or
- (b) special authority from creditors or contributories, to act on such a committee,

appointed in a meeting of creditors and contributories in such proportions as are agreed or in case of difference as are determined by the Court.

#### *Proceedings*

6. The committee shall meet at such times and places as the committee from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as the liquidator or the member thinks necessary.

7. The Committee may act by a majority of the members present at a meeting, but shall not act unless a majority of the committee is present.

#### *Resignation and removal of member*

8. A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

9. A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which meeting seven days' notice has been given stating the object of the meeting.

#### *Vacation of office*

10. If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors under any written law relating to bankruptcy or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall become vacant.

*Vacancy*

11. A vacancy in the committee shall be filled through an appointment by the committee of the same or another creditor or contributory or person holding a general power or special authority as specified in paragraph 5.

12. The liquidator, may at any time of his own motion and shall, within seven days from a request in writing of a creditor or contributory, summon a meeting of creditors or of contributories, as the case may be, to consider any appointment made under paragraph 11 and the meeting may confirm or revoke the appointment and appoint another creditor or contributory or person holding a general power or special authority as specified in paragraph 5, as the case may be, in his stead.

13. Notwithstanding any vacancy in the committee, the continuing members may act if there are at least two continuing members.

## ELEVENTH SCHEDULE

## [Section 456]

## POWERS OF LIQUIDATOR IN VOLUNTARY WINDING UP

1. The liquidator may in the case of a members' voluntary winding up, with the approval of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given to a liquidator under the Twelfth Schedule in a winding up by the Court.

2. The liquidator may exercise any of the other powers by this Act given to the liquidator in a winding up by the Court.

3. The liquidator may exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liabilities of the persons named in the list as contributories.

4. The liquidator may exercise the power of the Court of making calls or summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose as the liquidator thinks fit.

5. The liquidator may pay the debts of the company and adjust the rights of the contributories among themselves.

6. When several liquidators are appointed, any power given by this Act may be exercised by one or more of the liquidators as is determined at the time of their appointment, or in the absence of such determination by at least two of the liquidators.

## TWELFTH SCHEDULE

## POWERS OF LIQUIDATOR IN WINDING UP BY COURT

## Part I

## [Section 472]

*Powers exercisable without authority*

The liquidator may—

- (a) bring or defend any action or other legal proceedings in the name and on behalf of the company;
- (b) compromise any debt due to the company other than calls and liabilities for calls and a debt where the amount claimed by the company to be due to the company does not exceed ten thousand ringgit;
- (c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole immovable and movable property and things to any person or company or to sell the same in parcels;
- (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary, the company's seal;
- (e) prove rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors;
- (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (g) raise on the security of the assets of the company any money requisite;
- (h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed due to the liquidator;
- (i) make any payment as necessary in carrying on the affairs of the company in its ordinary course of business including payment of utility bills, statutory fees and all other such payments;

- (j) appoint an agent to do any business which the liquidator is unable to do;
- (k) appoint an advocate to assist him in his duties; and
- (l) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

## Part II

### [Section 486]

#### *Powers exercisable with authority*

1. The liquidator may, with the authority either of the Court or of the committee of inspection—

- (a) carry on the business of the company so far as is necessary for the beneficial winding up of the company, but the authority shall not be necessary to so carry on the business during the one hundred and eighty days after the date of the winding up order;
- (b) subject to the priorities under section 527, pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or where the company may be rendered liable;
- (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims, present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect of the call, debt, liability or claim; and
- (e) compromise any debt due to the company other than calls and liabilities for calls and a debt where the amount claimed by the company to be due to the company exceeds ten thousand ringgit.

2. The liquidator may apply to the Court or the committee of inspection for the authority given for the purpose of subparagraph 1(e) without additional approval provided that the debts referred to in that paragraph does not exceed fifty thousand ringgit.



## THIRTEENTH SCHEDULE

## [Subsection 561(2)]

## ACTIVITIES NOT REGARDED AS CARRYING ON BUSINESS IN MALAYSIA

A foreign company shall not be regarded as carrying on business in Malaysia for the reasons only that the company does the following matters in Malaysia:

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if the order is accepted outside Malaysia;
- (f) creates evidence of any debt, or creates a charge on movable or immovable property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to those debts;
- (h) conducts an isolated transaction that is completed within a period of thirty one days, but not being one of a number of similar transactions repeated from time to time;
- (i) invests any of its funds or holds any property; or
- (j) imports goods temporarily under the Customs Act 1967 [Act 235] for the purpose of display, exhibition, demonstration or as trade samples with a view to subsequent re-exportation within a period of three months or within such further period as the Director General of Customs and Excise may in his discretion allow.

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EXPLANATORY STATEMENT

This Bill seeks to provide for the registration, administration and dissolution of companies and corporations and to provide for related matters.

2. Part I of the proposed Act deals with preliminary matters.

*Clause 1* contains the short title and seeks to allow the Minister to appoint the date of commencement of the proposed Act and the Minister may appoint different dates for different parts or provisions of the proposed Act.

*Clause 2* contains the definition of certain words and expressions used in the proposed Act.

*Clause 3* seeks to provide for the definition of “corporation”.

*Clause 4* seeks to provide for the definition of “subsidiary and holding company” and show the relationship between a subsidiary and a holding company.

*Clause 5* seeks to provide for the definition of “ultimate holding company”.

*Clause 6* seeks to provide for the definition of “wholly-owned subsidiary”.

*Clause 7* seeks to explain when a corporation is deemed to be related to each other.

*Clause 8* seeks to provide for the circumstances, including exceptions to the general rule, in which a person is deemed to have an “interest in shares”.

3. Part II deals with matters relating to the formation and administration of companies and is divided into ten Divisions.

Division 1 deals with the types of companies.

*Clause 9* states the essential requirements of a company including name, minimum number of members, minimum number of shares in cases of company limited by shares and the minimum number of directors.

*Clause 10* seeks to provide for the types of companies which is categorised as a company limited by shares, a company limited by guarantee and an unlimited company.

*Clause 11* seeks to provide for further categorisation of companies limited by shares as private or public companies. This *clause* further provides that an unlimited company may be registered as private or public company.

*Clause 12* seeks to provide for the prohibition on companies limited by guarantee with a share capital.

*Clause 13* prohibits any association or partnership consisting of more than twenty persons formed for the purpose of carrying on business unless registered under the proposed Act or formed under any written law.

Division 2 deals with matters relating to incorporation and its effects.

*Clause 14* seeks to provide that a company may be formed by one or more persons for lawful purpose and the application procedures to form a company.

*Clause 15* seeks to provide that if the Registrar is satisfied with the application made under *clause 14*, the particulars of the company shall be entered into the register, a registration number shall be assigned and a notice of registration shall be issued.

*Clause 16* seeks to provide for the power of the Registrar to refuse registration of a proposed company if the Registrar is satisfied that the proposed company is likely to be used for purposes which are unlawful or prejudicial to national or public interests.

*Clause 17* seeks to provide that a company has the option whether or not to request a certificate of incorporation from the Registrar.

*Clause 18* provides for the effect of incorporation which, amongst others, proclaims the existence of the company by the name and registration number as stated in the register.

*Clause 19* seeks to provide for the notice of registration issued by the Registrar shall be conclusive evidence that matters relating to the incorporation procedures have been complied with.

*Clause 20* seeks to clarify that once incorporated, a company is a separate legal entity with perpetual succession until the company is removed from the register.

*Clause 21* seeks to clarify that a company shall have unlimited capacity and its powers and functions without having to rely on the same being specified in the company's constitution.

Division 3 deals with matters relating to the restriction on subsidiary being a member of its holding company.

*Clause 22* seeks to prohibit a subsidiary company from holding shares of its holding company unless in cases where the subsidiary is holding shares as personal representative or trustee without having any interest.

*Clause 23* seeks to provide for an exemption to the general rule in *clause 22* by providing a specific carve-out to address situations where a subsidiary inadvertently holds shares of its holding company in their ordinary course of business as a market intermediary.

*Clause 24* seeks to provide for the protection of third parties which acquires shares of the holding company from the subsidiary in its capacity as a dealer in securities.

Division 4 deals with provisions relating to name of companies.

*Clause 25* provides for the descriptions relating to the names of a company depending on the types of registration. This *clause* further provides that a company shall have an available name as its name or any other expressions as the Registrar may determine.

*Clause 26* seeks to describe that a name is available if it is not undesirable or unacceptable for registration. This *clause* also states that a name is available if it is not identical to an existing company, corporation or business or names which are being reserved.

*Clause 27* provides for application to the Registrar is required to confirm the availability of a name.

*Clause 28* seeks to allow a company to change its name by passing a resolution and to notify the Registrar accordingly.

*Clause 29* seeks to empower the Registrar to require a company to change its name under specified circumstances.

*Clause 30* seeks to provide for the requirements on the manner of the name of a company is to be published or displayed.

Division 5 deals with matters relating to constitution of a company.

*Clause 31* seeks to provide that a company may but does not need to have a constitution. The effect of a company having a constitution is that the company, its directors and members will be bound by that constitution to the extent of being modified by the proposed Act. If a company has no constitution, the provisions of the proposed Act shall apply on the company, its directors or members.

*Clause 32* seeks to provide that a company may adopt a constitution once the company has been incorporated and it shall be done by way of passing a resolution. Once a constitution is adopted, it shall be binding on the company, its directors and members.

*Clause 33* seeks to provide that the effect of adopting a constitution is that the document will bind the company and its members.

*Clause 34* seeks to clarify as to what constitute a constitution of a company. This clause states that for companies which are incorporated under the proposed Act, the constitution shall be that under *clause 32* or *38*, and for companies which are incorporated under the corresponding previous written law, the constitution shall be the memorandum and articles of association of the companies as previously lodged with the Registrar.

*Clause 35* seeks to provide that a company may, if it decides to adopt a constitution, include matters set out in this *clause* or any other matters including provisions that restrict the company from carrying out certain objects or activities.

*Clause 36* seeks to provide for the procedures to be followed when a company alters or amend its constitution.

*Clause 37* seeks to provide for an alternative way for companies to alter their constitution by applying to the Court if the constitution could not be altered in the usual manner either in accordance with the proposed Act or the constitution.

*Clause 38* provides that it is mandatory for a company limited by guarantee to have a constitution. This *clause* further describes the matters that should be stated in the constitution.

*Clause 39* seeks to provide for the non-application of the doctrine of constructive notice on the contents of a constitution or any other document of a company except with regard to documents relating to charges.

Division 6 deals with provisions relating to conversion of company status.

*Clause 40* seeks to provide for the procedures of converting an unlimited company to a limited company.

*Clause 41* seeks to clarify the procedures of converting a public company to a private company or vice versa.

Division 7 deals with provisions which are applicable only to certain types of company.

*Clause 42* seeks to provide for the definition of private company by stating that a private company shall have not more than fifty shareholders and shall have the right to restrict the transfer of its shares.

*Clause 43* seeks to prohibit private companies from offering shares or debentures to the public or to invite to deposit money from the public. This *clause* further states certain circumstances to which the prohibition does not apply.

*Clause 44* seeks to provide that an offer to the public referred to in *clause 43* includes an offer made in any manner to any section of the public. This *clause* also provides for circumstances which are not to be regarded as public offer.

*Clause 45* seeks to provide that a company limited by guarantee shall only be formed for the objects provided under this *clause* and that any profit generated shall only applied to the objects of the company so formed.

Division 8 deals with provisions relating to registered office and registers.

*Clause 46* seeks to impose the requirements for a company to have a registered office and for the registered office to be accessible during ordinary business hours.

*Clause 47* seeks to provide for the list of documents that must be kept at the registered office of a company. This *clause* further requires that certain documents may be kept at a different place provided that the Registrar is duly notified.

*Clause 48* seeks to provide that documents are to be made available for inspection to by any person who is entitled to inspect such document and record at the registered office of the company and that the company shall provide proper facilities to enable the documents and records to be inspected.

*Clause 49* seeks to provide that the keeping of documents may either be in written form or in a form which allows the documents or information to be easily accessible and reproduced into written form. This *clause* also

imposes a requirement for a company to take precautions against falsification of documents.

*Clause 50* seeks to impose an obligation on companies to keep a register of members with a list of description of information that must be kept in the register. This *clause* further states that the register of members shall be *prima facie* evidence of matters which are required to be stated by the proposed Act.

*Clause 51* seeks to impose a duty on the company to notify the Registrar on any changes in the register of members within fourteen days of such changes.

*Clause 52* seeks to provide that companies are required to have an index of the name of members where the number of members exceeds fifty unless the register of members is in the form of such index.

*Clause 53* seeks to provide that a company which has a branch office outside Malaysia may cause to be kept a register of members for that branch.

*Clause 54* seeks to clarify the places where the register of members and index can be kept apart from at the registered office of a company.

*Clause 55* seeks to provide for the inspection and closing of register of members of a company.

*Clause 56* seeks to empower a company to request from its members for the disclosure of beneficial interest in the voting shares. This *clause* further empowers the Registrar, the Securities Commission and Bursa Malaysia to direct a company to invoke its power under this *clause*.

*Clause 57* seeks to provide that a company is required to keep a register of its directors, managers and secretaries at its registered office.

*Clause 58* seeks to provide that a company is required to notify the Registrar on any changes to the particulars or on directors, managers and secretary of the company within fourteen days of such changes.

*Clause 59* seeks to provide that a company is required to keep a register of directors' shareholdings and sets out the details relating to such obligation.

*Clause 60* seeks to provide that a company which issues debentures shall keep a register of debenture holders and copies of the trust deed.

Division 9 deals with provisions relating to execution of documents.

*Clause 61* seeks to clarify that it is no longer mandatory for a company to have a seal. However, if a company opted to have a seal, the provision of this *clause* shall be applicable.

*Clause 62* seeks to provide for the procedures for the use of official seal outside Malaysia which is applicable for companies which have seal.

*Clause 63* seeks to outline the procedures in using seal for the purposes of securities or documents creating or evidencing securities issued by a company.

*Clause 64* seeks to set out the procedures of executing a contract on behalf of a company which can be under seal, if the company has a seal or alternatively by any authorized person acting on behalf of the company.

*Clause 65* seeks to allow the ratification of pre-incorporation contracts. If not ratified, the person entering a contract on behalf of a company prior to its incorporation shall be personally liable.

*Clause 66* provides for the manner and procedures on how documents are to be executed including the execution of documents on behalf of single member company.

*Clause 67* provides for the manner and procedures on how deeds are to be executed on behalf of a company.

Division 10 deals with matters relating to annual return.

*Clause 68* states the requirement for companies to lodge annual return for each calendar year and the details to be submitted to the Registrar in an annual return. This *clause* also provides for a company to lodge “no-change” annual return where there are no changes that need to be reported to the Registrar following the lodgement of the last annual return.

4. Part III deals with the management of company and is divided into eight divisions.

Division 1 of Part III deals with matters relating to share and capital maintenance of a company.

Subdivision 1 deals with provisions on share capital.

*Clause 69* seeks to provide for the types of shares that a company may issue and the rights attached with those shares.

*Clause 70* seeks to provide that the share or other interest of the member in the company is personal property and transferable.

*Clause 71* seeks to provide for the rights and powers attached to the shares issued by the company including the rights to vote, dividends and distribution of surplus assets.

*Clause 72* seeks to provide that subject to its constitution, a company having a share capital may issue preference shares.

*Clause 73* seeks to prohibit companies from issuing bearer’s share warrants. This *clause* further provides the transitional time frame for share warrants to be surrendered to the company and to have the bearer’s name entered in the register of members.

*Clause 74* seeks to introduce the no par value (NPV) concept whereby all shares issued by a company shall have no par value.

*Clause 75* seeks to empower the directors to allot shares after being permitted to do so by the shareholders.

*Clause 76* sets out the power and limitation on directors in allotting shares after obtaining the requisite permission from the shareholders.

*Clause 77* seeks to direct the company to register an allotment of shares in the register of members within fourteen days from the date of allotment.

*Clause 78* seeks to require companies to lodge a return with the Registrar after an allotment of shares has been made.

*Clause 79* seeks to prohibit a company from applying any of its shares in the payment of commissions, discounts and allowances.

*Clause 80* seeks to allow the company in applying in shares for payment of commission in certain circumstances.

*Clause 81* seeks to list out the differences in calls and payments.

*Clause 82* seeks to allow the directors to make calls upon the members in respect of any money unpaid on their shares.

*Clause 83* seeks to state that directors may issue notice if a shareholder fails to pay any call or instalment of a call within the stipulated time.

*Clause 84* seeks to provide for the power to the company to alter its share capital by passing a special resolution.

*Clause 85* seeks to provide for pre-emptive rights on the issuance of new shares which rank equally to the existing shareholders and upon the expiry of the timeframe, the offer is deemed to have been declined.

*Clause 86* seeks to provide for the procedures for a company to convert any paid up shares into stock and *vice versa*.

*Clause 87* seeks to provide for rights and privileges to stockholders similar to the shares from which the stock arose.

*Clause 88* seeks to clarify the rights attached to shares.

*Clause 89* seeks to provide for the classes of shares and the rights attached to those shares.

*Clause 90* seeks to provide that a company may have different classes of shares and if a company issued different classes of shares, the classes of shares and the rights of shares must be stated clearly in the constitution.



*Clause 91* seeks to provide for the procedures of variation of class rights.

*Clause 92* imposes an obligation on the company to notify the shareholders of the affected class if the rights of the shares are varied.

*Clause 93* seeks to empower the shareholders representing at least ten per centum of the affected class of shares to apply to the Court to have the variation disallowed.

*Clause 94* requires a company to lodge the Court order obtained under *clause 93* with the Registrar within fourteen days of the making of the order.

*Clause 95* imposes an obligation to a company to notify the Registrar if the rights attached to a class of its shares are being varied.

*Clause 96* seeks to clarify that a variation of class rights includes abrogation of that rights.

Subdivision 2 deals with provisions regarding share certificates, title, transfer and transmission of shares.

*Clause 97* seeks to provide that a company does not need to issue share certificates unless requested by the shareholders or stated otherwise in its constitution.

*Clause 98* imposes an obligation on a company to deliver a share certificate within sixty days upon receipt of the request made under *clause 97*.

*Clause 99* allows a shareholder to apply to the Court to direct a company which has failed to deliver a share certificate as requested.

*Clause 100* seeks to set out the procedures required to be adhered to when share certificates are issued.

*Clause 101* seeks to provide that the register of members is *prima facie* evidence that legal title to the share is vested in that person.

*Clause 102* seeks to introduce the duty of secretaries to maintain the register of members.

*Clause 103* seeks to provide for the procedures for any person to apply to Court for rectification of register of members in the case of omission or wrongly entered of a name of a shareholder in the register of members.

*Clause 104* seeks to provide for the procedures when the certificate of shares or debentures is lost or destroyed.

*Clause 105* seeks to provide for the procedures for the transfer of shares.

*Clause 106* seeks to impose the requirement to register a transfer of shares. The *clause* further states the right of the directors to refuse the registration of transfer in certain circumstances.

*Clause 107* seeks to provide for an avenue for aggrieved parties to seek recourse against the company for refusal to register a transfer through an application to the Court.

*Clause 108* seeks to provide for the procedures for the validation of shares which have been improperly issued.

*Clause 109* seeks to provide for the procedures relating to the transmission of shares and debentures due to operation of law.

*Clause 110* seeks to provide for the extent of liability a trustee, executor or administrator are subject to when registered as shareholder in the register of members.

*Clause 111* seeks to clarify that a company is entitled to a lien over shares which are partly paid and any dividend payment for all the money due from the shareholder.

Subdivision 3 deals with matters relating to solvency statements.

*Clause 112* seeks to introduce solvency tests for corporate exercises involving the redemption of preference shares, reduction of share capital and financial assistance. This *clause* further provides the solvency test in a share buyback.

*Clause 113* seeks to provide for the procedures to be complied with when making solvency statement in the event of exercising the redemption of preference shares, financial assistance, reduction of share capital and share buyback.

*Clause 114* seeks to criminalise acts relating to solvency statement in cases such statements are made without having reasonable grounds.

Subdivision 4 deals with provisions relating to the reduction of share capital.

*Clause 115* seeks to state that a reduction of share capital can be exercised through a special resolution and confirmation by the Court made under *clause 116* or supported by solvency statement by the directors made under *clause 117*.

*Clause 116* seeks to provide for the procedures for a reduction of share capital by the Court.

*Clause 117* seeks to provide for an alternative procedure for the reduction of share capital by private or public company which is supported by solvency statement by all directors.

*Clause 118* seeks to set out the creditor's rights to object to the reduction of the share capital by a company made under *clause 117* by applying to the Court to have the proposal cancelled.

*Clause 119* seeks to determine the position of the exercise of the reduction of share capital at the end of period for objection by creditors. This *clause* further states that the reduction of share capital shall only take effect if the application by the creditor under *clause 118* has been rejected by the Court and that fact has been recorded by the Registrar.

*Clause 120* seeks to introduce the power of the Court in relation to objection to the reduction of share capital by the creditor.

*Clause 121* provides for offences for making groundless or false statements.

*Clause 122* provides for liabilities of members where the share capital of the company has been reduced.

Subdivision 5 deals with provisions relating to assistance by a company in the purchase of its own shares.

*Clause 123* seeks to prohibit a company from giving any financial assistance, whether directly or indirectly, for the purposes of purchasing or subscribing shares of the company.

*Clause 124* seeks to clarify that the validity of any contract or transaction connected with the financial assistance shall not be affected by the contravention of the prohibition.

*Clause 125* provides for the circumstances in which the prohibition against financial assistance shall not apply.

*Clause 126* provides that a non-listed company may give financial assistance for the purchase or subscription of its shares provided that the amount does not exceed ten per centum of the shareholders' funds.

*Clause 127* seeks to provide for the manner and instances when a company can purchase its own shares.

*Clause 128* seeks to provide that a public company may grant an option for any person to take up unissued shares.

*Clause 129* imposes an obligation on a company to keep and maintain a register of options granted to persons to take up unissued shares in a company.

*Clause 130* seeks to provide for the power of a company to pay interest out of capital in certain instances.

Subdivision 6 deals with matters relating to dividends.

*Clause 131* provides for the distribution of dividends out of profits of the company.

*Clause 132* states that distribution of dividends can only be exercised when the company is solvent.

*Clause 133* states the instances where a company can recover a distribution which has been done in contravention of this Subdivision from the shareholder who have knowledge of such facts or from the manager or director who has wilfully authorizes the distribution.

Subdivision 7 deals with the provisions relating to substantial shareholdings.

*Clause 134* deals with the application and interpretation of this Subdivision. For the purposes of this subdivision, the reference to company is limited to a public company, a body corporate declared by the Minister for the purposes of this Subdivision or to a body, not being a body corporate formed in Malaysia and declared by the Minister as a company for the purposes of this Subdivision.

*Clause 135* provides for the persons who are obligated to comply with this Subdivision.

*Clause 136* provides that a shareholder is deemed to have a substantial shareholding for the purposes of this Subdivision if he has not less than five per centum of the total voting shares in the company.

*Clause 137* imposes an obligation for a substantial shareholder to notify the company of his interest. In the case of a listed company, the notification must be given within three days of a person becomes a substantial shareholder and in any other case, within five days.

*Clause 138* provides for the obligation for the substantial shareholder to notify the company of any changes in his interest.

*Clause 139* provides for the obligation for a person who has ceased to be a substantial shareholder to notify the company.

*Clause 140* provides for circumstances required to be stated in the notice under *clauses 137, 138 and 139* which include references to the operation of interest in a share.

*Clause 141* deals with the provision of when the copy of the notice under *clauses 137, 138 or 139* should be served on the Registrar and the Securities Commission.

*Clause 142* provides for the requirement for the person holding voting shares to give notice to a non-resident who has interest in the voting share in a manner determined by the Registrar.

*Clause 143* empowers the Registrar to provide for an extension of time for the giving of notice under this Subdivision.

*Clause 144* provides the obligation on the company to keep and maintain a register of substantial shareholders.

*Clause 145* empowers the Court to deal with substantial shareholders who fail to comply with *clauses 137, 138 or 139*.

Subdivision 8 deals with the provisions relating to the Central Depository System which is a book entry or scripless system for the transfer of securities.

*Clause 146* provides for the interpretation of certain words in context of Subdivision 8.

*Clause 147* provides for instances of when a depositor is deemed to be a member. This *clause* further states that the record of depositors shall be *prima facie* evidence of matters required or authorized by the proposed Act.

*Clause 148* provides that the transfer of securities shall be by way of book entry except in cases of transfer to or from the central depository of its nominee.

*Clause 149* provides that the rectification of record of depositors shall only be done by way of a Court order upon the satisfaction of the Court.

*Clause 150* provides for the non-application of *clause 472* pertaining to a disposition made by way of a book entry.

*Clause 151* empowers the Minister to exempt any company or class of companies from complying with all or any provisions of this Subdivision.

Subdivision 9 deals with provisions regarding prospectus.

*Clause 152* seeks to provide that this Subdivision applies only to—

(a) an offer or invitation in respect of shares or debentures made by an unlisted recreational club; and

(b) an offer or invitation to deposit money with or lend money to a corporation as specified in *clause 158*.

*Clause 153* empowers the Minister to exempt the application of this Subdivision in certain circumstances.

*Clause 154* prohibits the issuance of a prospectus unless it has been registered and lodged with the Registrar.

*Clause 155* deals with the requirement for the procedures of the registration of a prospectus.

*Clause 156* provides that the Registrar may refuse to register a prospectus, amongst others, if the proposed prospectus does not comply with the provision of the proposed Act or contains false or misleading information.

*Clause 157* deals with the requirements for a company to keep documents relating to a prospectus and such documents shall be kept at the registered office or at such other address as provided in the prospectus.

*Clause 158* prohibits an invitation to deposit money or lend money with a corporation unless a prospectus has been registered with the Registrar. This

*clause* further seeks to exempt a corporation from issuing a prospectus if the money deposited or the loan is accepted from less than ten persons or if fully guaranteed by the Government.

*Clause 159* deals with the requirement that a prospectus must comply with the form and contents as specified in the First Schedule.

*Clause 160* deals with the prohibition for the issuance of a prospectus unless consent from an expert whose statement is included in the prospectus has been obtained.

*Clause 161* seeks to provide for the requirements for relief as to form and content of prospectus.

*Clause 162* deals with the prohibition for the company to accept or retain subscriptions to a debenture issue in excess of the amount of the issue disclosed in the prospectus and the exception.

*Clause 163* seeks to clarify that every advertisement offering or intended to offer to the public in respect of shares or debentures are deemed to be prospectuses unless fall within the exception provided in the *clause*.

*Clause 164* provides that a document containing an offer of shares for sale shall be deemed to be a prospectus.

*Clause 165* provides that an information document purporting to describe the business affairs of the company shall be deemed to be a prospectus.

*Clause 166* contains provisions describing supplementary or replacement prospectuses and the circumstances for which the prospectuses are required to be registered.

*Clause 167* seeks to provide for the civil liability for any statement made in a prospectus which is false or misleading or where there is a material omission.

*Clause 168* seeks to provide for the criminal liability for any statement made in a prospectus which is false or misleading or where there is a material omission.

*Clause 169* seeks to provide the categories of person who shall not be taken as a party who has authorized or cause an issuance of a prospectus.

*Clause 170* seeks to empower the Registrar to issue a stop order if the Registrar is of the opinion that a registered prospectus did not comply with the requirement of the Act, contain a false and misleading statement or information, there is a material omission or the corporation contravenes a provision of the proposed Act.

Subdivision 10 deals with the provisions regarding debentures.

*Clause 171* seeks to provide that Subdivision 10 is applicable only to an offer made to the public or a section of the public with regard to shares or debentures of an unlisted recreational club and corporations specified in *clause 158*.

*Clause 172* contains the provision relating to specific performance which allows for the Court to enforce a contract to take up and pay for debentures and issue an order for specific performance.

*Clause 173* deals with the provision relating to perpetual debentures.

*Clause 174* deals with the provision where the company is allowed to re-issue debentures which have been redeemed by re-issuing the same debentures or issue new debentures in place of the redeemed debentures.

*Clause 175* seeks to provide that a debenture which is deposited by the company to secure advances is not treated as redeemed.

*Clause 176* seeks to provide the qualifications of a trustee for debenture holders.

*Clause 177* outlines the duties of trustee with respect to the debenture holders.

*Clause 178* provides for the retirement of trustees to the effect that a trustee shall not cease to be the trustee until a successor has been appointed and has taken office.

*Clause 179* seeks to provide for the contents of a trust deed.

*Clause 180* seeks to provide the Court with the power to enforce irredeemable debentures subject to certain conditions.

*Clause 181* empowers the trustee to apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the trustee or to determine any matter in relation to the interests of the holders of the debentures.

*Clause 182* provides for the obligations of a borrowing corporation to prepare a report to the trustees within a specified time frame and the report shall also be lodged with the Registrar.

*Clause 183* seeks to provide for the obligations of a guarantor corporation to furnish information relating to the guarantor corporation to be contained in the report prepared by a borrowing corporation.

*Clause 184* seeks to provide that loans and deposits are to be immediately repayable upon the achievement of a particular purpose or completion of a project.

*Clause 185* provides that any provision in a trust deed which have the effect of exempting or indemnifying the trustee against liability for breach of trust shall be have no effect.

Subdivision 11 deals with the provisions relating to the restrictions on allotment and commencement of business.

*Clause 186* prohibits the allotment of shares of a company which is offered to the public unless a minimum subscription has been subscribed and the sum payable for the subscription has been received.

*Clause 187* seeks to provide that all applications and other moneys paid prior to the allotment by any applicant shall be held upon trust by the company until the allotment.

*Clause 188* restricts the allotment of shares of a newly incorporated public company which does not issue a prospectus unless a statement in lieu of prospectus has been lodged with the Registrar.

*Clause 189* seeks to provide for the requirements relating to statements in lieu of prospectus to be lodged by a public company.

*Clause 190* provides for restrictions on the commencement of business of a newly incorporated public company subject to meeting certain conditions.

*Clause 191* deals with the restrictions on varying a contract referred to in the prospectus or statement in lieu of prospectus unless the variation has been approved at the general meeting of the company.

Division 2 deals with the provisions regarding members, directors and officers of a company.

Subdivision 1 deals with the provisions pertaining to members.

*Clause 192* seeks to state that a member shall not be liable for any obligation of a company by reason only of being a member of the company and the liability of the member is limited in certain circumstances.

*Clause 193* deals with provisions relating to liability for calls and forfeiture which is attached to the shareholder for the time being and not to any previous shareholder.

*Clause 194* seeks to provide that a member is not bound by any alteration to a constitution which requires him to acquire additional shares or increases his liability.

*Clause 195* seeks to provide for members' rights for a management review by allowing reasonable opportunity for members to question, discuss, comments or make recommendations to the company. This *clause* further provides that the recommendations shall not be binding on the directors unless the recommendations are made in the best interest of the company and that right to make the recommendation is provided for in the constitution or passed as a special resolution.

Subdivision 2 deals with provisions regarding directors.



*Clause 196* provides for the minimum number of directors for public and private company and other requirements including the minimum age and that the minimum number of director shall ordinarily reside in Malaysia.

*Clause 197* seeks to define the categories of persons who are deemed to be connected to a director.

*Clause 198* seeks to provide for the instances where a person is disqualified from being or becoming a director.

*Clause 199* seeks to empower the Court to disqualify persons from acting as a director or promoter due to certain circumstances.

*Clause 200* seeks to empower the Registrar to remove from the register kept by the Registrar the name of a director who has been disqualified under *clauses 198 or 199*.

*Clause 201* seeks to provide for the requirement that the consent of a person is required to act as a director of a company.

*Clause 202* seeks to provide that a person named as a director at the point of incorporation shall hold the position of a director in the company until he ceases to hold such position. Further, the *clause* also states that subsequent directors shall be appointed by ordinary resolution unless otherwise provided for in the constitution.

*Clause 203* seeks to provide for the appointment for directors of public companies is to be voted on individually.

*Clause 204* provides that the act of a director or other officer shall be valid notwithstanding any defect discovered subsequent to the appointment or in their qualification.

*Clause 205* seeks to provide for the requirement and procedures relating to the retirement of a director.

*Clause 206* seeks to provide for when a person may be removed as a director and the procedures for the removal.

*Clause 207* seeks to provide for the right of the directors of public company to be heard before being removed.

*Clause 208* seeks to provide for the instances when the office of a director may become vacant.

*Clause 209* seeks to provide for the procedures upon the resignation, vacation or death of a sole-director or last remaining director of a company.

Subdivision 3 deals with provisions regarding directors' duties and responsibilities.

*Clause 210* seeks to extend the definition of ‘director’ for the purposes of this Subdivision to include chief executive officer, chief financial officer, chief operating officer or any other person who is primarily responsible for the management of a company.

*Clause 211* seeks to provide that the affairs of the company shall be managed by the board of directors and subject to the exception or limitation in the proposed Act or the constitution, the board of directors shall have all the powers necessary to manage, direct and supervise the management of the business and affairs of the company.

*Clause 212* seeks to provide that subject to the constitution, the proceedings of the board of directors shall be governed by the provisions contained in the Third Schedule.

*Clause 213* seeks to provide for the duties and responsibilities of a director. A director must exercise his powers in good faith and in the best interest of the company. This *clause* further seeks to provide that a director shall exercise reasonable care, skill and diligence when carrying out his duties and responsibilities and imposes a double threshold to determine the standard of care, skill and diligence that a director shall exercise.

*Clause 214* seeks to provide for the business judgement rule to serve as a guide for directors when making decisions with regard to the business of the company.

*Clause 215* seeks to allow directors to rely on information, professional or expert advice, opinion, reports or statements provided, presented, prepared or made by third parties in exercising his duties provided always that he makes the reliance in good faith and has made an independent assessment on the information, professional advice, reports, *etc.*

*Clause 216* seeks to provide that the directors may delegate the power of the board of director subject to certain circumstances and will be responsible for the exercise of such power by the delegatee subject to certain circumstances.

*Clause 217* deals with the responsibility of a nominee director to act in the best interest of the company. This *clause* further seeks to provide that the nominee director must not subordinate the interest of the company to that the interest of his nominator in the event of conflict of interests.

*Clause 218* seeks to provide that a director is prohibited from improperly using the position as a director to gain, directly or indirectly, any benefit for himself or any other person, or causing detriment to the company.

*Clause 219* deals with the general duty and the procedures for a director of a company to make disclosure of his interests for the purposes of *clause 59*.

*Clause 220* deals with the effect of other rules of law on the duties of a director.

*Clause 221* seeks to provide for the requirement for directors to disclose their interest, either directly or indirectly, in contracts, proposed contracts, property, offices, etc.

*Clause 222* seeks to provide that a director who is directly or indirectly interested in a contract entered into or proposed to be entered shall not participate in any discussion during the consideration of the contract or vote on the contract or proposed contract. This *clause* further provide the effect of a contract entered in contravention of the provision which is voidable except if the contract is in favour of a third party who has no knowledge of the contravention.

*Clause 223* seeks to provide that directors must obtain the approval of the company for the disposal of the company's undertaking which exceeds certain threshold.

*Clause 224* deals with the general prohibition for a company other than an exempt private company to make a loan to a director of the company or enter into any guarantee or provide any security in connection with a loan made by such director.

*Clause 225* deals with the prohibition of providing loans or security in connection with a loan to persons connected with directors.

*Clause 226* prohibits a company to pay remuneration to directors which is free of income tax.

*Clause 227* deals with the prohibition for a company to make payment to a director for loss of office, or as consideration for his retirement or in connection with the transfer of the whole or any part of the undertaking or property of the company unless such payment has been disclosed and approved by the company.

*Clause 228* deals with the general prohibition for a company to enter into an arrangement or transact with the directors, substantial shareholders or persons connected with a director or shareholder unless the arrangement or transaction has been approved at a general meeting.

*Clause 229* deals with the exception to *clause 228*.

*Clause 230* seeks to provide that the fees and any benefit payable to the directors of a public company or where share of such company are quoted on a stock exchange, of the company or its subsidiaries, must be approved at a general meeting.

*Clause 231* provides the definition of a director's service contract for the purposes of this Subdivision.

*Clause 232* seeks to provide that a public company must make available for inspection a copy of every director's service contract with the company or with its subsidiaries.

*Clause 233* seeks to provide that a member has the right to inspect and request for a copy of the service contract of a director. However, this *clause* further states that the request can only be made by members holding at least five per centum of the total paid up capital or in the case of a public company not having share capital, by at least ten per centum of members.

*Clause 234* deals with the requirements to be fulfilled where a company contracts with a sole member who is also a sole director of the company.

Subdivision 4 deals with the provisions regarding secretaries.

*Clause 235* states the requirement for a company to have at least one secretary at all times. This *clause* further provides the criteria which would enable a person to be appointed as secretary.

*Clause 236* seeks to empower the board of director to appoint a secretary. This *clause* further states that a person must not be appointed as a secretary unless the person is qualified under *clause 235* and has given his consent for his appointment.

*Clause 237* seeks to provide for the rights and procedures for the resignation of a secretary.

*Clause 238* seeks to provide for the disqualification to act as a secretary.

*Clause 239* seeks to empower the board of directors to remove a secretary either in accordance with the term of the appointment or the constitution of the company.

*Clause 240* seeks to provide that the office of the secretary shall not be left vacant for more than thirty days at any one time.

*Clause 241* seeks to provide for the requirement for a secretary to register with the Registrar and for the Registrar to keep a register of secretaries.

*Clause 242* seeks to provide for the prohibition for a person to act in a dual capacity as a director and secretary where the situation requires or authorizes anything to be done by a director and a secretary.

Division 3 deals with the provisions relating to accounts and audit.

Subdivision 1 deals with the provisions regarding financial statements and report.

*Clause 243* provides for the definition of “approved accounting standards” which is aligned with the definition under the Financial Reporting Act 1997. For the purposes of this Division, except for *clause 246*, the definition of “subsidiary” is aligned with that provided under the approved accounting standard which is different from the definition of subsidiary under *clause 4*.

*Clause 244* states that the approved accounting standards shall apply to the financial statements or consolidated financial statements of a company and the circumstances to which a company may depart from this general application.

*Clause 245* deals with the requirement for all companies to keep accounting and other records which will sufficiently explain the transactions and financial position of the company. This will also enable a true and fair profit and loss accounts and balance sheets to be prepared and be conveniently and properly audited.

*Clause 246* seeks to provide for the requirement that a public company or its subsidiary to have a system of internal control which would provide reasonable assurance for the safeguard of assets of the company and that proper records are maintained to ensure that the assets are properly accounted for.

*Clause 247* seeks to provide that within two years after a corporation becomes a subsidiary of a holding company, the financial year of the corporation shall coincide with the financial year of the holding company.

*Clause 248* seeks to provide that the directors of a company shall prepare financial statements within eighteen months of its incorporation and subsequently within six months from the end of its financial year. The provision also states the requirement that the financial statements are to be duly audited, circulated to all members and in the case of a public company, to be laid before an annual general meeting.

*Clause 249* provides that the financial statements of a company must give a true and fair view of the financial position at the end of the financial year and the financial performance of the company.

*Clause 250* seeks to provide that the consolidated financial statements for a financial year shall include all the subsidiaries of a company.

*Clause 251* seeks to provide that the financial statements are to be approved by the Board and that the Board must state its opinion whether the financial statements has been drawn up in accordance to the approved accounting standards and has given a true and fair view of the financial position and the financial performance of the company.

*Clause 252* seeks to provide that the directors are required to prepare a directors' report which will be attached to the financial statement prepared under *clause 248*.

*Clause 253* seeks to provide for the contents of the directors' report including matters set out in the Fifth Schedule. This *clause* further states that the report may also include a business review as set out in Part II of the Fifth Schedule and other reporting requirement as may be prescribed from time to time.

*Clause 254* seeks to provide the form and content of the directors' report and financial statement of a banking corporation etc.

*Clause 255* seeks to provide for the relief from the requirements of the Act as to form and content of financial statements and directors' report and the procedures for such an application.

*Clause 256* empowers the Registrar to require the directors of any company to supply a statement of valuation of assets and liabilities of the company within the time specified in the notice.

*Clause 257* seeks to provide for the duty of the company to circulate copies of the financial statements and reports to the members of the company, the auditors of the company and any other persons who are entitled.

*Clause 258* states the time frame for the circulation of copies of the financial statement and reports to members of private and public companies. The time frame is within 6 months from the financial year end of a private company or in the case of a public company, at least twenty one days before the annual general meeting.

*Clause 259* seeks to provide for the duty on the company to lodge the financial statements and reports with the Registrar within a specified time frame.

*Clause 260* seeks to provide for the duty for an exempt private company to lodge a certificate regarding the status as an exempt private company within thirty days from the circulation of the financial statements and reports.

*Clause 261* seeks to provide that if a company is not required to lodge the financial statements and reports with the Registrar, a statement signed by the auditor stating that the conditions set out in the provision have been fulfilled must be lodged instead.

Subdivision 2 deals with matters relating to auditors.

*Clause 262* provides for the definition of “outgoing auditor” which refers to an auditor whose term of office has expired or about to expire.

*Clause 263* states the requirement that company auditors are to be approved by the Minister charged with the responsibility for finance. This *clause* further provides the procedures for the application for approval.

*Clause 264* deals with the qualifications or conditions to be fulfilled before a person can be appointed as an auditor of a company. This includes the requirements that the person is independent of the management of the company and that he has consented to such appointment.

*Clause 265* deals with the registration of firms of auditors with the Registrar and matters to be complied with.

*Clause 266* provides for the general powers and duties of auditors including the duties to report to members of a company on the financial statements and the records relating to the financial statements. This *clause* further states that an auditor is also required to report on whether or not the financial statements have been prepared in accordance with the approved accounting standards and have given a true and fair view of the financial position or financial performance of the company. This *clause* also states the right of an auditor to have access to accounting and other records for the purposes of an audit.

Chapter 1 of this Subdivision deals with matters relating to auditor of a private company.

*Clause 267* states the requirement for private companies to appoint auditors for each financial year but the Registrar is empowered to exempt any private company from the requirement subject to certain conditions as determined by the Registrar. This *clause* further provides the procedures for the appointment of auditors in a private company.

*Clause 268* empowers the Registrar to appoint an auditor for a private company, on an application by any member of the company if it fails to appoint an auditor.

*Clause 269* provides that the term of office of an auditor of a private company shall be in accordance with the term of his appointment and shall also be capable of being reappointed.

*Clause 270* provides that an auditor of a private company shall not be deemed to be reappointed if the company has received notice from members holding at least five per centum of the voting rights.

Chapter 2 of this Subdivision deals with matters relating to auditors of public company.

*Clause 271* states the requirement for public companies to appoint auditors for each financial year and further provides the procedures for such appointment.

*Clause 272* empowers the Registrar to appoint an auditor for a public company, on an application by any member of the company if it fails to appoint an auditor.

*Clause 273* states that the term of office of an auditor of a public company shall be in accordance with the term of his appointment and the time for him to take office.

Chapter III of this Subdivision deals with the requirements applicable to auditors generally.

*Clause 274* provides that remuneration of auditors is to be fixed by the body of authority that appoints the directors. For example, if the auditor is appointed by the members of the company, then the company shall have the power to determine the remuneration.

*Clause 275* accords the right for members holding at least five per centum of the issued share capital or total number of members to request the company to furnish details of payments in respect of other services rendered to the company other than auditing services.

*Clause 276* provides for the right for a company to remove the auditor before the end of his term.

*Clause 277* provides for the procedures for removing an auditor and the right for the auditor to make representations and to be heard during the removal process.

*Clause 278* requires a company to notify the Registrar that its auditor has been removed in accordance with *clause 277* within fourteen days from the date of the resolution.

*Clause 279* provides for the procedures for the appointment of auditor by way of written resolution in cases of private companies.

*Clause 280* provides for the procedures for the appointment of auditor at a meeting of members.

*Cause 281* states that an auditor may resign by giving a written notice to the company at its registered office.

*Clause 282* requires a company receiving a notice of resignation from its auditor to lodge a copy of the notice to the Registrar.

*Clause 283* states that if a resigning auditor attaches a statement of the circumstances connected with his resignation, the statement must be circulated to the members of the company and that a general meeting must be convened.

*Clause 284* imposes an obligation on a company to lodge a notice to the Registrar when an auditor ceases to hold office.

*Clause 285* seeks to introduce the requirement for auditor of a public company or his representative to attend every general meeting of the company at which the financial statements are laid. However, in cases of private companies, the presence of such an auditor is only mandatory if requested by the company.

*Clause 286* provides that an auditor will enjoy qualified privileges in certain circumstances on statement made in the course of his duties.

*Clause 287* requires an auditor of a borrowing corporation to send a copy of any report he is required to do under this Act or the debenture, to the trustee for the debenture holders.

Division 4 deals with matters relating to indemnity insurance for officers and auditors of the company.

*Clause 288* provides that any provision which exempts or indemnifies any officer or auditor from any liability which is attached to him under any law relating to negligence, default, breach of duty or breach of trust is void.

*Clause 289* deals with the provision relating to indemnifying or effecting any insurance for an officer or auditor for the liability for any act or omission occurred in their capacity as an officer or auditors, as the case may be. Any indemnification or provision of insurance must be in accordance with the proposed clause.



Division 5 deals with matters relating to meetings of a company.

Subdivision 1 deals with matters relating to meetings and resolution for members.

*Clause 290* provides for the procedures on how a company passes a resolution. Whilst a private company has the option of passing a resolution either by circulation or at a meeting of members, the public company shall only pass a resolution at a meeting of members.

*Clause 291* provides for the procedures on how ordinary resolutions may be passed.

*Clause 292* provides for the procedures on how special resolutions may be passed.

*Clause 293* provides for the general rules on voting including entitlement in person or by proxy.

*Clause 294* provides for the general rules if voting by proxy.

*Clause 295* states that for the purposes of voting, joint holders of shares will be counted as one shareholder.

*Clause 296* provides for the right to object to a person's entitlement to vote.

Subdivision 2 of this Division deals with matters relating to written resolutions.

*Clause 297* sets out the requirement that a written resolution may be proposed either by the Board or by any member of the company. This *clause* further states matters relating to the removal of director or auditor are not capable to be passed as written resolutions.

*Clause 298* provides the members of a company who are eligible to receive a proposed written resolution when it is circulated.

*Clause 299* deals with the rules relating to the date of the circulation of a written resolution.

*Clause 300* states the manner in which a written resolution is to be circulated including the form and where such written resolutions are to be sent.

*Clause 301* provides for the procedures on how a written resolution proposed by the Board is to be circulated.

*Clause 302* empowers members holding at least five per centum of the voting rights or such lower per centum as provided in the constitution to request for a circulation of a resolution.

*Clause 303* provides for the procedures on how a written resolution proposed by the members is to be circulated.

*Clause 304* states that the expenses for the circulation of a resolution requested by members shall be borne by the members unless resolved otherwise by the company.

*Clause 305* states that a company is not required to circulate the resolution proposed by the members on an application to the Court by the company or a person aggrieved by the proposed resolution.

*Clause 306* provides for the procedures to signify agreement to the proposed resolution.

*Clause 307* provides that the period to signify agreement is twenty eight days from the circulation date or any other shorter period if provided by the constitution. This provision further states that if the resolution is not agreed within the period, the resolution shall lapse.

*Clause 308* provides that where a company has provided an electronic address in a written resolution, it shall be deemed that any information or document relating to the resolution may be sent to that address.

Subdivision 3 deals with matters relating the passing of resolutions at meeting of members.

*Clause 309* states how a resolution may be validly passed at a meeting of members.

*Clause 310* states that a meeting of members may be convened either by the Board or upon request by any members holding at least ten per centum of the issued share capital of the company or a lower percentage as determined by the constitution.

*Clause 311* provides for the procedures where members of the company request a meeting of members to be convened.

*Clause 312* states the obligations imposed on directors to convene a meeting of members upon receiving request under *clause 311*.

*Clause 313* seeks to empower the members who have requisitioned a meeting under *clause 311* to convene the meeting so requested if the directors failed to do so as required under *clause 312*. This *clause* further states that the expenses of convening the meeting will be borne by the company.

*Clause 314* seeks to empower the Court to order a meeting amongst members of a company if it is impracticable to call for a meeting in accordance with the constitution or the proposed Act. This *clause* further states that the Court may order to be called, held and conducted in any manner it thinks fit including directing one member as sufficient to form a quorum of meeting.

*Clause 315* provides that the effective date of the resolution passed at adjourned meetings is treated to be the date the resolution was actually passed.

Subdivision 4 deals with matters relating to notice of meetings.

*Clause 316* provides for the notice period for meetings of private companies and public companies. The notice period for meeting of private companies is at least fourteen days or any longer period as stated in its constitution. The notice period for annual general meetings of a public company is at least twenty one days or any longer period as specified in the constitution and for any other meetings shall be at least fourteen days.

*Clause 317* provides for the minimum contents of a notice which must state the date, place, time and general business of the meeting.

*Clause 318* provides that a fresh notice must be given if a meeting is adjourned for more than thirty days.

*Clause 319* provides for the manner in which notice of meeting is to be given to members.

*Clause 320* seeks to allow the publication of notice of meeting on a website and the procedures that must be complied with.

*Clause 321* seeks to provide for the categories of persons who are entitled to a notice of meeting such as every member, every director and the auditor of the company.

*Clause 322* provides for the time frame to be complied with for resolutions which require special notice.

*Clause 323* seeks to allow members of a public company to require the circulation of statements to persons who are entitled to receive notice of meeting. This *clause* further specifies the thresholds to enable members to request circulation and the general obligations once a request has been received.

*Clause 324* imposes an obligation on the requirement of the directors to circulate the members' statement and the manner of the circulation.

*Clause 325* provides for the Court's power to order the non-circulation of members' statement if the rights conferred by *clause 323* are being abused to secure needless publicity or the matter is defamatory, frivolous or vexatious or if the circulation would not be in the best interest of the company.

*Clause 326* provides that where a company has provided an electronic address in a notice calling for a meeting, it shall be deemed that any information or document relating to the meeting may be sent to that address.

Subdivision 5 deals with matters relating to the procedures at meetings.

*Clause 327* provides that meeting of members can be convened at more than one venue by using any technology or method that allows members' participation. This *clause* further states that the main venue of the meeting shall be in Malaysia where the chairman of the meeting must present.

*Clause 328* provides for the minimum quorum requirement for meeting of members.

*Clause 329* seeks to provide for as to whom can be elected as chairperson of a meeting of members.

*Clause 330* seeks to provide for the declaration by chairperson of the outcome of voting by show of hands.

*Clause 331* seeks to provide for the right to demand for a poll and the circumstances when a poll can be demanded.

*Clause 332* seeks to provide for the general rule on voting on a poll.

*Clause 333* seeks to provide for the representation of corporations at meetings of members and the procedures to be complied with.

Subdivision 6 deals with matters relating to proxies.

*Clause 334* seeks to provide for a member of a company the right to appoint another person as proxy to exercise his right to attend, participate and vote at meeting of members. This *clause* further states the procedure for appointment of a proxy.

*Clause 335* seeks to impose an obligation on companies to state in the notice of meeting the right to appoint a proxy.

*Clause 336* seeks to introduce that a proxy may be elected as chairperson of a meeting of members unless expressly prohibited by the constitution.

*Clause 337* states that the appointment of a proxy authorizes the proxy to demand for a poll.

*Clause 338* provides for the procedures relating the termination of the authority to act as proxy and the effect of such termination.

Subdivision 7 deals with matters relating to class meetings.

*Clause 339* provides for the application of Subdivision 5 relating to the procedures at meetings of members to meetings of holders of a class of shares subject to certain modification as set out in this Subdivision.

Subdivision 8 deals with additional requirements applicable to public companies relating to meetings.

*Clause 340* seeks to provide for the requirement for public companies to hold annual general meeting and the matters to be transacted at such meetings. This *clause* further states the timeframe for the holding of annual general meetings.

Subdivision 9 deals with matters relating to record of resolutions and meetings.

*Clause 341* imposes an obligation on companies to keep records of resolutions and meetings and records provided under *clause 343* must be kept at the registered office for a period of at least seven years.

*Clause 342* states that the records kept under *clause 341* must be made available for inspection by members without any charge.

*Clause 343* provides that the record of resolution shall be sufficient evidence of the passing of the resolution or the record of the proceedings of meeting of members shall serve that a meeting has been duly held and convened.

*Clause 344* imposes a requirement on the sole member to provide the company with details of any decision that should have been made at a meeting of members unless that decision has been taken by way of written resolution.

Division 6 deals with matters relating to remedies.

*Clause 345* seeks to introduce the definition of “complainant” for the purposes of the Division.

*Clause 346* seeks to provide for the grounds or circumstances and the remedies which are available in cases of oppression.

*Clause 347* seeks to provide for the procedures for a complainant to bring or defend an action on behalf of a company. This *clause* further states that the right to bring or defend any proceeding on behalf of a company under the common law is abrogated.

*Clause 348* provides for the procedures in obtaining the leave of Court to discontinue, compromise or settle the proceedings.

*Clause 349* provides for the effect of ratification by members of the company of the matter which is the subject of a derivative action.

*Clause 350* sets out the powers of the Court in relation to derivative actions.

*Clause 351* empowers the Registrar to apply for an injunction from the Court in cases where a person has engaged, is engaging or intends to engage in conduct that constituted a contravention or possible contravention of the proposed Act. The power is also extended to any other person whose interest might be affected by the contravention or possible contravention.

Division 7 deals with matters relating to charges, arrangements and reconstructions as well as receivership.

Subdivision 1 deals with provisions on charges.

*Clause 352* imposes an obligation on a company which has created a charge to lodge a statement of particulars of the charge within thirty days from the date the charge was created.

*Clause 353* sets out the type of charges which must registered in accordance with this Subdivision.

*Clause 354* also imposes an obligation to lodge a statement of particulars as determined by the Registrar if a charge created in Malaysia affects a property which is situated outside Malaysia.

*Clause 355* states the requirement to register charges in a series of debentures and the procedure and particulars to be lodged with the Registrar.

*Clause 356* imposes an obligation on companies, including foreign companies, to register charges on any property acquired which would have been required to be registered under this Subdivision.

*Clause 357* requires the register of charges to be kept by the Registrar. The *clause* further provides that the Registrar shall issue a certificate of registration of charges that will serve as conclusive evidence that the requirement relating to the registration of charges have been complied with.

*Clause 358* provides for the requirement that every debenture of which the payment is secured by a charge must be endorsed with the certificate of registration or statement that the registration has been effected.

*Clause 359* states the requirement for a new holder of any charge to lodge a notice to the Registrar and the company stating the fact that he has become a new holder of a charge that was previously created. This *clause* further requires a company to notify the Registrar if there is any variation in the terms of the charge including the amount of debts or liabilities or other restrictions.

*Clause 360* provides for the requirements to notify the Registrar with regard to the release of a property from the charge upon satisfaction of debts.

*Clause 361* states that an application must be made to the Court by the company or any other person interested in a charge for any extension of time relating to the registration of a charge or any rectification in the register of charges.

*Clause 362* provides for the company to keep copies of instruments of charges at its registered office. This *clause* further imposes an obligation on the company to keep a register of charges by recording the description of the property charged, amount of the charge and names of persons entitled to the charge.

*Clause 363* lays out the requirements for documents related to charges which are made out of Malaysia to be lodged with the Registrar within a specified time period.

*Clause 364* provides for the application of the Subdivision on charges created by foreign companies.

Subdivision 2 deals with matters relating to arrangements and reconstructions.

*Clause 365* provides for the interpretation of terms used in this Subdivision.

*Clause 366* empowers to the Court to order for a meeting between a company and its creditors or members for a scheme of compromise or arrangement. If agreed by seventy five per centum of the creditors or members at the meeting, the proposed compromise or arrangement is binding on the company, members or creditors subject to it being approved by the Court.

*Clause 367* empowers the Court to appoint an approved liquidator to assess the viability of the proposed scheme of compromise or arrangement.

*Clause 368* empowers the Court to restrain any proceedings including any petition to wind up the company for a period of not more than three months when granting an order for the scheme of compromise or arrangement. This *clause* further states that any disposition of property of the company during the moratorium period is void unless permission has been obtained from the Court.

*Clause 369* provides that a statement containing certain information affecting the rights of members, creditors or debenture holders due to the compromise or arrangement must accompany every notice of meeting summoned under this subdivision.

*Clause 370* provides for the requirements to be complied with when a compromise or arrangement has been proposed in connection with a proposal for the reconstruction or amalgamation of companies.

*Clause 371* sets out the rights of the offeror and procedures to buy out of dissenting shareholders during the scheme of reconstruction or amalgamation.

Subdivision 3 deals with matters relating to receivers and receivers and managers.

*Clause 372* sets out the qualification to be a receiver or receiver and manager which refers to *clause 433*.

*Clause 373* sets out that certain categories of person are disqualified from acting as receiver or receiver and manager including a corporation, an undischarged bankrupt and mortgagee of the property of a company.

*Clause 374* states that the appointment of a receiver or receiver and manager can be under an instrument or by the Court.

*Clause 375* provides the right of debenture holder to appoint a receiver or receiver and manager under an instrument. The *clause* further states the effect and the powers conferred to the receiver or receiver and manager on such appointment.

*Clause 376* empowers the Court to appoint a receiver or receiver and manager on the application of a debenture holder or other interested person if the Court is satisfied that the company failed to pay a debt due to the debenture holder, has breached the terms of any instrument creating the charge or it is necessary to preserve the secured property for the benefit of the debenture holder.

*Clause 377* states the requirement to notify the Registrar on the appointment of a receiver or receiver and manager.

*Clause 378* states the instances where the office of a receiver or receiver and manager can be vacant and the right for a receiver or receiver and manager to resign.

*Clause 379* states the requirement to notify the Registrar on cessation of office of the receiver or receiver and manager.

*Clause 380* provides for the requirement for a statement relating to the appointment of a receiver or a receiver and manager wherever the name of the company appears including in the official documents and website of the corporation.

*Clause 381* provides that a receiver or receiver and manager is personally liable for the debts incurred by him during receivership unless specifically provided otherwise in the instrument appointing him.

*Clause 382* provides that a receiver or receiver and manager is personally liable for a contract entered in the exercise of his powers unless specifically stated otherwise. This *clause* further provides that the terms of contract may exclude or limit the personal liability unless the receiver or receiver and manager is appointed by the Court.

*Clause 383* provides for the powers of a receiver or receiver and manager which are specified under Sixth Schedule of the proposed Act.

*Clause 384* provides for instances where application to Court for directions has to be made by the receiver or receiver and manager.

*Clause 385* provides for the power to the Court to appoint the liquidator as the receiver or receiver and manager in cases of a company being wound up.

*Clause 386* seeks to provide that a receiver or receiver and manager may continue to act as a receiver or receiver and manager, as the case may be, after the commencement of a winding up.

*Clause 387* provides the powers of the Court to determine the remuneration of receivers or receiver and managers on application by the liquidator.

*Clause 388* provides that upon appointment a receiver or receiver and manager should notify the company as to his appointment and in return the company must submit a statement of affairs to the receiver or receiver and manager within a specified period. This *clause* further requires that within a specified period the receiver or receiver and manager shall lodge the statement together with his comments to the Registrar, the company and the debenture holders.

*Clause 389* seeks to impose on the company a requirement to make available all books and documents relating to a property in receivership once a receiver or receiver manager is appointed.



*Clause 390* seeks to impose a company to state the date of appointment of receiver or receiver and manager in submitting a statement of affairs as required under *clause 388* and other details as specified.

*Clause 391* seeks to provide for the requirement for receiver or receiver and manager to lodge detailed accounts of the receiver or receiver and manager

*Clause 392* seeks to provide a priority list of certain debts, to which the payment is subject to floating charge, in priority of the debenture holders.

*Clause 393* seeks to provide for provisions relating the enforcement of the duty of receiver or receiver and manager to lodge documents, accounts or other documents within fourteen days after the receipt of notice from any member or creditor or the trustee for the debenture holders.

Division 8 deals with matters relating to corporate rescue mechanism comprising the corporate voluntary arrangement and the judicial management.

Subdivision 1 deals with matters relating to corporate voluntary arrangement.

*Clause 394* provides for the definitions of terms used for this Subdivision.

*Clause 395* provides that corporate voluntary arrangement does not apply to public companies, a licensed institution regulated by the Central Bank of Malaysia or a company which is subject to the Capital Market and Services Act 2007 and a company which create a charge over its property.

*Clause 396* seeks to provides that the categories of person who may propose a corporate voluntary arrangement such as the directors, a judicial manager in the case of a company under a judicial management order and the liquidator in the case where the company is being wound up.

*Clause 397* seeks to provide for the appointment of a nominee in the proposal for a corporate voluntary arrangement and the documents that must be submitted to the nominee. This *clause* further requires the nominee to submit a statement to the directors indicating as to whether or not the proposed corporate voluntary arrangement has a reasonable prospect of being successful including the sufficiency of fund for the company to carry on business during the moratorium period.

*Clause 398* seeks to provide that the moratorium period commences from the time of filing certain documents to the Court. This *clause* further provides that further matters relating to moratorium for a corporate voluntary arrangement are provided under the Eighth Schedule of the proposed Act.

*Clause 399* sets out the requirement to summon for meetings between a company and its creditors when a moratorium for a corporate voluntary arrangement is in effect.

*Clause 400* seeks to provide that a proposal of corporate voluntary arrangement shall only be approved by at least seventy five per centum of the total value of creditors present and voting at the meeting.

*Clause 401* seeks to require that the implementation of the corporate voluntary scheme must be supervised by a supervisor who can be the nominee or an insolvency practitioner.

*Clause 402* provides that a corporate voluntary arrangement could come to an end prematurely if the scheme has not been fully implemented.

Subdivision 2 deals with matters relating to judicial management.

*Clause 403* provides that judicial management shall not apply to a licensed institution regulated by the Central Bank of Malaysia or a company which is subject to the Capital Markets and Services Act 2007.

*Clause 404* seeks to provide that an application for a company to be placed under a judicial management can be made to the Court if the company or its creditors considers that the company is or will be unable to pay its debts and that the probability of rehabilitating or preserving the assets of the company as a going concern is better served than if the company is to be wound up.

*Clause 405* provides for the power of the Court to make a judicial management order and appoint a judicial manager. The *clause* further states that a judicial management order shall not be granted once a company has gone into liquidation.

*Clause 406* seeks to provide that a judicial management order shall be in force for a period of not more than six months, with a further extension of a period of another six months.

*Clause 407* seeks to provide that only an insolvency practitioner may be appointed as a judicial manager and that the Court has the right to refuse the nomination. The *clause* further provides that a judicial manager is entitled to receive salary or remuneration by way of percentage or as agreed between the judicial manager and the company or the creditors.

*Clause 408* provides for the requirement for the notice of application for a judicial management order to be published in a widely circulated newspaper and the categories of persons to whom the notice should be given.

*Clause 409* seeks to provide that the Court may dismiss the application a judicial management order if a receiver or receiver and manager is or will be appointed or if the application is objected by a secured creditor.

*Clause 410* seeks to provide for certain actions or proceedings that could not be made during the application of a judicial management order including, amongst others, the resolution to wind up the company.

*Clause 411* seeks to provide that on the making of a judicial management order, any receiver or receiver and manager shall vacate the office and any application for the winding up of the company shall be dismissed.

*Clause 412* provides for the requirement for a statement that the company is managed by the judicial manager to appear wherever the name of the company appears including in the official documents and website.

*Clause 413* seeks to provide for the vacancy in the office of a judicial manager.

*Clause 414* seeks to provide for the general powers and duties of judicial manager including to take into his custody or control all property of the company and matters specified in the Ninth Schedule of the proposed Act. The *clause* further provides that all powers and duties of the directors shall be performed by the judicial manager.

*Clause 415* provides for the power of the judicial manager to deal with charged property including the power to dispose such property.

*Clause 416* seeks to provide that a judicial manager is under an agency relationship with the company. The *clause* further provides that a judicial manager will be personally liable for contracts entered into by him in carrying out his functions unless agreed otherwise.

*Clause 417* provides that a judicial manager may resign or be removed by the Court. The *clause* further states other instances for cessation of office of the judicial manager including by reason of him disqualified to act as an insolvency practitioner. The *clause* also states that where a person ceases to be a judicial manager, he will be released from any liability arising from his conduct as a judicial manager.

*Clause 418* seeks to provide for the procedures to be complied with the judicial manager and the company upon the making of the judicial management order including giving notice to the Registrar and the creditors.

*Clause 419* seeks to impose on a company to state provide details of information relating to the particular of the company's assets and liabilities including the list and particulars of creditors when submitting statement of affairs to the judicial manager as required under *clause 418*.

*Clause 420* seeks to introduce the requirement for a judicial manager to prepare a statement of proposals towards achieving one or more of the objectives set out under *clause 405* and to lay the proposal at the creditors' meeting. The *clause* further requires the judicial manager to send a copy of the statement to all members of the company and to publish the notice in a widely circulated newspaper.

*Clause 421* provides that the proposal made by the judicial manager shall be approved by at least seventy five per centum of the total value of creditors and shall be binding on the company and the creditors. The *clause* further provides that in cases where the proposal was not approve, the Court may order the discharge of the judicial management order.

*Clause 422* seeks to provide that at the creditors' meeting which approved the proposal, a committee of creditors may be established to monitor the

approved proposal and may require the judicial manager to provide information relating to his carrying out his function.

*Clause 423* provides for the duty of the judicial manager to manage the company's affairs, business and property of the company in accordance to the approved proposals.

*Clause 424* seeks to provide for the duty of the judicial manager to apply to Court for the discharge of the judicial management order once the objective of the proposal has been achieved implemented or if for some reason is unable to be implemented.

*Clause 425* seeks to provide for protection to the interests of the creditors and members during the judicial management order is in force on the ground that the company's affairs, business and property of the company has been unfairly managed by the judicial manager or the approved proposal would have been prejudicial to their interests. The *clause* further provides that the orders that might be given by the Court including, amongst others, to regulate the future affairs of the company or discharge the judicial management order.

*Clause 426* provides that any transfer, mortgage or delivery of goods payment, execution or other act in relation to property which gives undue preference to a creditor or any person which takes place six months before a company is being placed under a judicial management order shall be void.

*Clause 427* provides for the judicial manager's power for delivery and seizure of property under Court order from any contributories, any receiver or receiver and manager, any trustee or any other person who has possession or control of the company's property.

*Clause 428* seeks to impose a duty to any officer, promoter, employee or any other person to provide relevant information relating to the formation and management of the company to the judicial manager.

*Clause 429* seeks to allow the judicial manager to apply to the Court to make inquiry into company dealings during the judicial management order is in effect from any officer, employees or any other person who could provide the relevant information relating to their dealings with the company.

*Clause 430* provides for the application of *clauses 534, 535, 538 and 539* relating to the winding up for a company to a company which is under a judicial management order.

5. Part IV deals with matters relating to the cessation of a company and is divided into three Divisions.

Division I deals with matters relating to voluntary and compulsory winding up of a company.

Subdivision 1 deals with preliminary matters.

*Clause 431* states that application of the winding up provisions shall apply for the modes of winding up referred to in *clause 432* unless the context requires otherwise.

*Clause 432* provides that the winding up of a company may be effected by a Court order or by resolution for voluntary winding up by members or creditors of the company.

*Clause 433* provides for the qualifications or conditions to be fulfilled before a person can be appointed as a liquidator or an interim liquidator of a company. The *clause* further states that any person who is a member of a recognized professional body may apply to the Minister of Finance to be approved as a liquidator. The *clause* also provides that prior consent is required before a person is appointed as a liquidator.

*Clause 434* provides that the provisions of this Part relating to remedies against property of a company are also binding on the Government.

Subdivision 2 deals with matters relating to contributories.

*Clause 435* provides for the liability of every past and present member to contribute to the company in the event of a winding up. The *clause* also provides the exceptions to the general rule.

*Clause 436* provides for the nature of the liability of a contributory which will accrue when his liability commenced.

*Clause 437* provides that in the case of a death of a contributory, his personal representative shall be liable for his liabilities.

*Clause 438* provides that of a bankruptcy of a contributory, his trustee shall be liable for his liabilities.

Subdivision 3 deals with matters relating to voluntary winding up.

*Clause 439* provides for the circumstances in which a company may wound up voluntarily due to the occurrence of a certain event or if the company so resolve.

*Clause 440* provides for the duty for the director to appoint interim liquidators after making a statutory declaration that the company cannot continue with its business due to its liabilities and a meeting of creditors have been summoned. The *clause* further provides that an interim liquidator shall have the full powers of a liquidator and shall be entitled to receive a salary or remuneration by way of percentage or as provided for in the winding up rules.

*Clause 441* provides that the date of commencement of a voluntary winding up is at the date when an interim liquidator is appointed under *clause 439* or at the time of the passing of the resolution for the winding up.

*Clause 442* provides for the effect of voluntary winding up where from the date of the commencement of the winding up, the company shall cease to carry on its business.

*Clause 443* provides for the requirement for directors of a company to make declaration of solvency when intending to wind up voluntarily. The *clause* further provides for the statement of affairs to be prepared in support of the solvency declaration.

*Clause 444* describes the distinction between members voluntary winding up and creditors voluntary winding up.

Subdivision 4 deals with matters relating to members' voluntary winding up.

*Clause 445* provides for the appointment and removal of liquidator for members voluntary winding up. The *clause* further provides that on the appointment of a liquidator, the powers of the directors shall cease except so far as the company in general meeting and the liquidator consented to the continuance of the powers.

*Clause 446* provides for the power of the members to fill the vacancy in office of a liquidator.

*Clause 447* seeks to impose a duty on the liquidator to call for meeting of creditors if the company becomes insolvent. The *clause* further provides that once a meeting of creditors have been called, the winding up will then proceed as a creditors' voluntary winding up.

*Clause 448* seeks to provide for the effect of conversion into a creditors' voluntary winding up.

Subdivision 5 deals with matters relating to creditors' voluntary winding up.

*Clause 449* seeks to provide for the requirement for the company to call a meeting of creditors to propose the resolution for winding up. The *clause* further provides for the procedures to be complied with including the requirement to prepare a statement of affairs and publish the notice of the meeting in a widely circulated newspaper.

*Clause 450* seeks to provide for the company to nominate a liquidator in creditors voluntary winding up. The *clause* also provides that if the creditors nominate a different person as a liquidator, then the liquidator nominated by the creditors shall be the liquidator for the purposes of winding up the affairs and distributing the assets of the company unless an order from the Court has been obtained to direct otherwise.

*Clause 451* seeks to provide that any attachment, sequestration or other actions against the property of the company shall be void and no proceedings may be taken except with the leave of the Court.

Subdivision 6 deals with provisions which are applicable to every voluntary winding up.

*Clause 452* seeks to provide that unless provided otherwise, the distribution of property of the company in a voluntary winding up is in equal basis.

*Clause 453* provides for the appointment and removal of a liquidator by the Court.

*Clause 454* provides for the power of the Court to review the liquidators' remuneration in a voluntary winding up.

*Clause 455* provides that a liquidators act is still valid regardless of any defects in the appointment or qualification discovered afterwards.

*Clause 456* describes the powers of liquidators in a voluntary winding up as specified in the Eleventh Schedule. of the proposed Act

*Clause 457* provides for the liquidator's power to accept shares or other securities as consideration for the sale of property of the company.

*Clause 458* seeks to impose the requirement to conduct for annual meeting of members and creditors if the voluntary winding up continues for more than one year. The *clause* further provides the time frame for such meetings to be convened.

*Clause 459* seeks to impose an obligation on the liquidator to call for the final meeting and dissolution of the voluntary winding up once the affairs of the company has been fully wound up. The *clause* further provides the procedures to be complied with including the publication of the notice in a widely circulated newspaper.

*Clause 460* seeks to provide that any the arrangement made under the voluntary winding up is binding on creditors. The *clause* further provides that any creditor or contributory may appeal to the Court to amend, vary or confirm the arrangement.

*Clause 461* provides for the right of the liquidator, contributory or creditor to apply to the Court to determine questions which arise from the winding up or powers to be exercised.

*Clause 462* provides for costs in voluntary winding up which shall be paid out of the assets of the company in priority to all other claims.

*Clause 463* provides that where a petition has been presented to the Court on the ground of inability to pay debts, the company cannot resolve the winding up as voluntary winding up unless leave of the Court has been obtained.

Subdivision 7 deals with the provisions relating to winding up by Court.

*Clause 464* seeks to provide for persons who may present a petition to Court to wind up a company. Amongst others, the winding up petition may be presented by the company, a creditor, a contributory, and a liquidator. The *clause* also provide that in specific situations, the Minister, the Registrar, the Central Bank of Malaysia and the Malaysia Deposit Insurance Corporation may also present a winding up petition.

*Clause 465* seeks to provide for the circumstances in which a company may be wound up by Court. The circumstances include that the company has passed a special resolution to be wound up by the Court, the company does not commence business within a year from its incorporation, the number of members is reduced below the minimum requirement and the company is being used for unlawful purposes or purposes which are incompatible with peace, welfare, security, public interest or good order in Malaysia.

*Clause 466* seeks to provide for the definition of ‘inability to pay debts’ by a company. The *clause* clarifies that if a company is unable to pay debts when the company is indebted in a sum exceeding five thousand ringgit and a notice of demand has been served on the company and the company has neglected to pay the sum within a specified time frame. The *clause* further states that the period for the filing of the petition in Court to wind up a company is within six months from the expiry date of the notice of demand.

*Clause 467* seeks to provide the circumstances as to when the winding up of a company by Court commences. In the case where before the presentation of the winding up petition, a resolution has been passed, the winding up commences on the date of the resolution. In any other case, the winding up commences on the date of the winding up order.

*Clause 468* seeks to provide that a person other than a company itself or a liquidator who presents a winding up petition shall at his own cost, upon a winding up order is made by Court, carry out all proceedings in the winding up until a liquidator has been appointed and the liquidator shall reimburse that person unless otherwise ordered by the Court.

*Clause 469* seeks to provide for the power of the Court, on hearing the winding up petition, to dismiss, adjourn the hearing conditionally or unconditionally or make any interim or any other order that the Court deems fit.

*Clause 470* deals with the power of the Court to stay or restrain proceedings against a company before making the winding up order upon an application made by the company, creditor or a contributory.

*Clause 471* seeks to provide that no action or proceeding shall be proceeded against a company when a winding up order has been made or an interim liquidator has been appointed except with the leave of Court.

*Clause 472* provides that any disposition of property of the company other than an exempt disposition made after the presentation of the winding up petition, shall be void unless the Court otherwise orders. The *clause* further states that “exempt disposition” means a disposition made in accordance with Part I of the Twelfth Schedule of the proposed Act.

*Clause 473* seeks to clarify that any petition for winding up of a company shall constitute a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

*Clause 474* seeks to impose an obligation on the petitioner to notify the Registrar on the making of the winding up order by the Court and the name



and address of the liquidator. It also requires the petitioner to lodge a copy of the winding up order with the Registrar, Official Receiver and liquidator.

*Clause 475* seeks to provide for the effect of the winding up order that the order will operate in favour of all creditors and contributories as if made on the joint petition of a creditor and a contributory.

Subdivision 8 deals with the provisions relating to liquidators in winding up by Court.

*Clause 476* provides that the Court may appoint the Official Receiver or an approved liquidator as an interim liquidator at any time after the presentation of a winding petition and before the making of a winding up order.

*Clause 477* deals with provisions relating to the effect of the appointment of the liquidator upon a winding up order being made.

*Clause 478* prohibits any person other than the Official Receiver to act as a liquidator until that person gives notice on his appointment to the Registrar and the Official Receiver.

*Clause 479* seeks to provide for the remuneration of liquidators where they shall be entitled to receive the salary or remuneration by way of percentage or otherwise as is determined by the Court.

*Clause 480* empowers the Official Receiver to have control over an approved liquidator by inquiring into any matter or take such action as he think expedient relating to any misconduct of the liquidator.

*Clause 481* empowers the Minister to have control over the Official Receiver by inquiring into any matter or take such action as he think expedient relating to any misconduct of the Official Receiver.

*Clause 482* provides that a liquidator appointed by the Court may resign or, on good cause shown, be removed from office by the Court.

*Clause 483* seeks to provide that when an interim liquidator has been appointed or a winding up order has been made, the interim liquidator or liquidator shall take into custody all the property of the company.

*Clause 484* seeks to provide that the company is required to submit a statement as to the affairs of the company as at the date of the winding up within fourteen days from the date of the winding up order or within such extended time by the Court or liquidator.

*Clause 485* seeks to impose a requirement on the liquidator to submit a preliminary report to the Court on the affairs of the company as soon as practicable but not more than thirty days from receipt of the statement of affair from the company.

*Clause 486* prescribes the power of liquidator in winding up by Court by either exercising any of the general powers specified in Part I or Part II of

the Twelfth Schedule of the proposed Act with the authority of the Court or the committee of inspection.

*Clause 487* provides that a liquidator in exercising his powers in the administration of the assets of the company and in the distribution among the creditors shall have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall override any directions given by the committee of inspection in case of conflict.

*Clause 488* seeks to provide that a liquidator is required to pay any money received by him into such bank account as prescribed by the winding up rules or as specified by the Court.

*Clause 489* seeks to provide that the liquidator is required to settle a list of contributories and cause the company's property to be collected and applied to discharging the company's liabilities.

*Clause 490* seeks to provide that a liquidator may apply for an order for his release if he has realized all property of the company, distributed a final dividend, if any, to the creditors, adjusted the rights of contributories amongst themselves and made final return to the contributories, if any.

*Clause 491* seeks to provide for the procedures for an order of dissolution and that where an order is made that the company is dissolved, the company shall from the date of the order, be dissolved accordingly.

Subdivision 9 deals with the provisions relating to general power of the Court in winding up by Court.

*Clause 492* empowers the Court to order for a stay of winding up of a company on the application of the liquidator, creditor or contributory.

*Clause 493* empowers the Court to make an order terminating the winding up of a company on the application of the liquidator, creditor or contributory.

*Clause 494* deals with matters relating to stay and termination of winding up of a company. The *clause* further provides that the Court when giving order for the termination of a winding up may give such directions for the resumption and management of the company by its officers including a direction for a general meeting.

*Clause 495* seeks to provide that the Court may make an order directing any contributory of the company to pay to the company any debts due to the company and allow the contributory to set-off any money due to him.

*Clause 496* deals with the power of the Court to make calls on all or any of the contributories of the company for payment of any money which the Court considers necessary to satisfy the debt and liabilities of the company and make an order for payment of any calls so made.

*Clause 497* seeks to provide that the Court may order any contributory or any other person who owes money to the company to pay the amount due into the bank named in the order to the account of the liquidator instead of to the liquidator

*Clause 498* seeks to clarify that an order made by the court on a contributory shall be conclusive evidence that the money, if any, appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

*Clause 499* seeks to provide that a liquidator of a company may require the appointment of a special manager other than himself, if he is satisfied that it is necessary having considered the nature of the estate or business of the company or in the interest of the creditors or contributories to act during such time the court directs with such powers entrusted to him by the Court.

*Clause 500* seeks to allow the Court to fix a date which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before the debts are proved.

*Clause 501* deals with the power of the Court to order for inspection of books and papers of the company by creditors and contributories.

*Clause 502* deals with the power of the Court to summon persons connected with the company who is known or suspected to have in his possession any property of the company or supposed to be indebted to the company.

*Clause 503* deals with the power of the Court to summon on the application of the liquidator any person who was previously an officer of the company including any banker, advocate or auditor to be publicly examined as to the promotion, formation or the conduct of the business of the company or with regard to the conduct and dealing as officers of the company.

*Clause 504* deals with the power of the Court to cause the arrest of any absconding contributory, director or former director.

*Clause 505* seeks to provide for the delegation of powers of the Court to the liquidator as an officer of the Court and subject to the control of the Court in respect of meetings of creditors or contributories, settling the list of contributories, paying money or delivering or transferring property and documents to the liquidator, adjusting the right of contributories and the date when the debts or claims are to be proved. The *clause* further states that the liquidator shall not without the special leave of the Court rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

*Clause 506* seeks to provide that any powers by this Act conferred on the Court shall be in addition to and not in derogation of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Division 2 deals with the provisions applicable to every winding up.

Subdivision 1 deals with provisions relating to general matters.

*Clause 507* seeks to provide that cash balance standing to the credit of any company in liquidation in excess may be invested in securities issued by the Government of Malaysia or place it on deposit at interest or with return with any bank.

*Clause 508* seeks to provide that any unclaimed assets of the company are to be paid to the Official Receiver.

*Clause 509* seeks to impose an obligation on every liquidator to keep proper books and papers to record minutes of proceedings at meetings and such other matters as are prescribed. Subject to the control of the Court, any creditor or contributory may personally or by his agent inspect the books and papers.

*Clause 510* seeks to provide for the control of the Court over liquidators. The clause further states that if a liquidator does not perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver, the Court must inquire into the matter and take such action as the Court thinks fit.

*Clause 511* seeks to provide that the Court may require any person to deliver any property of the company to the liquidator.

*Clause 512* deals with the power of the Official Receiver to do any act required to be done by the committee of inspection when there is no committee of inspection.

*Clause 513* seeks to require a liquidator or interim liquidator to lodge a notice of his appointment and his address with the Registrar and the Official Receiver within fourteen days from the appointment.

*Clause 514* seeks to impose an obligation to every liquidator to lodge with the Registrar and with the Official Receiver, an account of his receipts and payments and a statement of the position in the winding up and verified by statutory declaration in a manner as may be determined by the Registrar within a specified period.

*Clause 515* seeks to provide that a liquidator who has made default in making any application, return, account or other document, or in giving any notice which he is required under the law, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

*Clause 516* seeks to provide that a company under liquidation shall give notification by stating it in every official documents of the company.

*Clause 517* seeks to provide that any aggrieved person by the act or decision of the liquidator may appeal against that decision or act to the Court.

*Clause 518* seeks to provide that when a company is being wound up all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall be prima facie evidence in respect of the contributories and the companies.

*Clause 519* seeks to provide that a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

*Clause 520* seeks to provide that if a resolution passed at an adjourned meeting of any creditors or contributories of a company, the resolution is to be treated as having been passed on the date on which it was in fact passed.

*Clause 521* seeks to provide that the Court may determine the manner or procedures for matters relating to meetings to ascertain wishes of creditors or contributories.

*Clause 522* seeks to provide that the Session Court Judges shall be the commissioners for the purpose of taking evidence under this Part.

Subdivision 2 deals with the provisions relating to proof and ranking of claims.

*Clause 523* provides the description of debts which are provable in winding up.

*Clause 524* deals with the rights and duties of secured creditors including the right to realize property subject to the charge, value the property subject to the charge or surrender the charge to the liquidator for the general benefit of creditors and claim in the winding up as an unsecured creditor for the whole debt.

*Clause 525* deals with the rights and duties of unsecured creditors in proving debts by sending an affidavit to the liquidator.

*Clause 526* seeks to provide that where before the commencement of the winding up there have been mutual credits, mutual debts or other mutual dealings between the company and any of the company's creditors proving or claiming to prove for a winding up debts, the amount may be set off from the amount due from the other.

*Clause 527* seeks to provide for the priority of payment in a winding up of a company to all other unsecured debts. The *clause* further provides for the mechanism in determining payment of debts amongst the creditors including debts which are ranked *pari passu*.

Subdivision 3 deals with the provisions relating to effect on other transactions and dissolution.

*Clause 528* seeks to provide that any transfer, mortgage or delivery of goods, payment, execution or other act in relation to property which gives undue preference to any creditor over other creditors which takes place six

months before a presentation of a winding up petition or where the resolution to wind up the company has been passed, order shall be void.

*Clause 529* seeks to provide that any floating charge created within six months from the presentation of a winding up petition, or the passing of resolution in the case of voluntary winding up shall be invalid except in certain circumstances.

*Clause 530* seeks to provide for the liquidator's rights to recover in respect of certain sales to or by company any amount by which the cash consideration exceeded the value of the property, business or undertaking at the time of the acquisition.

*Clause 531* seeks to empower the liquidator, with the leave of Court or the committee of inspection, to disclaim any onerous property within twelve months after the commencement of the winding up.

*Clause 532* seeks to provide for interpretation to the words "bailiff" and "goods" for purposes of *clauses 533 and 534*.

*Clause 533* seeks to provide that when a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up.

*Clause 534* deals with the duties of bailiff as to goods taken in execution.

*Clause 535* deals with the power of Court to declare the dissolution of a company void on application of the liquidator of the company or of any other person who appears to the Court to be interested within two years from the date of dissolution.

Subdivision 4 deals with the provisions relating to offences in a winding up proceedings.

*Clause 536* seeks to provide for provisions relating to offences by officers of the company in liquidation such as non-disclosure to the liquidator of all the property of the company, makes any material omission in any statement relating to the affairs of the company, fails to inform the liquidator of a false debt within a specified time period from the date he knows or believes that the false debt has been proved by any person.

*Clause 537* seeks to provide that any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator commits an offence.

*Clause 538* seeks to provide that every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false

or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person, commits an offence.

*Clause 539* seeks to clarify the liability of officers of the company where proper accounts are not kept for a period of two years immediately preceding the commencement of investigation or the winding up or the period between the incorporation of the company and the investigation or winding up.

*Clause 540* seeks to provide for the responsibility of any person for fraudulent or unlawful trading if it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose.

*Clause 541* deals with the power of the Court to assess damages against delinquent officers of the company.

*Clause 542* deals with the prosecution of delinquent officers and members of the company who have been found guilty of an offence in relation to the company for which he is criminally liable. The Court may either on the application of any person interested in the winding up or of its own motion, direct the liquidator either to prosecute the offender himself or to refer the matter to the Minister.

Division 4 deals with the provisions relating to winding up of unregistered companies.

*Clause 543* states that the provision of this Division shall be in addition to and not in restriction of any provisions contained in this or any other Act with respect to winding up companies by the Court and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies.

*Clause 544* provides for the interpretation of “unregistered company” which includes a foreign company and any partnership, association or company consisting of more than five members but does not include a company incorporated under this Act or under any corresponding previous written law.

*Clause 545* provides for the modification this Part to apply in respect of the winding up of unregistered companies.

*Clause 546* seeks to prescribe the contributories in winding up of an unregistered company and their liabilities.

*Clause 547* seeks to provide that the provisions of the proposed Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order will also extend to actions and proceedings against any contributory of an unregistered company, in the case of where the application to stay or restrain is by a creditor.

*Clause 548* seeks to clarify matters related to outstanding assets of a dissolved unregistered company of which the place of incorporation or origin is outside Malaysia.

Division 4 deals with the provisions relating to striking off and management of assets of dissolved companies.

Subdivision 1 deals with the provisions relating to striking off.

*Clause 549* seeks to provide for the Registrar's power and the circumstances of which a company may be struck off the register including if the company is not carrying on business or in operation, has contravened the proposed Act or being used for unlawful purposes.

*Clause 550* seeks to provide that the Registrar may strike a company off the register, either on his own motion or upon an application by a director, member or liquidator of the company.

*Clause 551* seeks to allow the Registrar to serve on the company or the liquidator a notice, stating that if an answer showing cause to the contrary is not received within thirty days from the date of the notice, a notification to the public will be published with a view to striking the name of the company off the register.

*Clause 552* seeks to provides for provisions for any interested person to make an objection to the striking off of the company on reasons such as in instances where the company is still carrying on business or there is other reason for it to continue in existence, that the company is a party to a legal proceeding, that the company is in receivership or liquidation, or both, etc.

*Clause 553* seeks to provide for the withdrawal of a striking off by lodging a notice to the Registrar.

*Clause 554* seeks to provide for the effect of striking off where the liability, if any, of every director or officer and member of the company continues and may be enforced as if the company had not been dissolved.

*Clause 555* empowers the Court to reinstate a struck off company into register on an application made by any aggrieved person to the Court within seven years from the date of the dissolution of the company.

Subdivision 2 deals with the provisions relating to management of assets of dissolved company.

*Clause 556* deals with the power of Registrar to represent a dissolved company in certain circumstances such as where the company if still existing would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter. The power to be exercised under this *clause* is purely an administrative act.

*Clause 557* seeks to provide that all outstanding assets of dissolved or struck off company to vest in the Registrar.



*Clause 558* seeks to empower the Registrar to dispose of outstanding interest in property that is vested in him and the manner the property may be disposed by the Registrar.

*Clause 559* seeks to provide for the liability of the Registrar and the Government as to property vested in Registrar.

*Clause 560* seeks to impose an obligation on the Registrar to record in the register a statement of any property received by him or under his control, keep accounts of all moneys arising and of how they have been disposed of and keep all accounts, vouchers, receipts and papers relating to the property and moneys.

6. Part V deals with miscellaneous provisions and is divided into three Divisions covering matters relating to foreign companies, enforcement and general provisions.

Division 1 deals with provisions relating to foreign companies.

*Clause 561* seeks to prohibit a foreign company from carrying on business in Malaysia unless registered under the proposed Act. The *clause* further provides the definition of “carrying on business” and activities which are not considered as carrying on business are specified in Thirteenth Schedule of the proposed Act.

*Clause 562* sets out the required information and documents to be provided to the Registrar by a foreign company for the purpose of registration such as the name, identification, nationality and the ordinary place of residence of every shareholder in Malaysia, every director of the company, the list of shareholders or members at its place of origin, *etc.*

*Clause 563* sets out the requirement for foreign companies to have an agent in Malaysia at all times.

*Clause 564* seeks to provide that the foreign company shall be registered under the name as registered in its place of origin subject to the name being available under *clause 26*.

*Clause 565* seeks to impose an obligation on a foreign company to display the name of a foreign company, whether limited, and place where it is incorporated in Romanised characters outside its registered office and every place of business established by it in Malaysia.

*Clause 566* seeks to impose a requirement for foreign companies to have a registered office in Malaysia at all times where all communication and notices may be addressed and which shall be open and accessible to the public during the ordinary course of business hours.

*Clause 567* seeks to provide that if any change or alteration is made to the information provided to the Registrar by a foreign company after the registration, the foreign company must inform the Registrar within fourteen days from the date of the change or alteration.

*Clause 568* seeks to require a foreign company which has a share capital and has any member who is a resident in Malaysia, to keep at its registered office in Malaysia or at some other place in Malaysia a branch register for the purpose of registering shares of members resident in Malaysia.

*Clause 569* seeks to provide that a foreign company shall register in a branch register of the company, the shares held by a member which are registered in any other register kept by the company.

*Clause 570* seeks to provide for the removal of shares from the branch register where subject to the proposed Act, on an application in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the particulars relating to the shares from the branch register and register the shares in such other register within Malaysia as is specified in the application.

*Clause 571* seeks to provide that the requirement relating to the index of member, inspection and closing of branch register under *clauses 50, 51, 52, 53, 54 and 55* of the proposed Act to apply to foreign companies with modifications.

*Clause 572* seeks to provide for the transfer of shares and rectification in respect to the transfer of shares and the rectification of the branch register under *clauses 105, 106, 107 and 603* of the proposed Act to apply to foreign companies with modifications.

*Clause 573* seeks to provide that the branch register shall be *prima facie* evidence of any matters directed or authorized by this Subdivision to be inserted in the branch register and the title of the member to the shares and the registration of the shares in the branch register.

*Clause 574* seeks to impose an obligation on foreign companies to keep accounts and other records in Malaysia which will sufficiently explain the transactions and financial position of the foreign company arising out of its operation in Malaysia.

*Clause 575* seeks to provide that a foreign company shall, within two months of its annual general meeting, lodge with the Registrar a copy of its financial statement. The *clause* further states that if the law at the country of origin does not require the preparation of financial statements, the foreign company must prepare a financial statements for its operations in Malaysia as though it is a public company limited by shares.

*Clause 576* seeks to impose an obligation on a foreign company to lodge with the Registrar, once in every calendar year, an annual return in the form and manner as the Registrar may determine.

*Clause 577* seeks to provide for the manner as to how documents are to be served on a foreign company.

*Clause 578* seeks to set the requirements and procedures when a foreign company ceases its business in Malaysia.

*Clause 579* provides that a foreign company shall have power to hold immovable property in Malaysia.

Division 2 deals with the provisions relating to enforcement and sanctions.

*Clause 580* seeks to provide for the right of witnesses to legal representation.

*Clause 581* seeks to empower the Court to grant relief to a person who has been negligence, default, committed breach of duty or breach of trust and in the opinion of the Court it appears that he acted honestly and reasonably and he ought fairly to be excused.

*Clause 582* seeks to provide for provisions relating to irregularities in proceedings including allowing the Court to make order declaring that the proceeding is valid notwithstanding any defect, irregularity and deficiency.

*Clause 583* provides for provisions relating to disposal of shares of shareholder whose whereabouts are unknown. If a company is unable to discover the whereabouts of a shareholder for more than ten years, the company may advertise in a widely circulated newspaper that upon expiration of thirty days from the advertisement, the shares will be transferred to the Minister charged with responsibility for finance.

*Clause 584* seeks to compel any company, person or individual to furnish information and particulars of shareholding, whether directly or indirectly, when required by the Registrar.

*Clause 585* empowers the Court to compel an officer, former officer of the company or any other person who fail or omitted to do any act under this Act to comply with the Act.

*Clause 586* seeks to impose an obligation that all documents required to be lodged with the Registrar are to be translated to national language or English language if the original document is not in national language or English language.

*Clause 587* provides for the protection to any officer of the company who make a report to the Registrar regarding any matters which constitute a breach of the provision of the proposed Act or serious offence involving fraud or dishonesty is being or likely to be committed against the company. The *clause* further states that a company is not allowed discriminating against any officer who made a disclosure under this proposed *clause*.

*Clause 588* seeks to impose a general penalty of a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both for an offence committed under the proposed Act for which no penalty is expressly provided.

*Clause 589* seeks to provide for the manner as to how and when proceedings to be taken.

*Clause 590* seeks to empower the Minister to investigate the affairs of a company on the application by members or debenture holders of the company. The investigation under this clause will be initiated if the Minister is satisfied that the investigation is carried out to protect public interests.

Subdivision 2 deals with the provision relating to general offences.

*Clause 591* seeks to provide that any corporation or person who made any false and misleading statements in any report, returns, financial statements and other documents required under the proposed Act commit an offence.

*Clause 592* seeks to provide that a person who knowingly furnishes a false report or statement to certain categories of persons with including the directors or officers of the company, the Securities Commission or a stock exchange with the intent to deceive such person, commits an offence.

*Clause 593* seeks to provide that a person who makes a false and misleading report relating to the affairs of a corporation, any matter relating to the implementation or the enforcement of the proposed Act to the Registrar, commits an offence.

*Clause 594* makes it an offence to fraudulently inducing persons to invest money.

*Clause 595* seeks to provide that any officer of a company who fraudulently induced any person to give credit to the company or to defraud creditors, commits an offence.

*Clause 596* seeks to provide for restriction on the manner of offering shares and debentures for subscription or purchase.

*Clause 597* imposes the restriction on the use of the words “Limited”, “Berhad” and “Sendirian” unless duly incorporated under the proposed Act.

*Clause 598* seeks to provide for the prosecution of delinquent officers of company in instances where the company is placed under a moratorium period.

Division 3 deals with general provisions.

*Clause 599* seeks to provide for the evidentiary value of copies certified by the Registrar. A copy or extract from any document filed or lodged at the office of the Registrar certified to be a true copy or extract signed and sealed by the Registrar shall be admissible in evidence in any proceedings as of equal validity with the original document.

*Clause 600* seeks to provide for certification by the Registrar on whether or not a company is registered during any particular time and the certification shall be admissible as *prima facie* evidence.

*Clause 601* seeks to provide that the Registrar shall keep such registers as he considers necessary in such form as the Registrar thinks fit and that they are open for inspection.

*Clause 602* provides procedures for the application to rectify the register and the powers of the Registrar to rectify the register.

*Clause 603* provides for the provisions for the disposal of old record by the Registrar.

*Clause 604* allows the Registrar to provide a service for the electronic lodgement of documents required by the proposed Act to be lodged with the Registrar.

*Clause 605* provides for the issuing of documents by the Registrar electronically whereby the Registrar may, by electronic means, issue a document which is to be issued by the Registrar under this Act.

*Clause 606* seeks to provide that electronic information certified by the Registrar is admissible in evidence.

*Clause 607* seeks to provide the enforcement of duty to make return.

*Clause 608* seeks to provide for the requirement of reloading of lost or destroyed document to the Registrar. If the Registrar has reasonable cause to believe that a document in relation to a corporation originally lodged under this Act has been lost or destroyed, the Registrar may by notice in writing direct the corporation to reload a copy of the document in the manner and form as may be determined by the Registrar.

*Clause 609* provides for the time for lodging documents with Registrar and extension of time. If a document is required to be lodged under this Act and the period of time for the document to be lodged is not prescribed, the document shall be lodged within thirty days or, in the case of a document required to be lodged by a foreign company, within such further period as the Registrar in special circumstances allows, after the happening of the event to which the document relates.

*Clause 610* prescribes the particulars and manner of information required to be lodged under this Act if a document is required to be lodged under this Act, the Registrar shall have the power to determine the particulars, form and manner of such information. This is in addition to the requirements contained under this Act.

*Clause 611* prescribes the time for compliance with the requirements under this Act if any action or document is required to be in compliance with this Act and the period for compliance is not prescribed, the time to comply shall be within thirty days from the action or document is required to be complied with.

*Clause 612* seeks to provide for the methods of communication between company and member.

*Clause 613* empowers the Minister to make regulations with respect to certain matters under this Act such as fees and charges.

*Clause 614* empowers the Minister to impose terms and conditions relating to approval for any application or any issuance of licence under this Act.

*Clause 615* seeks to provide that the Minister, upon recommendation by the Commission, exempt any person from any provision of this Act.

*Clause 616* empowers the Rules Committee under the Courts of Judicature Act 1964 to make rules on matters relating to winding up.

*Clause 617* empowers the Minister to amend the Schedules under this Act by varying, deleting, adding to, substituting or otherwise and publishing it in the *Gazette* by way of an order.

*Clause 618* seeks to provide transitional provisions relating to abolition of nominal value.

*Clause 619* seeks to provide for general transitional provisions.

*Clause 620* seeks to provide for repeal and savings provisions.

#### *FINANCIAL IMPLICATIONS*

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

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