



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

**PUBLIC
CONSULTATION ON
THE NEW COMPANIES
BILL**

JULY 2013



**SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA**

**CONSULTATION DOCUMENT ON THE PROPOSED
COMPANIES BILL**

2 JULY 2013

The Companies Commission of Malaysia (SSM) invites comments on the provisions of the proposed Companies Bill as set out in Section B of this consultation document by **1 August 2013**. Please provide your name and the organisation you represent (where applicable) and to provide reference on the provision/clause you are commenting. Comments may be forwarded by email to:

email: feedback.bills@ssm.com.my

Confidentiality: Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

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SECTION A

INTRODUCTION AND OVERVIEW

INTRODUCTION AND OVERVIEW

The Companies Commission of Malaysia (*Suruhanjaya Syarikat Malaysia*) or SSM has completed the drafting of the proposed Companies Bill that sets out the new legal framework to replace the existing Companies Act 1965 (CA1965).

2. The proposed provisions were drafted primarily based on policies which have been approved by the Cabinet on **18 June 2010** and derived from a four-year comprehensive corporate law review conducted by the SSM's Corporate Law Reform Committee or CLRC as well as the recommendations by the Accounting Issues Consultative Committee or AICC.

THE CORPORATE LAW REFORM COMMITTEE (CLRC)

3. The CLRC was a Committee established by SSM as part of SSM's strategic direction plan in facilitating the development of a conducive and dynamic business and regulatory environment for the country which is in line with international standards. The CLRC was chaired by Dato' K.C. Vohrah, (Retired Court of Appeal Judge) and comprised of representatives from the public and private sectors¹.

4. Following the completion of the review of the Companies Act 1965, the CLRC submitted its Final Report consisting of 188 recommendations to the Minister of Domestic Trade and Consumer Affairs on 30 June 2008. Upon receiving the Final Report, SSM reviewed the recommendations and duly translated them into policies for implementation. Out of the 188

¹ Refer to Appendix 1 for the full list of members of CLRC.

recommendations, a total of 183 recommendations were accepted and thereafter, the recommendations of the CLRC were translated into 19 policy statements which were submitted and approved by the Cabinet in 2010.

THE ACCOUNTING ISSUES CONSULTATIVE COMMITTEE (AICC)

5. The AICC² was established by SSM in February 2010 with the main objective of aligning the provisions of the CA 1965 with the accounting standards to complement the initiatives of the CLRC in carrying out a comprehensive and holistic review of the CA 1965.

6. The CLRC's review on the CA 1965 was confined on areas relating to core-company law only. Thus a separate review on accounting issues and financial reporting must be conducted to examine and re-align them with the proposed new legal framework for corporate law as recommended by CLRC.

7. SSM believes that there are many areas which require extensive and focused deliberations in respect of accounting practices as well as accounting standards vis-à-vis the provisions of the CA 1965 towards ensuring the integrity of the financial reporting framework amongst companies.

8. The review is also crucial considering the tremendous evolution in the last decade pursuant to the issuance of numerous global accounting standards in order to cope with the changes in the manner business transactions are being carried out in the

² Refer to Appendix 2 for the full list of members of the AICC.

wake of globalization and innovations brought about by the dynamic nature of the modern-day financial markets. These changes have a direct impact on the existing corporate legal framework to be in tandem with the changes so that they remain relevant and contemporary.

OTHER CONSIDERATIONS

9. Apart from the recommendations of the CLRC and AICC, the drafting of the proposed Companies Bill also reflects the recommendations made by regulatory authorities, professional bodies, the World Bank's 2012 Malaysia Report of the Observance of Standards and Codes (ROSC) on Accounting and Audit Oversight, the World bank's Ease of Doing Business Report as well as, the recommendations based on the report issued by the OECD's Peer Review Group (PRG) of the Global Forum on Transparency and Exchange of information for Tax purposes on Malaysia.

10. The various recommendations and proposals by such regulatory agencies, professional bodies and reports were assessed and carefully considered in the formulation of the new Companies Bill to ensure that the new corporate legal framework for Malaysia will remain forward looking and is in line with local and international standards.

POLICY STATEMENTS AND OTHER GUIDING PRINCIPLES

11. The proposed Companies Bill was drafted based on the policy statements and guiding principles as set out below:

	POLICY STATEMENTS AND GUIDING PRINCIPLES
1.	Facilitating and modernizing entrance into the corporate sector by: <ul style="list-style-type: none">• conferring companies with full capacity of a natural person. This would confer unlimited capacity to companies which would lead to the abolition of the doctrine of constructive notice;• introducing the concept of a single member company;• simplifying name approval process and making the process of name reservation optional;• simplifying incorporation process by introducing a single incorporation template and allowing promoters/directors to incorporate a company;• replacing the requirement for statutory declaration with statement of compliance for incorporation purposes;• making the requirements for certificates of incorporation and company seals optional; and• leveraging on the advent of ICT for the purposes of incorporation and lodgements.

	POLICY STATEMENTS AND GUIDING PRINCIPLES
2.	Migration to no par value regime
3.	<p>Facilitating the management and restructuring of the company’s share composition by:</p> <ul style="list-style-type: none"> • introducing alternative procedures for the reduction of capital; and • reforming the policies relating to share buyback and financial assistance through the introduction of solvency tests.
4.	<p>Simplifying and facilitating internal decision making process by:</p> <ul style="list-style-type: none"> • removing the mandatory requirement for private companies to hold Annual General Meeting; • restructuring the policies pertaining to written resolution procedures for private companies towards abolishing the rule of unanimity in passing written resolutions; • simplifying and clarifying the rules relating to meeting procedures; • lifting the prohibition on person(s) who can be appointed as proxies and facilitating the affairs of proxies during general meetings;

	<p style="text-align: center;">POLICY STATEMENTS AND GUIDING PRINCIPLES</p>
	<ul style="list-style-type: none"> • liberalizing the modes of voting during general meetings through the recognition of best practices; and • reducing the required threshold for the purpose of convening/requisitioning of general meetings.
<p>5.</p>	<p>Strengthening the corporate governance structure in relation to the affairs of the directorship of a company which include:</p> <ul style="list-style-type: none"> • the relationship between the board of directors and <i>shadow directors</i>; • clarifying the minimum age for directorship and abolishing the maximum age for directorship; • revising the residency requirement for directorship; • restructuring the rules pertaining to the appointment, resignation and removal of directors; • codifying the requirement for remuneration of directors of public companies to be sanctioned; • providing members the right to inspect directors' contract of service with public companies; • requiring any payment for loss of office of directors of public companies to be approved by disinterested members • clarifying the rules relating to exemption and

	POLICY STATEMENTS AND GUIDING PRINCIPLES
	<p>indemnification of directors' and officers'/auditors' liability; and</p> <ul style="list-style-type: none"> • enhancing the rules relating to disqualification of directors.
6.	Reinforcing the roles, functions and obligations of the company secretaries.
7.	Establishment of a mandatory registration regime for practicing company secretaries.
8.	Integrating the content of the new Companies Act with the notions and elements of corporate responsibility.
9.	<p>Enhancement of shareholders' rights and protection through:</p> <ul style="list-style-type: none"> • Clarifying the application of rules relating to oppression of members' rights; • Refining the application of statutory derivative actions; and • Reforming the rules relating to variations of class rights and preference shareholders.

	<p style="text-align: center;">POLICY STATEMENTS AND GUIDING PRINCIPLES</p>
	<ul style="list-style-type: none"> • Strengthening and refining procedures on dividend.
<p>10.</p>	<p>Strengthening the corporate governance structure through refinement of auditors’ role and responsibilities by:</p> <ul style="list-style-type: none"> • retaining the mandatory requirement for the appointment of auditor(s) for all types of companies; • introducing a new regime for the appointment of auditors for private companies in view of the proposal to lift the requirement for holding annual general meetings; • enhancing the rules relating to the resignation of auditors; • relying on industry practice for mandatory audit rotation of audit firms; and • granting access to auditors on all communications relating to any resolutions which the company proposes to pass by way of the written resolution procedure.
<p>11.</p>	<p>Reaffirming the importance of audited financial statements the timely disclosure of such</p>

	POLICY STATEMENTS AND GUIDING PRINCIPLES
	<p>information and aligning the company law provisions with International and Best auditing practices.</p>
<p>12.</p>	<p>Strengthening good corporate governance practices through enhancement and refinement of rules pertaining to transactions involving directors and substantial shareholders in the following areas:</p> <ul style="list-style-type: none"> • rules relating to substantial property transactions and persons connected with directors or substantial shareholders; and • disclosure principles to avoid conflict of interests.
<p>13.</p>	<p>Simplifying, refining and expediting the winding up process by:</p> <ul style="list-style-type: none"> • shortening the time taken to wind up a company; • introducing and defining the parameters for exempt dispositions; • refining the concept of undue preference transactions; • preserving the assets of the company; • increasing the threshold for statutory amount of

	<p style="text-align: center;">POLICY STATEMENTS AND GUIDING PRINCIPLES</p>
	<p>debts to prevent abuse by creditors;</p> <ul style="list-style-type: none"> • empowering the Court to terminate winding up proceedings to ascertain the status of a company; • enhancing the roles of liquidators to facilitate the smooth process of liquidation; • enhancing the rights of creditors; • reaffirming the rules relating to preferential debts; and • providing adequate protection to employees as unsecured creditors.
<p>14.</p>	<p>Modernising the insolvency law by introducing alternative corporate rescue mechanisms for companies whose business are still viable through:</p> <ul style="list-style-type: none"> • introduction of the concept of judicial management scheme; and • introduction of the concept of corporate voluntary arrangement.
<p>15.</p>	<p>Restructuring the concept of scheme of arrangements between a company and its creditors.</p>
<p>16.</p>	<p>Refining the role of receivers/receiver</p>

	POLICY STATEMENTS AND GUIDING PRINCIPLES
	<p>managers by:</p> <ul style="list-style-type: none"> • clarifying the status and power of receivers; and • introducing new provisions relating to liability, indemnity and priority over receiver’s costs.
17.	<p>Refining the current system of registration of charges by improving the procedures and process involved.</p>
18.	<p>Modernizing the enforcement regime by:</p> <ul style="list-style-type: none"> • introducing the concept of civil and administrative proceedings for selected types of breaches of the Companies Act alongside criminal sanctions; • criminal sanctions to be imposed against the officers responsible instead of the company; and • refining the rules pertaining to disqualification of directors.
19.	<p>To introduce a comprehensive financial reporting framework which is in line with the international accounting standards and accounting practices by:</p> <p>(i) assessing the relevance of the Ninth Schedule of CA 1965 as jurisdictions such as Singapore, Australia and the United Kingdom have since</p>

	POLICY STATEMENTS AND GUIDING PRINCIPLES
	<p>removed the equivalent of the schedule from their Companies Act;</p> <p>(ii) aligning inconsistencies between the Ninth Schedule of CA 1965 vis-à-vis the MASB standards;</p> <p>(iii) reviewing the details to be disclosed in the directors' report with respect to the company's profit and loss for a financial year; and</p> <p>(iv) refining the provisions on matters relating to dividends.</p>

SECTION B

THE PROPOSED COMPANIES BILL

COMPANIES BILL 2013

ARRANGEMENT OF CLAUSES

PART I PRELIMINARY

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

PART II FORMATION AND ADMINISTRATION OF COMPANIES

DIVISION 1 TYPES OF COMPANIES

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

**DIVISION 2
INCORPORATION AND ITS EFFECTS**

- 13. Application for incorporation**
- 14. Registration for incorporation**
- 15. Notice of registration as conclusive evidence**
- 16. Certificate of incorporation**
- 17. Power to refuse registration**
- 18. Effect of incorporation**
- 19. Separate legal entity**
- 20. Companies have unlimited capacity**

**DIVISION 3
RESTRICTION ON SUBSIDIARY COMPANY BEING MEMBER OF ITS
HOLDING COMPANY**

- 21. Membership of holding company**
- 22. Subsidiary company acting as authorized dealer in securities**
- 23. Protection of third parties in other cases where a subsidiary company acting as a dealer in securities**

**DIVISION 4
NAME OF COMPANY**

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

**DIVISION 5
CONSTITUTION OF A COMPANY**

- 30. No requirement for a company to have a constitution**
- 31. Company may adopt a constitution**
- 32. Effect of constitution**
- 33. Form of constitution**
- 34. Contents of a company's constitution**
- 35. Company may alter or amend constitution**
- 36. Court may alter or amend constitution**
- 37. A company limited by guarantee shall have a constitution**
- 38. Non-application of doctrine of constructive notice**

**DIVISION 6
CONVERSION OF COMPANY STATUS**

- 39. Conversion from an unlimited company to a limited company**
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**DIVISION 8
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- 46. Documents to be kept at registered office**
- 47. Inspection of documents and records kept by company**
- 48. Forms of documents**
- 49. Register of members**
- 50. Duty to notify Registrar on changes in the register of members**
- 51. Index of members of company**
- 52. Branch register of members**
- 53. Where register of members and index to be kept**
- 54. Inspection and closing of register of members**
- 55. Consequences of default by agent**
- 56. Power of company to require disclosure of beneficial interest in its voting shares**
- 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.***

**DIVISION 9
EXECUTION OF DOCUMENTS**

- 60. Company seals**
- 61. Official seal for use abroad**
- 62. Official seal for share certificates, *etc.***
- 63. Company contracts**
- 64. Pre-incorporation contract**
- 65. Execution of documents**
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- 68. Nature, rights and powers attaching to shares**
- 69. Types of shares**
- 70. Redeemable preference shares**
- 71. Prohibition to issue share warrants**
- 72. No par value shares**
- 73. Transitional provisions for section 72**
- 74. Exercise by directors of power to allot shares or grant rights**
- 75. Allotment of shares or grant of rights with company approval**
- 76. Registration of allotment in the register of members**
- 77. Return of allotment**
- 78. Voting right of equity shares in certain companies**
- 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**
- 88. Rights attached to shares**
- 89. Classes of shares**
- 90. Description of shares of different classes**
- 91. Variation of class rights**
- 92. Notifying class members of variation**
- 93. Disallowance or confirmation of variation by Court**
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- 95. Notifying Registrar of variation**
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- 97. Issuance of Share certificate**
- 98. Share certificate in relation to allotment and transfer**
- 99. Numbering of shares**
- 100. Register of members as evidence of legal title**
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- 102. Rectification**
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- 104. Requirement for instrument of transfer**
- 105. Registration of transfer or refusal of registration**
- 106. Order of Court for registration**
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- 108. Order of Court for delivery of share certificate**
- 109. Registration of transmission of shares**
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**SUBDIVISION 3
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- 118. Position at end of period for objection by creditor**
- 119. Power of Court in relation to objection by creditor**
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- 121. Liability of members on reduced shares**

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- 122. Financial assistance by a company in dealings in its shares, *etc.***
- 123. Consequences of failing to comply with this Subdivision**
- 124. General exceptions**
- 125. Financial assistance not exceeding ten per centum of shareholders funds**
- 126. Purchase by a company of its own shares, *etc.***
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- 139. References to operation of interests in shares**
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- 147. Depositor deemed to be member**
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- 158. Form and contents of prospectuses**
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- 161. As to retention of over-subscriptions in issuance of debenture**
- 162. Certain advertisements deemed to be prospectuses**
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- 165. Supplementary or replacement prospectus**
- 166. Civil liability for misstatement in prospectus**
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- 172. Perpetual debentures**
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- 179. Duties of trustees**
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- 181. Obligations of borrowing corporation**
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**RESTRICTIONS ON ALLOTMENT AND COMMENCEMENT OF
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- 186. Application moneys to be held in trust until allotment**
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DIVISION 2

SHAREHOLDERS, DIRECTORS AND OFFICERS OF COMPANIES

SUBDIVISION 1

MEMBERS' LIABILITIES, RIGHTS AND OBLIGATIONS

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205. Removal of directors

206. Right to be heard for directors of public company against removal

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SUBDIVISION 3

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- 220. Interested director not to participate or vote**
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- 236. Disqualification to act as a secretary**
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DIVISION 3

ACCOUNTS AND AUDIT

SUBDIVISION 1

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- 279. Duty to inform upon cessation of office**
- 280. Powers and duties of auditors**
- 281. Attendance of auditors at general meetings where financial statements are laid**
- 282. Auditors and other person to enjoy qualified privilege in certain circumstances**
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**DIVISION 4
INDEMNITY AND INSURANCE FOR DIRECTORS, OFFICERS AND
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**DIVISION 5
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**SUBDIVISION 1
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290. Votes of joint holders of shares

291. Right to object to a person's entitlement to vote

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- 301. Procedure for signifying agreement to written resolution**
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SUBDIVISION 3

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SUBDIVISION 4

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TENTH SCHEDULE

ELEVENTH SCHEDULE

TWELFTH SCHEDULE

A BILL

intituled

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 2013.

(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 contrary intention appears—

“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 made up;

“annual general meeting”, in relation to a public company, means a meeting of the company required to be held by section 338;

“annual return” means the return required to be made under section 67, and includes any document accompanying the return;

“approved company auditor” means a person approved as such by the Minister under section 259 whose approval has not been revoked;

“approved liquidator” means a person who has been approved by the Minister under section 457(3) as a liquidator and whose approval has not been revoked;

“articles” means a document referred to section 33(c);

“banking corporation” means a licensed bank, a licensed merchant bank and an Islamic bank;

“Board” and “Board of Directors”, 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 9 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 in pursuance of section 52; or
- (ii) a branch register of holders of debentures kept in pursuance of section 170,

as the case may require; and

(b) in relation to a foreign company, a branch register of members of the company kept in pursuance of section 588;

“certified”, in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means certified in the prescribed manner 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 pursuant to this Act or pursuant to any corresponding previous written law;

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

“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;

“corporation” means any body corporate formed or incorporated or existing within 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 within 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;

“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 thereof;

“creditor’s voluntary winding up” means a winding up under Subdivision 9 of Division 1 of Part IV, other than a members’ voluntary winding up and court winding up;

“debenture” includes debenture stock, bonds, 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;

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

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

“emoluments”, in relation to a director or auditor of a company, includes any fees, percentages and other payments made, including the money value of any allowances or perquisites, or consideration given, directly or indirectly, to the director or auditor by that company or by a holding company or a subsidiary of that company, whether made or given to him in his capacity as a director or auditor or otherwise in connection with the affairs of that company or of the holding company or the subsidiary;

“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 all of whom are natural persons;

“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 profit and loss account of the 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;

“insolvency practitioner” means a person who is appointed under this Act to be and holds office in the winding up of a company as approved liquidator, other than Official Receiver, receiver, receiver and manager, nominee and judicial manager;

[“Islamic bank”](#) or “Islamic banking business” shall have the meaning assigned to it in the Islamic Financial Services Act 2013 [*Act XXX*];

“licensed bank”, “licensed business”, “licensed discount house”, “licensed finance company”, “licensed institution”, “licensed merchant bank”, “licensed moneybroker”, “non-scheduled institution”, “scheduled business” and “scheduled institution” shall have the meanings assigned to them in subsection 2(1) of the Financial Services Act 2013 [*Act XXX*];

“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—

- (i) whose name is entered in the register of members as the holder for the time being of one or more shares in the company;
- (ii) a person who is entitled to have his name entered as the holder for the time being of one or more shares in the company at the time of registration of the company; or

(b) in the case of a company limited by guarantee, a person whose name is entered in or who is entitled to have his name entered in the register of members;

“members’ voluntary winding up” means a winding up under Subdivision 8 of Division 1 of Part IV, where a declaration has been made and lodged in pursuance of section 490;

“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 pursuant to the Securities Commission Act 1993 [*Act 498*], means the amount stated in the prospectus relating to the issue, offer or invitation in pursuance of 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;

“officer”, in relation to a corporation, includes—

- (a) any director, manager, secretary or employee of the corporation;
- (b) a receiver or 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—

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

“officer who is in default”, for the purposes of any provision under this Act means the officer who authorises or permits or participates in the contravention of that provision;

“Official Receiver” means the Director General of Insolvency, Deputy Director General 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 thereof 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 or under this Act;

“principal register”, in relation to a company, means the register of members of the company kept in pursuance of section 49;

“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 repealed written laws;
- (b) any company incorporated as a private company under this Act; or
- (c) any company converted into a private company pursuant to section 40, being a company which has not ceased to be a private company under section 41;

“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 thereof; but does not include any person by reason only of his acting in a professional capacity;

“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 [*Act 671*], means a prospectus as defined under that Act;

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

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

“Registrar” means the Registrar of Companies as provided under 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 6;

“repealed written laws” means the written laws repealed by this Act;

“resolution for voluntary winding up” means the resolution referred to in section 485;

“rules” means rules of court;

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

“securities” has the same meaning as is assigned to that word in the Capital Markets and Services Act 2007 [*Act 671*];

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

“statutory report” means the report referred to in section 337;

“substantial shareholder” has the meaning assigned to it in section 135;

“substantial shareholding” has the meaning assigned to it in section 135;

“this Act” includes any regulations;

“transparency”, in relation to a document, means –

- (a) a developed negative or positive photograph of that document, in this definition referred to as an “original photograph”, made on a transparent base, by means of light reflected from or transmitted through the document;
- (b) a copy of an original photograph made by the use of photo-sensitive material, being photo-sensitive material on a transparent base, placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material, being photo-sensitive material on a transparent base, placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner from any preceding copy in the series;

“trustee corporation” means—

- (a) a company registered as a trust company under the Trust Companies Act 1949 [*Act 100*]; or
- (b) a corporation that is a public company under this Act or under the laws of any other country, which has been declared by the Minister to be a trustee corporation for the purposes of 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 same meaning as is assigned to that expression in the Capital Markets and Services Act 2007 [*Act 671*];

“voting share”, in relation to a body corporate, means an issued share of the body corporate, not being—

- (a) a share to which, under no circumstances, there is attached a right to vote; or
- (b) a share to which there is attached a right to vote only in 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 thereof or by reference incorporated therein or issued therewith.

(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 section 157 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 2013 [Act xxx];

(6) Any reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, 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 [Act 617] applies; or
- (d) made to existing members of a company within the meaning of section 507 and relates to shares in the corporation within the meaning of that section.

(7) Unless the contrary intention appears 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 “subsidiary and holding company”

3. (1) A corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if—

(a) that other corporation—

(i) controls the composition of the board of directors of the first-mentioned corporation;

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

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

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

(2) For the purposes of subsection (1), the composition of a corporation’s board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have 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,
 - (iii) 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 first-mentioned 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 its 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 last-mentioned company or corporation is a subsidiary.

Definition of “ultimate holding company”

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

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

Definition of “wholly-owned subsidiary”

5. A corporation shall be deemed to be a wholly-owned subsidiary of another corporation if none of the members of the first-mentioned corporation is a person other than—

- (a) the second-mentioned corporation;
- (b) a nominee of the second-mentioned corporation;
- (c) a subsidiary of the second-mentioned corporation, being a subsidiary none of the members of which is a person other than the second-mentioned corporation or a nominee of the second-mentioned corporation; or
- (d) a nominee of such a subsidiary.

When corporations deemed to be related to each other

- 6.** Where a corporation—
- (a) is the holding company of another corporation;
 - (b) is a subsidiary of another corporation; or
 - (c) is a subsidiary of the holding company of another corporation, that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

Interests in shares

7. (1) The following subsections have effect for the purposes of section 59, Subdivision 7 of Division 1 of Part III and section 217 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, he shall be deemed to have an interest in those shares.

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

- (a) a right issued or offered to the public for subscription or purchase of interest pursuant to the Interest Schemes Act 2013;
- (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 pursuant to the Interest Schemes Act 2013; or
- (d) such a right is a right which has been prescribed by the Minister, 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 the associates of that person or that person and his associates are entitled to exercise or control the exercise of not less than fifteen 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 first-mentioned 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; or
- (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) There shall be disregarded—

- (a) an interest in a share if the interest is that of a person who holds the share as bare trustee;
- (b) an interest in a share of a person whose ordinary business includes the lending of money 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;
- (c) an interest of a person in a share being an interest held by him by reason of his holding a prescribed office; and
- (d) a prescribed interest in a share 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 pursuant to 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

8. 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

9. (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

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

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

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

Prohibition on companies limited by guarantee with a share capital

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

Prohibition for unincorporated associations, etc.

12. 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 pursuant to other written law or letters patent.

DIVISION 2

INCORPORATION AND ITS EFFECTS

Application for incorporation

13. (1) One or more persons desiring to form a company may lodge an application for incorporation to the Registrar.

(2) A company may not be formed for 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;
- (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 ordinary place of residence of every person who is to be a director;
- (g) the name, identification, nationality and the ordinary place of residence of the secretary;
- (h) in the case of a company limited by shares, the details of class and number of shares to be taken by the 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 his appointment as director, as the case may be; and
- (b) that he is not disqualified under this Act to act as a promoter, director or secretary, as the case may be.

Registration for incorporation

14. 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 such form as the Registrar may determine.

Notice of registration as conclusive evidence

15. 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.

Certificate of incorporation

16. 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 such form as the Registrar may determine.

Power to refuse registration

17. (1) Without prejudice to the powers of the Registrar under section 14, the Registrar shall not register an application unless he is satisfied that all the requirements of this Act in respect of the registration and related matters thereto have 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 the Federation.

Effect of incorporation

18. (1) Upon the date of incorporation specified in the notice of registration issued under section 14, there shall be a company by the name and registration number as stated in the register kept by the Registrar for this purpose.

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

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

(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.

Separate legal entity

19. 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

20. (1) A company shall be capable of exercising all the functions of an incorporated company and have the full capacity to carry on or undertake any business or activity, do any act which is lawful by law do or enter into transactions.

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

DIVISION 3
RESTRICTION ON SUBSIDIARY COMPANY BEING MEMBER OF ITS
HOLDING COMPANY

Membership of holding company

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

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

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

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

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

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

(b) in the case of a subsidiary company referred to under subsection (4), dispose of all of its shares in the holding company within twelve months after becoming a subsidiary company 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 company as if references in those subsections to such a corporation included 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 the allotment is made by way of capitalization of reserves of the holding company and 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 but for this section a subsidiary would have been entitled to subscribe for shares in the holding company, the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

(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 as such, whatever the form of that interest.

Subsidiary company acting as authorized dealer in securities

22. (1) Subject to the provision of this section, the prohibition under subsection 21(1), shall not apply where the shares are held by the subsidiary company in the ordinary course of its business as an intermediary.

- (2) For this purpose a person is an intermediary if he—
- (a) carries on a bona fide business of dealing in securities;
 - (b) is a member of or has access to a regulated market; and
 - (c) does not carry on an excluded business.
- (3) For the purposes of this section—
- “excluded businesses” means—
- (a) a business that consists wholly or mainly in the making or managing of investments;
 - (b) a business that consists wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
 - (c) a business that consists in insurance business;
 - (d) a business that consists in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
 - (e) a business that consists in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme.

“persons who are connected” shall have the same meaning as persons connected with the director under section 196;

“collective investment scheme” has the same meaning assigned to it in the Capital Markets and Services Act 2007;

“insurance business” means business that consists in the effecting or carrying out of contracts of insurance;

“securities” includes—

- (i) options;

- (ii) futures;
- (iii) contracts for differences; and
- (iv) rights or interests in the investments of such options, futures and contracts for differences;

“trustee” and “the operator” in relation to a collective investment scheme shall be construed in accordance with Capital Markets and Services Act 2007.

Protection of third parties in other cases where a subsidiary company acting as a dealer in securities

23. (1) This section shall apply where—

- (a) a subsidiary company that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 21; 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 company; or
 - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary company.

(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 their original acquisition by the subsidiary company had not been in contravention of the prohibition.

DIVISION 4

NAME OF COMPANY

Name of company

24. (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;
- (b) the expression “Company Registration Number”; or
- (c) any such expression as the Registrar may assign,

followed by the number assigned by the Registrar upon its incorporation.

Availability of name

25. (1) A name is available if the name 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 the Limited Liability Partnerships Act 2012 [Act 743]; 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

26. (1) A person shall apply to the Registrar to confirm as to the availability of the proposed name.

(2) If the Registrar is satisfied that the proposed name is a name which is not in contravention with subsection 25(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, 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 27.

(5) Upon being satisfied that the name is not one which may be refused on any ground referred to in subsection 25(1) and on 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 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 names

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

(2) The special resolution under subsection (1) shall be lodged with the Registrar within thirty days after it 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 a former name; and
- (b) issue a notice of registration of 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.

Power of Registrar to direct a change of name

28. (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 the company fails to comply with the direction of the Registrar under subsection (1), the company and every officer who is in default commit an offence.

(3) If the company fails to change the 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 24(2) by altering the company's registration details to reflect the change.

Publication of name

29. (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 statutory 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 for money, goods or services purporting to be signed by or on behalf of the company;
- (f) its bills of parcels, invoices and other demands for payment, receipts and letters of credit; and
- (g) 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) Where a company changed its name pursuant to sections 27 or 28, the former name of the company shall appear beneath its present registered name for the purposes of subsection (2), for a period of not less than twelve months from the date of the change.

(5) If a company fails to comply with the provisions of this section, the company and every officer who is in default commit an offence.

DIVISION 5
CONSTITUTION OF A COMPANY

No requirement for a company to have a constitution

30. (1) A company may, but does not need to, 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 modified, in accordance with this Act, 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

31. (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 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 members and its directors.

(4) Within thirty days after the adoption of a constitution pursuant to subsection (1), the company shall lodge the constitution with the Registrar.

(5) If a company contravenes subsection (4), the company and any officer who is in default 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

32. (1) The constitution shall, when adopted, bind the company and the members to the same extent as if they respectively 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 him to the company.

Form of constitution

33. 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 pursuant to section 31;

(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 37; or

(c) in the case of a company registered under the repealed Act, is the memorandum and articles of association as originally registered or as altered in accordance with the repealed Act, and the company shall have unlimited capacity pursuant to section 20,

and includes any alteration or amendment made under section 35, or any alteration or amendment made under section 36, if any, as the case may be.

Contents of a company's constitution

34. (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 expressly provides otherwise.

Company may alter or amend constitution

35. (1) A company having a constitution may, by a special resolution, alter or amend its constitution.

(2) Subject to this Act, upon the date of the special resolution or a later date as specified in the resolution, any alteration or amendment to the constitution shall be deemed to be originally contained in the constitution.

(3) The company shall lodge with the Registrar the resolution referred to in subsection (1) within thirty days of the alteration or amendment of its constitution.

(4) If the company fails to comply with subsection (3), the company and every officer who is in default 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

36. (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 a 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) If the company fails to comply with subsection (2), the company and every officer who is in default 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

37. (1) Notwithstanding section 30, a company limited by guarantee shall have a constitution.

(2) The constitution of a company limited by guarantee shall be signed by the persons intending to incorporate the company limited by guarantee 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 purporting 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

38. 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—

- (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.

DIVISION 6

CONVERSION OF COMPANY STATUS

Conversion from an unlimited company to a limited company

39. (1) Subject to this section, an unlimited company may convert to a limited company by a special resolution and shall lodge with the Registrar for registration a copy of the special resolution and specifying an appropriate alteration to its name.

(2) Subject to this Act, upon the lodgement of the copy of the resolution, the Registrar shall—

- (a) register the copy;
- (b) make such endorsements in or alterations to his registers to record the effect of the resolution with respect to the conversion; and
- (c) 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 the lodging of any document that had been lodged at the time of its incorporation as 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 shall thereupon be altered in accordance with the terms of the resolution.

(5) A conversion of a company pursuant to this section shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding the conversion, be continued or commenced by or against it after the conversion.

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

40. (1) A public company having a share capital may convert to a private company by a special resolution and shall lodged with the Registrar for registration a copy of the special resolution and specifying an appropriate alteration to its name.

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

- (a) a copy of the special resolution and specifying an appropriate alteration to its name;
- (b) a statement in lieu of prospectus; and
- (c) a statutory declaration verifying that section 189 has been complied with.

(3) Subject to this Act, upon the lodgement of the copy of the resolution, the Registrar shall—

- (a) register the copy;
- (b) make such endorsements in or alterations to his registers to record the effect of the resolution with respect to the conversion; and
- (c) 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)(c).

(5) A conversion of a company pursuant to this section shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it 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 it after the conversion.

DIVISION 7

PROVISIONS APPLICABLE TO CERTAIN TYPES OF COMPANIES

Private companies

41. (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) For the purpose 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 an employee of the company or its subsidiary company or a shareholder who was an employee of the company or its subsidiary company when they became a shareholder shall not be counted.

(3) Where a private company—

(a) ceases to have a share capital; or

(b) has more than fifty shareholders,

the Registrar may by notice served on the company determine that, on such date as specified in the notice, the company ceased to be a private company.

(4) 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 a period of fourteen days after the date of the notice, lodge with the Registrar—

(i) a statement in lieu of prospectus; and

(ii) a statutory declaration verifying that section 189(1)(b) has been complied with.

(5) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a private company without the leave of the court.

(6) If the company fails to comply with subsection 4(c), the company and every officer who is in default 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.

Prohibition of private companies to offer shares or debentures

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

- (a) offer to the public any shares or debentures of the company; or
- (b) allot or agree to allot any shares or debentures of the company with a view to offer such securities to the public.

(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 them, 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 pursuance of arrangements under which it is to re-register as a public company before the shares or debentures are allotted, or

(b) as part of the terms of the offer it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.

(4) The specified period for the purposes of subsection (3)(b) shall be a period ending not later than six months after the day on which the offer is made, or, in the case of an offer made on different days, first made.

(5) If the company fails to comply with this section, the company and every officer who is in default commit an offence and shall, upon conviction be liable to a fine not exceeding five million ringgit or to an imprisonment for a term not exceeding ten years or to both.

Offer to the public

43. (1) An offer to the public referred to in section 42 includes an offer made in any manner to any section of the public.

(2) Such 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 it and the person making it.

(3) Such offer is to be regarded, unless the contrary is proved, as being a private concern of the person receiving it and the person making it 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 or debentures of that corporation and is not an offer pursuant to section 237 of the Capital Markets and Services Act 2007;
or
- (d) made to existing members of a company within the meaning of section 507 and relates to shares in the corporation within the meaning of that section.

Special provisions applicable to company limited by guarantee

44. (1) A company limited by guarantee shall only 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.

(2) A company limited by guarantee shall—

- (a) apply its profits or other income in achieving and 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 thereto.

(3) A company limited by guarantee may apply to the Minister for a licence to have the word “Berhad” or the abbreviation “Bhd.” omitted 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

45. (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) If a company contravenes this section, the company and any officer who is in default commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

Documents to be kept at registered office

46. (1) A company shall keep at its registered office —
- (a) the constitution of the company, if any;
 - (b) certificates given under this Act;
 - (c) all registers, statutory books, records and documents as required under this Act;
 - (d) copies of all instruments creating or evidencing charges as required under section 358;
 - (e) minutes of all meetings and resolutions of shareholders;
 - (f) minutes of all meetings of the directors and directors' committee;
 - (g) copies of all written communications to all shareholders or all holders of the same class of shares;
 - (h) copies of all financial statements and group financial statements;
 - (i) the accounting records of the company required under section 241; and
 - (j) such other documents required to be kept by the Registrar.

(2) The documents referred to under paragraphs (1)(e) to (1)(i) shall be kept for a period of seven years.

(3) Any document referred to in subsection (1) may be kept at a place other than at the registered office of a company provided that prior notice to the Registrar has been given.

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

(5) If the company fails to comply with this section, the company and every officer who is in default 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

47. (1) Any document and record that is to be made available for inspection under this Act, shall be made available for inspection to 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

48. (1) The documents and records of a company referred to under section 46 shall be—

- (a) in written form; or
- (b) in a form or manner 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 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) any other actions that the Registrar thinks fit.

- (4) If contravention is made to this section—
 - (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; and
 - (b) the officer who is in default commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding five hundred thousand ringgit or to both.

Register of members

49. (1) Every company shall keep a register of its members and enter therein—
- (a) the names, addresses, the number of the identity card issued under the National Registration Act 1959 [*Act 78*], if any, nationality and any other relevant information and particulars of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (b) the date at which the name of each person was entered in the register as a member;
 - (c) the date at which any person who ceased to be a member during the previous seven years so ceased to be a member; and
 - (d) 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 anything in subsection (1) 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)(a).

(3) Notwithstanding anything in subsection (1) 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.

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

(5) If the company fails to comply with this section, the company and every officer who is in default 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

50. (1) A company shall notify the Registrar, within the period of thirty days, from the date —

- (a) of any change in the prescribed particulars of any shareholder contained in the register of members as specified under section 49;
- (b) after a person ceases to be, or becomes, a shareholder of the company;
- (c) of the information received by the company pursuant to section 56 or of any changes to such information.

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

(3) If a company fails to comply with this section, the company and every officer who is in default commit an offence and shall, upon 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

51. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) 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 found.

(3) If the company fails to comply with this section, the company and every officer who is in default 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

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

(2) The company shall lodge with the Registrar notice of the address of the office where any branch register is kept and of any change in its address, and if it is discontinued, of its discontinuance, and any such notice shall be lodged within

one month 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 to the office at which its principal register is kept a copy of every entry in its branch register within fourteen days from the entry is made, and shall cause to be kept at that office duly entered up from time to time a copy of its branch register,.

(5) Subject to the provisions of 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 during the continuance of that registration be registered in any other register.

(6) A company may discontinue a branch register and thereupon 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 in Malaysia a branch register of its members, 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 to and in relation to any such branch register kept in Malaysia as they apply to and in relation to the registers of companies under this Act and thereupon those provisions shall apply accordingly.

- (8) If default is made in complying with this section,—
- (a) the company and every officer of the company who is in default;
 - and

(b) every person who, pursuant to section 53 has arranged to make up the principal register and is in default, commit an offence and shall, upon 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.

Where register of members and index to be kept

53. (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 an agent to prepare the register and index on its behalf, the register and index may be kept at the office of the agent at which the work is done if that office is within Malaysia.

(2) Every company shall, within fourteen days after the register and index are first kept at a place other than the registered office, lodge with the Registrar notice of the place where the register and index are kept and shall, within fourteen days after any change in the place at which the register and index are kept, lodge with the Registrar notice of the change.

(3) If the company fails to comply with this section, the company and every officer who is in default 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

54. (1) The register and index shall be open to the inspection of any member without charge and of any other person on payment for each inspection of ten ringgit or such less 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 thereof, 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 less sum as the company requires for every hundred words or fractional part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of twenty-one days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after 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 for any time or times 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.

Consequences of default by agent

55. Where, by virtue of paragraph 53(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 fails to comply with sections 53(1) or (2) or with 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 who was in default, and the power of the Court under section 605 shall extend to the making of orders against the agent and officers and servants of the agent.

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, to indicate so far as the member can 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 in pursuance of a notice given to any person under subsection (1) or under this subsection 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 that interest as beneficial owner or as trustee; and
- (b) if the person holds the interest as trustee, to indicate so far as the person can 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 to which this section applies may by notice in writing require any member of the company to inform the company, within such 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 pursuance of 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 pursuance of the requirement.

(5) The provisions of section 49 shall apply 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 49(1) included references to subsection (4).

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

- (a) fails to comply with 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,
- shall be guilty of an offence against this Act.

(7) A person shall not be guilty of an offence under paragraph (6)(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 frivolous or vexatious.

(8) The Registrar, Stock Exchange or the Securities Commission may by notice in writing direct a company to which this section applies to invoke its powers under subsections (1) and (2) and to forthwith provide it with the information so obtained.

(9) Where a company to which this section applies fails to comply with the direction of the Registrar, Stock Exchange or the Securities Commission, the company and every officer of the company who is in default commit an offence.

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, 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 6 is deemed to be related to that company;
- (b) in respect of a manager and secretary, his full name, identification and residential address and other occupation.

(2) For the purpose 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 and secretary the company shall effect the change in the register within fourteen days of the change.

(5) A certificate of the Registrar stating that from any return lodged with the Registrar pursuant to 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 therein.

(6) In this section—

- (a) “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; or
- (b) “director” includes an alternate, substitute or local director.

(7) If the company fails to comply with this section, the company and every officer who is in default 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 of director, manager and secretary

58. (1) A company shall notify the Registrar, within the period of thirty 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 ;
- (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 that are required to be included in the company's register of directors and its register of directors' residential addresses, and
- (b) be accompanied by a consent, by that person, to act in that capacity.

(4) Where—

- (a) a company gives notice of a change of a director's service address as stated in the company's register of directors; and
- (b) the notice is not accompanied by notice of any resulting change in the particulars contained in the company's register of directors' residential addresses;

the notice shall be accompanied by a statement that no such change is required.

(5) If a company contravenes this section, the company and every officer who is in default commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(6) For the purpose of this section, a shadow director is treated as an officer of the company.

Register of directors' shareholdings, etc.

59. (1) A company shall keep a register showing with respect to each 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) For the purposes of subsection (1), reference to “director” shall include reference to—

- (a) the spouse of a director who is not a director of the company; and
- (b) a child of a director, including adopted child or stepchild who is not a director of the company.

(3) A company need not disclose in its register any director's particulars of shares in a wholly owned subsidiary of a company which is deemed to be a related corporation pursuant to section 6.

(4) 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.

(5) A company shall within three days after receiving notice from a director under paragraph 217(1)(a) 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—

- (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.

(6) A company shall enter in its register the particulars of the change referred to in the notice under paragraph 217(1)(b) within three days after receiving the notice from the director.

(7) 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.

(8) A company shall, subject to this section, keep its register at the registered office of the company and 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.

(9) 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 after the day on which the request is received by the company.

(10) 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 after the day on which the requirement is received by the company.

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

(12) In this section—

- (a) a reference to a participatory interest is a reference to an interest within the meaning of the Interest Schemes Act 2013;
- (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.

(13) The provisions of section 7, except for subsections 7(1) and (3) have 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.

- (14) If contravention is made to this section—
 - (a) the company commits 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; and
 - (b) the officer who is in default commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding five hundred thousand ringgit or to both.

DIVISION 9

EXECUTION OF DOCUMENTS

Company seals

60. (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 engraved in legible characters on the seal.

(3) If a company fails to comply with subsection (2), the company and every officer who is in default commit an offence—

(a) the company; and

(b) every officer of the company who is in default.

(4) An officer of a company, or a person acting on behalf of a company, commits an offence if he uses, or authorises 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, upon conviction be liable to a fine not exceeding fifty thousand ringgit.

Official seal for use abroad

61. (1) 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 or places 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 by writing under its common seal authorise 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.

62. (1) 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

63. (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 also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

Pre-incorporation contract

64. (1) A contract or other 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 one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Notwithstanding subsection (1), a contract or transaction referred to in that subsection may be ratified by the company after its incorporation and thereupon the company shall be bound by the contract or transaction.

Execution of documents

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

- (a) by the affixing of its common seal; 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 which must 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 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 purpose this section—

“authorized officer” means—

- (a) director of the company; or
 - (b) secretary of the company,
- approved by the Board;

“director” includes the chief executive officer, chief operating officer, chief financial controller, or any other person primarily responsible for the operations or financial management of the company, by whatever name called.

Execution of deeds

66. (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 executed by the company.

DIVISION 10 ANNUAL RETURN

Duty to lodge annual return

67. (1) A company shall lodge with the Registrar an annual return for each calendar year not later than thirty days after 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 shall contain the following particulars—

- (a) the address of its registered office;
- (b) the address of its business place(s) 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;
- (g) the particulars of directors, officers, auditors and secretaries;
- (h) the list of its shareholders and members; and
- (i) 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—

- (a) has more than 500 members; and
- (b) provides reasonable opportunities and facilities at a place approved by the Registrar for persons 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(*h*) if there 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) If a company contravenes this section, the company and any officer who is in default 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.

(9) Notwithstanding subsection (8), the Registrar may strike a company off the register as provided in section 556 of Division of 4 of Part IV, if the company has failed to lodge an annual return for three or more consecutive years.

**PART III
MANAGEMENT OF COMPANY**

**DIVISION 1
SHARE AND CAPITAL MAINTENANCE**

**SUBDIVISION 1
SHARE CAPITAL**

Nature, rights and powers attaching to shares

68. (1) A share or other interest of a member in a company is personal property and transferable in accordance to section 103.

(2) A share in a company confers on the holder—

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

(3) Notwithstanding paragraph (2)(b), 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.

Types of shares

69. (1) 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 70;
- (c) confer preferential rights to distributions of capital or income;
- (d) confer special, limited, or conditional voting rights; or
- (e) not confer voting rights.

Redeemable preference shares

70. (1) Subject to this section, a company having a share capital may, if authorized by its constitution, issue preference shares which are, or at the option of the company are to be, liable to be redeemed and the redemption shall be effected in accordance with the constitution.

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

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

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

(4) 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 a sum equal to the amount of the shares redeemed into the contributed capital.

(5) Subject to subsection (3) the shares shall only be redeemed out of the capital subject to the following—

- (a) all the directors have made a solvency statement pursuant to section 96 in relation to such redemption; and
- (b) the company has lodged a copy of the solvency statement with the Registrar.

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

Prohibition to issue share warrants

71. (1) No company shall have the power to issue a share warrant.

(2) Prohibition to this effect has been in force in Malaysia since 15 April 1966.

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

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

(5) 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

72. (1) Shares of a company shall have no par or nominal value.

(2) Subsection (1) shall apply to all shares, whether issued before or upon the commencement of this section.

Transitional provisions for section 72

73. (1) Where a share is issued before the commencement of section 72—

- (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 72, 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 72, 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 72;
- (b) write off—
 - (i) the preliminary expenses of the company incurred before the commencement of section 56; or
 - (ii) expenses incurred, or commissions or brokerages paid or discounts allowed, before or upon the commencement of section 72, for any duty, fee or tax payable on or in connection with any issue of shares of the company;
- (c) pay up, pursuant to an agreement made before the commencement of section 72, 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 72 to members of the company; or
- (e) pay dividends declared before the commencement of section 72, if such dividends are satisfied by the issue of shares to members of the company.

(4) Notwithstanding subsection (2), any company carrying out the business of insurance in Malaysia immediately before the commencement of section 72, 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 pursuant to the Insurance Act 1996 [Act 553].

(5) Notwithstanding subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before the commencement of section 72, 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.

(6) For the purpose of interpreting and applying, upon the commencement of section 72, a contract, including the constitution of the company, entered into before the commencement of section 72 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,

and a reference to share premium shall be taken to be 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 taken to be 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 taken to be 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.

(7) 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); or

(ii) the expiry of 180 days after the end of the period referred to under subsection (3),

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.

(8) Notwithstanding subsection (7), a company may file with the Registrar a notice of its share capital earlier than the periods referred to under paragraph (7)(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 pursuant to subsection (3).

(9) Unless a company has filed a notice of its share capital under subsection (7) or (8), 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 paragraph 7(a).

Exercise by directors of power to allot shares or grant rights

74. (1) The directors of a company shall not exercise any power—

(a) to allot shares in the company; or

(b) to grant rights to subscribe for shares in the company, or

(c) to convert any security into shares in the company.

(2) Subsection (1) does 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 their 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 their shareholdings;
- (c) an allotment of shares to a promoter of a company that the said promoter has agreed to take; or
- (d) where the said shares 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 said shares at least fourteen days before the date of issue of the said shares.

Provided that for the purpose of paragraph (2)(d), members of the company are deemed to have been notified of the intention to issue shares of the company if—

- (i) 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
- (ii) the copy of the statement has been advertised in a national language and an English language newspaper which is widely circulated in Malaysia.

(3) A director who—

- (a) contravenes this section; or
- (b) authorizes or permits, participates in, or fails to take all reasonable steps to prevent, a contravention of this section,

commits an offence.

(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, this section with respect to any issue of shares 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 thereby,

Provided that no proceedings to recover any such loss, damages or costs shall be commenced, notwithstanding the Limitation Act 1953 [*Act 254*], after the expiration of three years from the date of the issue.

Allotment of shares or grant of rights with company approval

75. (1) Notwithstanding section 74, the directors of a company may exercise any power—

(a) under subsection 74(1); or

(b) to allot shares pursuant to an agreement or option or offer, provided prior approval by resolution by the company has been obtained.

(2) Approval for the purposes of this section 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.

(3) An approval expires—

(a) if the 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 after the approval was given is required to be held,

whichever is the earlier; or

(b) if the company is not required to hold an annual general meeting shall not be 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 expired; 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 had expired.

(6) An approval made under subsection (1) shall be lodged with the Registrar.

(7) If the company contravenes this section, the company and every officer who is in default 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.

Registration of allotment in the register of members

76. (1) A company shall register an allotment of shares within fourteen days after the date of the allotment, by entering in the register of its members the information below—

- (a) the names and addresses of its members;
- (b) the date on which each person is entered in the register as a member;
- (c) the shares held by each member by distinguishing each share by its number if the share has a number; and
- (d) the amount, if any, paid, deemed to be paid, or due and payable on the shares of each member.

(2) If the company fails to comply with this section, the company and every officer who is in default 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.

Return of allotment

77. (1) Within fourteen days after an allotment of shares is registered pursuant to section 76, a company shall lodge with the Registrar for registration a return of the allotment.

(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 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 pursuant to 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, if the Registrar so requests, be produced at the same time to 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) pursuant to a contract not reduced to writing;

(b) pursuant to a provision in the constitution; or

(c) in satisfaction of a dividend declared in favour of, but not payable in cash to the shareholders, or in pursuance of 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 pursuant to a scheme of arrangement approved by the Court under section 431 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 subscribers without formal allotment for the purpose of incorporation of a company shall be deemed to have been allotted on the date of such incorporation.

(9) If a company contravenes this section, the company and every officer who is in default 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.

Voting right of equity shares in certain companies

78. (1) Notwithstanding any provision in this Act, where a public company or its subsidiary has, before or on the commencement of the Companies Act 1965, issued any equity share which does not comply with paragraph 68(2)(a), the company shall not issue any invitation to subscribe for or to purchase any shares or debentures of the company until the voting rights attached to each share of that company have been duly varied so as to comply with paragraph 68(2)(a).

(2) Where the rights of issued preference shares have been altered to become equity shares, the issued preference shares shall be deemed to be issued equity shares.

(3) Any person who makes an invitation in contravention of this section commits an offence and shall, upon conviction, be liable to a term of imprisonment not exceeding ten years or a penalty not exceeding five hundred thousand ringgit or to both.

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 absolute or conditional, 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) Nothing in this section shall affect the payment of brokerage by a company.

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 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 absolute or conditional, for shares in the company,

if—

(i) the payment of the commission is authorized by the constitution of a company;

(ii) the commission paid or agreed to be paid does not exceed—

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

(B) the amount or rate authorized by the constitution,
whichever is the lesser;

(iii) the amount or rate of the commission is—

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

(B) in the case of shares not so offered, disclosed in the statement in lieu of prospectus, or in a statement as may be determined by the Registrar, signed in like manner as a statement in lieu of prospectus and lodged before the payment of the commission with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(iv) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the like manner.

(2) 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 so received in payment of any commission the payment of which directly by the company would be permitted by this section.

(3) If the company fails to comply with this section, the company and every officer who is in default 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.

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 member 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 directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may, until the same would, but for the advance, become payable, pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, eight per centum per annum as may be agreed upon between the directors and the member paying the sum in advance.

Calls on Shares

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

(2) Any 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 same becomes payable.

(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 one month from the date fixed for the payment of the last preceding call;
- (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 may be revoked or postponed as the directors may determine.

(5) 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.

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

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

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

(9) The directors may waive payment of the interest due wholly or in part from the person referred to in subsection (7).

Forfeiture of Shares

83. (1) The board of directors may, if a member fails to pay any call or instalment of a call within the stipulated time, serve a notice on the member

requiring payment of the amount unpaid, together with any interest which may have accrued.

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

- (a) specify a date on or before which the payment required shall 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, shall be 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 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, 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 the director or the secretary of the company that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as 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 board of directors think fit.

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

(10) The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof 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 holder of the share;

(b) not be bound to see to the application of the purchase money, if any;
and

(c) 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.

(11) This section shall apply in the case of non-payment of any amount of money which, by the terms of issue of a share, becomes payable to the company at a fixed time, as if the same 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, in a general meeting alter the conditions of its constitution in any one or more of the following ways:

- (a) consolidate and divide all or any of its share capital;
- (b) convert all or any of its paid-up shares into stock and may reconvert that stock into paid-up shares;
- (c) subdivide its shares or any of them, 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; or
- (d) cancel the number of shares which, at the date of the passing of the resolution for cancellation, have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the number of the shares so cancelled.

(2) The company shall lodge with the Registrar notice of any alteration referred to in paragraph (1)(a), (b), (c) or (d) in the manner as may be determined by the Registrar within fourteen days from the date of the alteration.

(3) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

(4) In the case of an unlimited company having a share capital may by any resolution passed for the purposes of registration of an unlimited company as a limited company—

- (a) increase the amount of its share capital by increasing the issue price of each of its shares, but 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) 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) Where a company issues shares which rank equally or prior to existing shares as to voting or distribution rights, those shares shall 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 remain open for acceptance for a reasonable time.

Conversion of shares into stock

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

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

(3) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the issued price of the shares from which the stock arose.

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

Rights and privileges of stockholders

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

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

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 them are identical in all respects.

(2) Notwithstanding subsection (1), 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 their 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 the holders of which 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) does 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 in its constitution.

(5) Notwithstanding subsection (4), a company may allot any preference shares or convert any issued shares into preference shares if the rights of the holders of those shares 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 are set out in the constitution.

(6) If a company contravenes this section, the company, and every responsible person of the company, commits an offence, and each is liable to a fine of five hundred 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.

Variation of class rights

91. (1) Rights attached to shares in a class of shares in a company may be varied only—

(a) in accordance with provisions in the constitution for the variation of those rights; or

(b) if there are no such provisions, with the consent of holders of shares in that class given in accordance with this section.

(2) Subsection (1) is without prejudice to any other restrictions on the variation of the rights.

(3) For the purposes of paragraph (1)(b), the consent of holders required for the purposes of this section is—

(a) written consent representing at least seventy five per centum of the total voting rights of holders of shares in the class; or

(b) a special resolution passed at a separate general meeting of holders of shares in the class sanctioning the variation.

(4) A variation of class rights takes effect—

(a) if no application is made under section 93 for it to be disallowed, at the end 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.

(5) The issue by a company of preference shares ranking pari passu 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 first-mentioned 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 class members 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 holder of shares in that class within fourteen days after the date on which the variation is made.

(2) If a company contravenes this section, the company, and every responsible person of the company, commits 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.

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, holders representing at least ten per centum of the total voting rights of shareholders in the class may apply to the Court to have the variation disallowed.

(2) The variation shall not have effect until confirmed by the Court.

(3) An application shall be made within thirty days after the date on which the variation is made.

(4) An application may be made on behalf of the shareholders entitled to apply under subsection (1) by any shareholders appointed in writing by all such shareholders.

(5) The following persons are entitled to be heard on an application—

(a) the applicant; or

(b) any other person who appears to the Court to be interested in the application.

(6) 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 to the Registrar within twenty one days after the making of the order by the Court.

(2) If a company contravenes this section, the company, and every responsible person of the company, commits an offence and shall, on conviction, be liable to a fine not exceeding five 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 to the Registrar, within thirty days after 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) Subsection (1)(a) does not apply if the company is required to lodge a copy of the resolution or other document to the Registrar under another provision of this Act.

(3) If a company contravenes this section, the company and every officer who is in default 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 any person to obtain relief under any remedy in cases of oppression.

SUBDIVISION 2

SHARE CERTIFICATE, TITLE, TRANSFER AND TRANSMISSION

Issuance of share certificate

97. (1) Subject to subsection (2), a company shall issue share certificate in accordance to this Division.

(2) A private 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.

Share certificate in relation to allotment and transfer

98. (1) A company shall, within sixty days after the allotment, or registration of transfer or receipt of an application under subsection 97(2), as the case may be, send a share certificate to every holder of those shares 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) Subsection (1) shall not apply in relation to shares which can be transferred under a system for electronic trading approved by a Stock Exchange.

(3) 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 by 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 subsection 103(2).

(4) 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.

(5) If a company contravenes subsection (1), the company and any officer who is in default commit an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Numbering of shares

99. (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, at any time—

(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 for the time being 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, they 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 them are fully paid up and rank equally for all purposes.

Register of members as evidence of legal title

100. (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) 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.

(3) For a company not having a share capital, the members shall be entitled to—

- (a) exercise the right to vote;
- (b) receive notices;
- (c) receive a distribution, if any; and
- (d) exercise the other rights and powers as provided in the constitution.

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

101. (1) The secretary of the company shall cause the register of members to be properly kept and any share transfers are promptly entered in accordance with section 104.

(2) A secretary 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.

Rectification

102. (1) If the name of a person is wrongly entered in, or omitted from, the register of members of a company, 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 application under this section the court may order—

- (a) rectification of the register of members by the company;
- (b) payment of compensation by the company or an officer who is in default of the company for any loss sustained; or
- (c) rectification and payment of compensation.

Loss or destruction of certificates

103. (1) Subject to subsection (2) 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 in lieu thereof to the owner on his application accompanied by—

- (a) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
- (b) an undertaking in writing that if it is found or received by the owner, it will be returned to the company.

(2) Where the value of the shares or 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 advertise 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;
- (b) to furnish a bond for an amount equal to at least the current market value of the shares or 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

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

(2) For the purpose of effecting the transfer of shares, the company shall enter the name of the transferee on the register of members in accordance with this section.

(3) Subsection (1) does not affect any power of a company to register as a member, a person to whom the right to shares or debentures has been transmitted by operation of law.

Registration of transfer or refusal of registration

105. (1) Within thirty days after the receipt of the instrument of transfer under subsection 104(2), the company shall enter or cause to be entered the name of the transferee on the share register as holder of the shares unless—

- (a) the Act or its constitution expressly permits the directors to refuse or delay registration for the reasons stated;
- (b) the directors resolve within thirty days of the receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
- (c) notice of the resolution, including those 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 of a company, the directors may refuse or delay the registration of a transfer of shares under subsection (1) where the holder of the shares has failed 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 holder of the shares in accordance to the constitution.

(3) If a company contravenes subsection (1), the company and any officer who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit and, in the case of a continuing offence, to a default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Order of Court for registration

106. (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

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

(2) The Court may make the order in subsection (1) where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by—

- (a) reason of any provision of this 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 upon the terms of the issue or allotment thereof upon an order of the Court being lodged with the Registrar.

Order of Court for delivery of share certificate

108. (1) If a company contravenes section 98 in relation to an allotment or transfer of shares, a person entitled to the certificate for the shares may serve a notice on the company requiring the company to deliver the certificate within ten days after service of such notice to the person.

(2) If a company fails to comply with 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 an officer of the company responsible for the contravention.

Registration of transmission of shares

109. (1) This section applies if the right to shares 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 member of the company in respect of the shares.

(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 and all the limitations, restrictions, and provisions of this Subdivision relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

(3) Notwithstanding anything in its constitution, where 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.

(4) Within sixty days after receiving the notification, the company shall register the person as a member of the company in respect of the shares.

(5) If a company contravenes subsection (1), the company and any officer who is in default 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

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

(7) For the purpose of this section—

“share” includes debenture or other interests; and

“instrument of transfer” includes a written application for transmission of a share debenture or other interest to a personal representative.

Lien on shares

110. (1) Subject to subsection (2) a company shall, unless otherwise provided in the constitution, be entitled to a lien, in priority to any other claim, over every partly paid issued share, and over any dividend payment on the share, for all money due by the holder of that share to the company by way of money called or payable at a fixed time.

(2) A company, other than a listed company, may, if expressly so provided in its constitution, be entitled to a lien, in priority to any other claim over all shares including fully paid up shares and over any dividend payable on those shares, for all money due by the holder of those shares to the company whether in relation to the shares or otherwise.

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

(2) The sale of any shares by a company referred to in subsection (3) 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 after 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.

(5) The directors may, to give effect to any sale under subsection (3), authorize a person to transfer the shares sold to the purchaser of the shares, who shall be registered as the holder of the share comprised in any such transfer, and shall not be bound to see to the application of the purchase money, nor shall the title of the purchaser to the share 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, subject to a like lien for sums not presently payable as existed upon the share before the sale, be paid to the person entitled to the share at the date of the sale.

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

SUBDIVISION 3 SOLVENCY STATEMENT

Solvency test

111. (1) For the purposes of provisions relating to redemption of preference shares, financial assistance and reduction of share capital, 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 they 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 buy-back, a company satisfies the solvency test in relation to a transaction if the share buy back would not result in the company being insolvent or its capital being impaired at the date of the solvency statement—

(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 obligations as and when they 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 assets is less than the aggregate amount of all the shares of the company after the share buy back.

Solvency statement

112. (1) A solvency statement in relation to a transaction is a statement that each of the directors making it has formed the opinion that the company satisfies the solvency test in relation to the transaction.

(2) 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.

(3) A solvency statement—

- (a) shall be in the specified manner;
- (b) shall state—
 - (i) the date on which it is made; and
 - (ii) the name of each director making the statement; and
- (c) shall be signed by each director making the statement.

(4) Where a company proposes to purchase its own shares pursuant to a share buy back, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, shall make a declaration to the effect that they have made an inquiry into the affairs of the company and, at a meeting of directors, have formed an opinion that—

- (a) it is necessary for the company to buy back its own shares;
- (b) the company is solvent as at the date of the declaration and the share buy back would not result in the company being insolvent or its capital being impaired;
- (c) the company will remain solvent after each buy back during the period of six months after the date of the declaration; and
- (d) the share buy back is made in good faith and in the interests of the company.

Offences regarding solvency statement

113. A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it commits an offence and is liable on

conviction to imprisonment not exceeding five years or to a fine not exceeding five hundred thousand or to both.

SUBDIVISION 4
REDUCTION OF SHARE CAPITAL

Company may reduce its share capital

114. A company may, unless otherwise provided in the constitution, reduce the share capital of the company by—

- (a) a special resolution and confirmation by the Court in accordance to section 115; or
- (b) a special resolution supported by a solvency statement in accordance to section 112.

Reduction of share capital by Court

115. (1) Subject to confirmation by the Court, a company may, by 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 share capital not paid up;
- (b) by cancelling any paid-up share capital which is lost or unrepresented by available assets;
- (c) by returning to shareholders any paid-up share capital which in excess of the needs of the company,

and may so far as necessary alter its constitution by reducing the amount of the share capital of the company and of its shares accordingly.

(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 the Court so directs—

- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company shall be entitled to object to the reduction;
- (b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not 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 like inquiry and adjudication as if the company were being wound up by the Court.

(3) Notwithstanding subsection (2) the Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.

(4) The Court if 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,

may make an order confirming the reduction on such terms and conditions as it thinks fit.

(5) An order made under subsection (4) shall show the following:

(a) the amount of the share capital of the company as altered by the order;

(b) the number of shares into which it is to be divided; and

(c) the amount, if any, at the date of the order deemed to be paid up on each share.

(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) The certificate of 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 such as is stated in the order.

(8) On the lodging of the copy of the order the particulars shown in the order pursuant to subsection (5) shall be deemed to be substituted for the corresponding particulars in the constitution and such substitution and any addition ordered by the Court to be made to the name of the company shall, in the case of any addition to the name, for such period as is specified in the order of the Court, be deemed to be alterations of the constitution for the purposes of this Act.

(9) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount

of the share as fixed by the order and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be.

(10) Where any creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim—

(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 said date; and

(b) if the company is wound up the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim may, if it thinks fit settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up,

but nothing in this subsection shall affect the rights of the contributories among themselves.

(11) 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 ten years or to a fine of not more than one million ringgit or to both.

(12) This section shall not apply to an unlimited company, but nothing in this Act shall preclude an unlimited company from reducing in any way its share capital.

Reduction of share capital by private or public company

116. (1) A company may reduce its share capital in any way by a special resolution if the company—

- (a) sends to the Director General of the Inland Revenue Board and the Registrar a notice—
 - (i) stating that the resolution has been passed; and
 - (ii) containing the text of the resolution and the resolution date, within seven days of the date of the resolution; and
- (b) meets the solvency requirements.

(2) The resolution and the reduction of the share capital shall take effect in accordance with section 118.

(3) Notwithstanding subsection (1), the 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.

(4) The company meets the solvency requirements if—

- (a) all the directors of the company make a solvency statement in relation to the reduction of share capital;
- (b) the statement is made—

- (i) after fourteen days for private companies and twenty-one days for public companies from the date of the resolution; but
- (ii) in time for subsection (5)(a) or (5)(b) to be complied with; and
- (c) for a public company, a copy of the solvency statement is lodged with the Registrar, together with the copy of the resolution required to be lodged with the Registrar, within fourteen days of the date of the resolution.

(5) Subject to subsection (3), a private company shall—

(a) if the resolution for reducing share capital—

(i) is a special resolution to be passed by a written resolution, ensure that every copy of the resolution served is accompanied by a copy of the solvency statement; or

(ii) is a special resolution to be passed in a general meeting, throughout that meeting make the solvency statement or a copy of it available for inspection by the members at that meeting, and

(b) throughout the six weeks from the date of resolution, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

(6) Subject to subsection (3) applies, a public company shall—

(a) throughout the meeting at which the resolution is to be passed, make the solvency statement or a copy of it available for inspection by the members at the meeting; and

(b) throughout the six weeks from the date of the resolution, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

(7) The resolution does not become invalid by virtue only of a contravention of subsections (5) or (6), but every officer of the company who is in default commits an offence.

(8) Any requirement under subsections (4)(c), (5)(b) or (6)(b) ceases if the resolution is revoked.

Creditor's right to object to the reduction of the share capital by the company

117. (1) This section shall apply where a company has passed a special resolution for reducing share capital under section 116.

(2) Any creditor of the company to which this subsection applies may, at any time during the six weeks from the date of resolution, apply to the Court for the resolution to be cancelled.

(3) Subsection (2) shall apply to a creditor of the company who, at the date of his application to the Court, is entitled to any debt or claim which, if such date were the commencement of the winding up of the company, would be admissible in proof against 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

118. (1) Where—

(a) a company passes a special resolution for reducing its share capital and meets the requirements under paragraphs 116(1)(a) and (b) and the solvency requirements under subsection 116(3), if applicable; and

(a) no application for cancellation of the resolution has been made under subsection 117(2) during the six weeks from the date of the resolution, for the reduction of share capital to take effect, the company shall lodge with the Registrar—

(i) a copy of the resolution; and

(ii) the following documents after the end of six weeks, and before the end of eight weeks, from the date of the resolution:

(A) a copy of the solvency statement under subsection 116(4), if applicable;

(B) a statement made by the directors confirming that the requirements under paragraphs 116(1)(a) and (b) and the solvency requirements under subsection 116(4), if applicable, have been complied with, and that no application for cancellation of the resolution has been made; and

(C) a notice containing the reduction information.

(2) Where—

(a) a company passes a special resolution for reducing its share capital and meets the requirements under paragraphs 116(1)(a) and (b) and the solvency requirements under subsection 116(3), if applicable; but

(b) during the six weeks from the date of the resolution, one or more applications for cancellation of the resolution are made under subsection 117(2),

for the reduction of share capital to take effect, the following conditions shall be satisfied:

(i) the company has complied with subsection 116(1)(a) or 116(3) in relation to all such applications;

- (ii) the proceedings in relation to each such application have been brought to an end—
 - (A) by the dismissal of the application under subsection 117; or
 - (B) due to a withdrawal or any reasons as the Registrar may allow; and
- (iii) the company has, within fourteen days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (ii), lodged with the Registrar—
 - (A) a statement made by the directors confirming that the requirements under paragraphs 116(1)(a) and (b), the solvency requirements under subsection 116(4), if applicable, and subsection 116(5)(b) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the dismissal of the application 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 reduction information.

(3) The resolution in a case referred to in subsection (1) or (2), and the reduction of the share capital, shall take effect when the Registrar has recorded the information lodged with him in the appropriate register.

Power of Court in relation to objection by creditor

119. (1) An application by a creditor under section 117 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 it; 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) If a company contravenes subsection (4), every officer of the company who is in default commits an offence.

(6) 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.

Offences for making groundless or false statements

120. A director making a statement under subsubparagraph 118(2)(b)(iii)(A) commits an offence if the statement—

- (a) is false; and
- (b) is not believed by him to be true.

Liability of members on reduced shares

121. Where the share capital of the 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.*

122. (1) Except as is otherwise expressly provided by this Act no company shall give, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company or in any way purchase, deal in or lend money on its own shares.

(2) Where—

(a) a person has acquired shares in a company or its holding company; and

(b) any person has incurred a liability for the purpose of the acquisition, the company shall not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability, except as provided by this Act.

(3) Nothing in subsection (1) prohibits 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, finance companies or insurance or are subject to supervision by the Securities Commission and where—

- (a) 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
- (b) 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, the terms of repayment of principal and payment of interest, the security to be provided and otherwise.

(4) This section does not apply to the giving of financial assistance by a company for the purpose of the acquisition of a share in its holding company or for the purpose of reducing or discharging a liability incurred for such an acquisition if the holding company is a company incorporated outside Malaysia.

(5) Any officer who contravenes subsection (1) or (2) 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..

(6) Where a person is convicted of an offence under subsection (5) and the Court, by which he 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 that subsection, order the convicted person to pay compensation to the company or the person, as the case may be, such amount as the Court specifies, and such order may be enforced as if it were a judgement of the Court,

(7) 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

123. 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 it is not affected only because of the contravention.

General exceptions

124. Nothing in section 122 shall prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
- (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; or
- (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 themselves by way of beneficial ownership.

Financial assistance not exceeding ten per centum of shareholders funds

125. (1) A company may, by 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) giving 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 fair and reasonable to the company;
- (b) on the same day that the directors pass the resolution, the directors who vote in favour of it 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).

(2) The resolution of the directors under paragraph (1)(a) shall set out in full the grounds for their conclusions made under that paragraph.

(3) A reference in paragraph (1)(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.

(4) Within fifteen days after 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 (1)(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.

(5) If a company contravenes subsection (4), the company and any officer who is in default 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Purchase by a company of its own shares, etc.

126. (1) Notwithstanding the provisions of section 122, a public company with a share capital whose shares are quoted in a Stock Exchange may, if so authorized by its constitution, purchase its own shares.

(2) A company shall not purchase its own shares unless—

- (a) it 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) 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, in this Act referred to as “treasury shares”; or

(c) to retain part of the shares so purchased as treasury shares and cancel the remainder.

(4) Shares that are purchased by a company pursuant to this section shall, unless held in treasury, be deemed to be cancelled immediately on purchase.

(5) Where shares are held as treasury shares, the company shall be entered in the register of members as the member holding those shares.

(6) Where such shares are held as treasury shares, the directors of the company may, at any time—

(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 them, in accordance with the relevant rules of the Stock Exchange;

(c) transfer the shares, or any of them, for the purposes of or pursuant to an employees’ share scheme;

(d) cancel the shares, or any of them; or

(e) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

(7) Notwithstanding any provision in this Act or the constitution, treasury shares which are held pursuant to subsection (5), shall not be entitled to—

(a) the right to attend or vote at meetings, and any purported exercise of such rights is void;

(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.

(8) 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.

(9) Nothing in this section is to be taken as preventing—

(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 amount, or consolidation of any treasury shares into treasury shares of a smaller number.

(10) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which subsection (2) applies.

(11) Where the directors resolve to cancel the shares so purchased, or cancel any treasury shares, the costs of the shares shall be applied in the reduction of the profits otherwise available for distribution as dividends.

(12) A cancellation of shares made pursuant to subsection (4) shall not be deemed to be a reduction of share capital within the meaning of this Act.

(13) A company shall, within fourteen days after the shares are purchased, lodge with the Registrar and the Stock Exchange a notice in a manner to be determined by the Registrar.

(14) If contravention is made to this section —

- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; and
- (b) every officer of the company and any other person or individual who is in default 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.

Options to take up unissued shares

127. (1) A public company may grant an option to any person to take up unissued shares for a period 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 holders of debentures 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

128. (1) A company shall keep a register of options granted to persons to take up shares in the company.

(2) The company shall, within fourteen days after the grant of an option to take up 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 [*Act 78*], 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 prescribed.

(3) Sections 49, 50, 51, 52, 53, 54 and 620 shall apply to a register kept under this section as if the register was the register of members.

(4) A company shall keep at the place where the register under this section is kept a copy of every instrument by which an option to take up shares in the company is granted, and for the purposes of subsection (3) those copies shall be deemed to be part of the register.

(5) Failure by the company to comply with any provision in this section shall not affect any rights in respect of the option.

(6) If a company contravenes this section, the company and any officer who is in default commits 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 default penalty of ten thousand ringgit for each day during which the offence continues after conviction

Power of company to pay interest out of capital in certain cases

129. 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 on so much of such share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but—

- (a) no such payment shall be made unless it is authorized by the constitution or by special resolution, and is approved by the Court;
- (b) before approving of any such payment, the Court may at the expense of the company appoint a person to inquire and report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;
- (c) the payment shall be made only for such period as is determined by the Court, but in no case extending beyond a period of twelve months after the works or buildings have been actually completed or the plant provided;
- (d) the rate of interest shall in no case exceed five per centum per annum or such other rate as is for the time being prescribed; and
- (e) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

SUBDIVISION 6

DIVIDENDS

Distribution out of profit

130. (1) Subject to section 131, a company may only make a distribution to the shareholders out of the company's profits available for the purpose.

(2) A company's profits available for distribution shall be its accumulated profits so far as not previously utilized by distribution or capitalization, less its accumulated losses, so far as not previously written off in a reduction or reorganization of capital duly made.

(3) If contravention is made to this section —

- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit.
- (b) every officer of the company and any other person or individual who is in default 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.

Distribution only if company is solvent

131. (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 they consider appropriate, where it is satisfied that the company will, immediately after the distribution is made, satisfy the solvency test.

(3) For the purpose of this section, the company is able to satisfy the solvency test if the company is able to pay its debts as and when they become due in the normal course of business.

(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, immediately after the distribution is made, satisfy the solvency test, the directors shall take all necessary steps to prevent the distribution 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 ten years or a fine not exceeding three million ringgit or to both.

Recovery of distribution

132. (1) The company may recover from a shareholder any amount to the extent by which the distribution paid to him have exceeded 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 111(3).

(2) Every director or manager of a company who wilfully pays or permits to be paid any dividend in contravention of sections 130 or 131, out of what he knows is not profits shall also be liable to the company to the extent by which the dividends so paid have exceeded the value of any distribution that could properly have been made.

(3) No liability under this section imposed on any person shall on the death of the person extend or pass to his executors, administrators or the estate of any such person after his death.

SUBDIVISION 7

SUBSTANTIAL SHAREHOLDINGS

Application and interpretation of Subdivision

133. (1) This section has effect for the purpose of this Subdivision but shall not prejudice the operation of any other provision of this Act.

(2) In this Subdivision a reference to a company is a reference—

(a) to a company all or any of the shares in which are listed for quotation on the official list of a Stock Exchange as defined in the Capital Markets and Services Act 2007;

(b) to a public company whose shares are not listed for quotation on the official list of a Stock Exchange as defined in the Capital Markets and Services Act 2007;

(c) to a body corporate incorporated 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; 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, by notification in the *Gazette*, vary or revoke a notification published under subsection (2).

(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 in the definition of “voting share” in subsection 2(1) to a body corporate includes a reference to a body referred to in paragraph (2)(d).

Persons obliged to comply with Subdivision

134. (1) The obligation to comply with this Subdivision extends to a natural person, whether resident in Malaysia or not and whether a Malaysian citizen or not, and to a body corporate, whether incorporated or carrying on business in Malaysia or not.

(2) The provisions of this Subdivision extend to acts done or omitted to be done outside Malaysia.

Substantial shareholdings and substantial shareholders

135. 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 of such share is not less than five per centum of the total number of all the voting shares in the company;
- (b) being a company the share capital of which is divided into two or more classes of the shares, if the person has an interest or interests in one or more voting shares included in one of those classes and the number of such share, or the aggregate of such shares, is not less than five per centum of the aggregate of the total number of all the voting shares included in that class;
- (c) where such person is a substantial shareholder in the company.

Substantial shareholder to notify company of his interests

136. (1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating the name, nationality and address and full particulars of the voting shares of the substantial shareholder in the company in which the substantial shareholder has an interest or interests, including, unless the

interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder and full particulars of each such interest and of the circumstances by reason of which the substantial shareholder has that interest.

(2) The notice shall be given—

- (a) if the person was a substantial shareholder on the date on which this Subdivision came into operation, within one month after that date; or
- (b) if the person became a substantial shareholder after that date, within seven days after becoming a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable.

(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.

Substantial shareholder to notify company of change in his interests

137. (1) Where there is a change in the interest or interests of a substantial shareholder in a company in voting shares in the company, the substantial shareholder shall give notice in writing to the company stating the name and full particulars of the change of the substantial shareholder.

(2) The notice shall be given within seven days after the date of the change.

(3) For the purposes of subsection (1) where a substantial shareholder in a company acquires or disposes of voting shares in the company, there shall be

deemed to be a change in the interest or interests of the substantial shareholder in voting shares in that company.

(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.

Person who ceases to be substantial shareholder to notify company

138. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) The notice shall be given within seven days after the person ceased to be a substantial shareholder.

(3) 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.

References to operation of interests in shares

139. The circumstances required to be stated in a notice under section 136, 137 or 138 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 Stock Exchange

140. A person who gives a notice under section 136, 137 or 138 to a company referred to in section 133(2)(a), shall, on the day on which such person gives that notice, serve a copy of the notice to the Registrar, the Stock Exchange as defined in the Capital Markets and Services Act 2007 and the Securities Commission as defined in the Securities Commission Act 1993.

Notice to non-residents

141. (1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, shall—

- (a) give to the non-resident a notice in the manner as determined by the Registrar as to the requirements of this Subdivision; or
- (b) where the first-mentioned 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, give to the non-resident a notice in the manner as determined by the Registrar as to the requirements of this Subdivision and direct the non-resident to give the notice or a copy of the notice to that other person.

(2) The notice shall be given—

- (a) if the first-mentioned person holds the shares on the date on which this Subdivision came into operation-within fourteen days after that date; or
- (b) if the first-mentioned person did not hold the shares on that date-within fourteen days after becoming the holder of the shares.

(3) In this section, “non-resident” means a person who is not resident in Malaysia or a body corporate that is not incorporated in Malaysia.

(4) Nothing in this section affects the operation of section 134.

(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.

Registrar may extend time for giving notice under this Subdivision

142. (1) The Registrar may, on the application of a person who is required to give a notice under this Subdivision, in his discretion, extend or further extend the time for giving the notice.

(2) Application for an extension under subsection (1) may be made, and the power of the Registrar under the subsection may be exercised, notwithstanding that the period referred to in that subsection has expired.

Company to keep and maintain register of substantial shareholders

143. (1) A company shall keep a register in which it shall forthwith enter—

(a) in alphabetical order the names of persons from whom it has received a notice under section 136; and

(b) against each name so entered the information given in the notice and, where it receives a notice under sections 137 or 138, the information given in that notice.

(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 for each inspection of a sum of ten ringgit or such lesser sum as the company requires.

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

(4) If default is made in complying with this section, the company, and every officer of the company who is in default is guilty of an offence.

(5) A company is not, by reason of anything done under this Subdivision—

(a) to be deemed for any purpose to have notice of; or

(b) to be put upon inquiry as to,

a right of a person to or in relation to a share in the company.

Powers of Court with respect to defaulting substantial shareholders

144. (1) Where a person (in this section referred to as “the substantial shareholder”) is, or at any time after the date on which this Subdivision came into operation has been, a substantial shareholder in a company and has failed to comply with section 136, 137 or 138, the Court may, whether or not that failure still 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 holder of shares referred to in paragraph (a) from disposing of any interest in those 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) Any order under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, 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.

(4) The Court may direct that where a share is not sold in accordance with an order of the Court under this section, the share shall vest in the Registrar.

(5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person and the Court shall not

make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied—

- (a) that 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) that, in all the circumstances, the failure ought to be excused.

(6) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(7) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(8) Section 555 applies in relation to a share that vests in the Registrar under this section as the first-mentioned section applies in relation to an estate or interest in property referred to in the first-mentioned section.

(9) A person who contravenes or fails to comply with an order under this section which is applicable to him shall be guilty of an offence against this Act.

(10) Subsection (9) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

SUBDIVISION 8

THE CENTRAL DEPOSITORY SYSTEM — A BOOK-ENTRY OR SCRIPLESS SYSTEM FOR THE TRANSFER OF SECURITIES

Interpretation

146. In this Subdivision, unless the contrary intention appears—

“central depository” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991 [Act 453];

“deposited securities” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“depositor” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“security” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991;

“stock exchange” has the same meaning as is assigned to that expression under 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 pursuant to 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 member, debenture holder, interest holder or option holder, as the case may be, of the company, and shall, subject to the provisions of the Securities Industry (Central Depositories) Act 1991 [Act 453] and any regulations made thereunder, be entitled to the number of securities stated in the record of depositors and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such securities, whether conferred or imposed by the Act or the constitution of the company.

(2) Nothing in this Subdivision shall be construed as affecting the obligation of the company to keep a register of its members under sections 49 and 51, a register of holders of debentures under section 170, and a register of option holders under section 128 and to open them for inspection in accordance with the provisions of 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 members, debenture holders, interest holders or option holders.

(3) 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 thereat unless his name appears on the record of depositors not less than three market days before the general meeting.

(4) The record of depositors shall be *prima facie* evidence of any matters inserted therein as required or authorized by this Act.

(5) For the purpose 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 sections 104 and 105, such company shall be precluded from registering and effecting any transfer of securities or class of securities which have been deposited.

(2) Subsection (1) shall not apply to a transfer of securities to a central depository or its nominee company.

Rectification of record of depositors

149. (1) Notwithstanding anything in this Act or any written law or rule of 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) If the Court 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,

it 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.

Non-application of section 453 to disposition made by way of book entry

150. Section 453 shall not apply to a disposition of property made by way of book entry by a central depository, but where the Court is satisfied that a party to the disposition other than the central depository, had notice that a petition had been presented for the winding up of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other orders as the Court thinks fit, including an order for the transfer of deposited securities by that party but not an order for the rectification of the record of depositors.

Exemption from interests in shares

151. The Minister may, by notice published in the *Gazette*, exempt any company or class of companies, subject to such terms and conditions as he deems fit to impose, 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 and may, by notice published in the *Gazette*, revoke such a notice or vary it in such manner as the Minister thinks fit.

SUBDIVISION 9 PROSPECTUS

Application of Subdivision 9

152. (1) Unless specified otherwise under 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 regard 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 157.

(2) This Subdivision unless otherwise stated, with regards to prospectus, shall not be applicable to—

- (a) an offer or invitation to subscribe for or purchase any securities of a corporation made pursuant to the provisions under the Capital Markets and Services Act 2007;
- (b) exempted offers as shall be specified by the Registrar in Second Schedule;
- (c) an offer or invitation in respect of shares or debentures for sale to the public where the offer or invitation relates to shares or debentures that

- have previously been issued and the shares or debentures are of a class that are listed for quotation on a stock exchange; and
- (d) an offer that is not regarded as an offer made to the public as defined under section 43.

Power of Minister to exempt the application of Subdivision 9

153. (1) Subject to subsection (2) the Minister may, on the application in writing by any person interested and subject to the recommendation of the Registrar, by order declare that this Subdivision as a 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) Recommendation shall not be made by the Registrar to the Minister unless he is of the opinion that circumstances exist whereby—

- (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) Unless authorized in writing by the Registrar, a person shall not issue, circulate or distribute any form of application for shares in or debentures of a corporation unless the form is accompanied by a copy of a prospectus which has been registered by the Registrar.

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

(a) the form of application is issued, circulated or distributed in connection with shares or debentures which are not offered to the public;

(b) the form of application 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 of application 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, for the time being in force.

(5) Any person who contravenes this section commits an offence.

Registration of prospectus

155. (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 shares or debentures to which the prospectus relates does not comply with any other requirement or provision of this Act;

(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) In furtherance to subsection (1) 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.

(4) No prospectus shall be registered unless—

(a) the a copy of it, signed by every director and by every person who is named therein 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 its issue;

(b) it is submitted to the Registrar together with—

(i) a written application for its registration;

(ii) copies of all consents required under section 159 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 thereof, verified in accordance with any requirements specified by the Registrar; and

(iv) all such information or documents as may be required by the Registrar.

Keeping of documents relating to prospectus

156. (1) A corporation shall cause a copy of—

(a) any consent required under section 159 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 it 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 and shall keep each such copy, for such period as may be specified by the Registrar, for inspection by any person without charge.

(2) Any person who contravenes this section commits an offence.

As to invitations to the public to lend money to or to deposit money with a corporation

157. (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 pursuant to sections 154 and 155.

(2) For the purposes of this Part 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) it is not, at any one time, under a liability, whether or not such liability is present or future, to repay any money accepted by it on deposit or loan from more than ten persons; or

(b) any money accepted by it on deposit or loan is fully guaranteed by the Government.

(4) Where pursuant to an invitation referred to in subsection (1) a corporation has accepted from any person any money as a deposit or loan 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 pursuant to subsection (6) or (7) it is and may be otherwise described.

(6) The document may be described or referred to in the prospectus or in such other document or in the document itself as a mortgage debenture or certificate of mortgage debenture stock unless there is included in the prospectus the statements and the valuation referred to in First Schedule.

(7) The document may be described or referred to in the prospectus or in such other document or in the document itself as a debenture or certificate of debenture stock unless—

(a) pursuant to subsection (6) it may be, but is not, described or referred to in that prospectus or document as a mortgage debenture or certificate of mortgage debenture stock; or

(b) there is included in the prospectus the statement and the summary referred to in First Schedule.

(8) Nothing in this section shall apply to a prescribed corporation and nothing in this Act shall require a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed corporation.

(9) 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 Bank Negara 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.

(10) The Minister charged with the responsibility for finance may, by notice published in the *Gazette*—

(a) specify terms and conditions subject to which subsection (8) shall have effect in relation to a corporation specified in paragraph (9)(b); or

(b) vary or revoke any declaration or specification made under this section.

(11) Any corporation or other person that contravenes this section and every officer of a corporation who is in default commits an offence and shall upon conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one three million ringgit or to both.

(12) The provisions of this section relating to the description of any document acknowledging or evidencing or intended to acknowledge or evidence the indebtedness of a corporation shall apply to and in relation to every such document issued after the commencement of this Act notwithstanding anything in any existing debenture or trust deed and any such document issued after the

commencement of this Act may be described in accordance with the requirements of this section notwithstanding anything in any such existing debenture or trust deed.

(13) For the purposes of this section a document issued by a borrowing corporation certifying that a person named therein is 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, shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

Form and contents of prospectuses

158. (1) Every prospectus issued pursuant to this Subdivision shall comply with the requirements relating to the form and contents of a prospectus as specified by the Registrar in the Second Schedule.

(2) Where 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 commits an offence and shall upon conviction, be liable to imprisonment not exceeding ten 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) as regards any matter not disclosed, he proves that he was not cognizant thereof;
- (b) he 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 was in respect of matter which in the opinion of the court dealing with the case was immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused.

(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 under any rule of law or any written law or under this Act apart from subsection (2).

Consent from person to issue of prospectus containing statement by him

159. (1) A prospectus that includes a statement, other than a statement which is an extract of an official statement or any other statement as may be specified by the Registrar, purporting to be made by any person including experts, 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 it is included and has not, before the date of issue of the prospectus, withdrawn such consent; and
- (b) there appears in the prospectus a statement that the person has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of this section, the corporation and every person who is knowingly a party to the issue thereof commits an offence and shall upon conviction, be liable to imprisonment not exceeding ten years or to a fine not exceeding one million ringgit or to both.

Relief from requirements as to form and content of a prospectus

160. (1) Without prejudice to subsection 154(4), the Registrar may, on the application in writing by any person required to comply with section 154(1), make an order relieving him or approving any variation from the requirements of this Act relating to the form and content of a prospectus.

(2) In making an order under subsection (1), the Registrar may impose such terms and conditions as he deems fit.

(3) The Registrar shall not make an order under subsection (1) unless he is satisfied, having considered the nature and objectives of the corporation, that—

- (a) such relief or variation shall 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) compliance with the requirements, for which such 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 it is issued in compliance with an order made under subsection (1).

As to retention of over-subscriptions in issuance of debenture

161. (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 it 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 First Schedule where a corporation specifies in a prospectus relating to a debenture issue that it 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) If a corporation contravenes this section, the corporation commits an offence and shall, on conviction, be liable to imprisonment not exceeding five years or a fine not exceeding one million ringgit.

Certain advertisements deemed to be prospectuses

162. (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;
 - (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) No statement that, or to the effect that, the advertisement is not a prospectus shall 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) Where an advertisement is deemed to be a prospectus by virtue of subsection (1), 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) 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 prospectuses, 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 upon conviction, be liable to imprisonment not exceeding five years or to a fine not exceeding one million ringgit or to both.

(6) For the purposes of this section where—

(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,

the corporation and each person who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement, but no other person shall be deemed to be such a person.

(7) Any person who has obtained a certificate referred to in paragraph (6)(b) shall, when so requested by the Registrar forthwith deliver the certificate to the Registrar.

(8) Any person who contravenes subsection (7) 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 under any rule of law or under any provision of this Act apart from this section.

Document containing offer of shares for sale to be deemed prospectus

163. (1) Where a corporation allots or agrees to allot to any person any shares in or debentures of the corporation with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made, shall for all purposes be deemed to be a prospectus issued by the corporation.

(2) Where documents are deemed to be prospectus for the purposes 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 be applicable and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of false or misleading statements or material omission in the document or otherwise.

(3) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the corporation in respect of the shares or debentures had not been so received.

(4) The requirements of this Subdivision as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(5) In addition to complying with the other requirements of 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 sign by his agent authorized in writing.

Information memorandum deemed to be prospectus

164. Any information memorandum purporting to describe the business affairs of the person making the offer issued by the said 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 and a copy of the memorandum shall be lodged with the Registrar within seven days after it is first issued.

Supplementary or replacement prospectus

165. (1) This section applies if, after the registration of a prospectus, but before its issue, the person who registered or lodged the prospectus became 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 has been 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) As soon as practicable, after becoming aware of the matters in subsection (1), the person shall lodge or register with the Registrar, a supplementary or replacement prospectus, as the case may be.

(3) A supplementary prospectus shall clearly identify the prospectus to which it relates and shall contain on each page of the supplementary prospectus, a statement in bold or coloured print stating that it is a supplemental prospectus to be read in conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the same original prospectus, both the original prospectus and previous supplementary prospectuses.

(4) A replacement prospectus shall clearly identify the prospectus which it replaces and shall contain at the beginning of the prospectus a statement in bold or coloured print stating that it is a replacement prospectus.

(5) A supplementary prospectus shall be deemed to be part of the original prospectus to which it relates and provisions under this Subdivision regarding the contents of prospectuses and liability in respect of false or misleading statements and material omissions in a prospectus, shall apply and have effect accordingly.

(6) A replacement prospectus shall be regarded as replacing the original prospectus previously registered under section 155.

(7) Where a supplementary prospectus has been registered with the Registrar pursuant to subsection (1), every copy of the original prospectus shall be issued, accompanied by a copy of the supplementary prospectus.

(8) A supplementary or replacement prospectus may be registered for the purpose of subsection (1), notwithstanding that the original prospectus to which it relates or replaces, as the case may be, has been issued, if—

- (a) the original prospectus relates to an invitation or offer which is addressed to an identifiable category of persons to whom it is directly communicated by the person making the invitation or offer or by his appointed agent, and a copy of the supplementary or replacement prospectus is sent to each of those persons in compliance with subsection (9); or
- (b) the original prospectus relates to an invitation or offer to the general public and a copy of the supplementary or replacement prospectus is advertised in every newspaper which originally advertised the invitation or offer or calling attention to the invitation or offer in compliance with subsection (9).

(9) For the purpose of subsection (8), a notice shall—

(a) in the case of paragraph (8)(a), be sent together with a copy of the supplementary or replacement prospectus to every person referred to in that subsection;

(b) in the case of paragraph (8)(b), be advertised together with the supplementary or replacement prospectus, stating that—

- (i) a copy of the supplementary 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 of the date of the notice and all application money received in respect thereof will be repaid in full without penalty.

(10) Any supplementary 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 it relates to or replaces, as the case may be.

(11) 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 five hundred thousand ringgit or to both.

Civil liability for misstatement in prospectus

166. (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 all or any of the persons set out in paragraphs (a), (b), (c), (d) and (e) and to the extent provided for—

- (a) the corporation and each director of the corporation at the time of the issue of the prospectus, for any loss or damage;
- (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, for any loss or damage;

- (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;
- (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 167, for any loss or damage caused by such contravention.

(2) No person shall be so liable 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 it was issued without his authority or consent;
- (b) the prospectus was issued without his knowledge or consent and he gave reasonable public notice after he became aware of its issue;
- (c) after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any false or misleading statement therein, withdrew his consent and gave reasonable public notice of the withdrawal together with the reason; or
- (d) as regards every false or misleading statement—
 - (i) he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true;
 - (ii) purporting to be a statement made by a person under section 160 or to be based on a statement made by a person under section 160 or contained in what purports to be a copy of or extract from a report of valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of

the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given the consent required by section 159 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to that person's knowledge, before any allotment or sale thereunder; 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, it was a correct 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 159, 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.

(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 159, 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 shall not be so liable if he proves that—

- (a) having given his consent under section 159 to the issue of the prospectus, he withdrew it 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 thereunder, he, on becoming aware of the false or misleading statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal together with the reason; or
- (c) he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.

(5) Where—

(a) the prospectus contains the name of a person as a director of the corporation, or as having agreed to become a director, and he 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 thereof; or

(b) the consent of a person is required under section 159 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the corporation except any without whose knowledge or consent the prospectus was issued, and any other person who authorized or caused the issue thereof shall be liable to indemnify the person so named or whose consent was so 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 therein of a statement purporting to be made by him, or in defending himself against any action or legal proceeding brought against him in respect thereof.

Criminal liability for statement in prospectus

167. (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) any statement or information from which there is a material omission.

(2) Any person who contravenes subsection (1) 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.

(3) For the purposes of this section, it shall be a defence for a person if he proves either that—

- (a) the statement or omission was immaterial; or
- (b) he had made all enquiries as were reasonable in the circumstances and after making such enquiries, he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe the statement was true or the omission was immaterial.

Persons not to be taken to have authorized or caused issue of prospectus

168. (1) For the purposes of this Part, the Registrar shall not be taken to have authorized or caused the issue, or to be involved in the preparation, of a prospectus for any reason including where there has been the performance or purported performance of any function, or the exercise or purported exercise of any power, by the Registrar under the Companies Act.

(2) For the purpose of sections 166 and 167, a person shall not be deemed to have authorized or caused the issue of a prospectus by reason only—

- (a) of his having given a consent as required under section 159;
- (b) of 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

169. (1) Where in the opinion of the Registrar—

- (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 the Companies Act, the Registrar may, by 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 an order under subsection (1) unless the Registrar has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Registrar considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the public interest, the Registrar may make an interim order without giving the opportunity to be heard.

(4) An interim order under subsection (3) shall, unless sooner revoked, have effect until the end of twenty one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is the later.

(5) While an order made under subsection (1) or an interim order made under subsection (3) is in force, this Part shall apply as if the prospectus had not been registered.

(6) An interim order made under subsection (3) may, by further order in writing made by the Registrar, be revoked if the Registrar becomes satisfied that the circumstances that resulted in the making of the order no longer exists.

(7) Where applications to subscribe for or purchase shares or debentures to which the prospectus relates have been made prior to the order made under subsection (1)—

- (a) where the shares or debentures have not been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the corporation or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if any such money is not repaid within fourteen days of the stop order, the corporation shall be liable to repay such monies 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 that period; or
- (b) 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 repay without interest all monies received from the applicant and if any such money is not repaid within fourteen days of the date of service of the stop order, the issuer shall be liable to repay such monies 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 that period; and
 - (ii) take necessary steps to effect the order.

(8) Any person who contravenes an order made under subsection (1) or an interim 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

Register of debenture holders and copies of trust deed

170. (1) Every company which issues debentures, not being debentures transferable by delivery, shall keep a register of holders of the debentures at the registered office of the company or at some other place in Malaysia.

(2) Every company shall within seven days after the register is first kept at a place other than the registered office lodge with the Registrar notice of the place where the register is kept and shall within seven days after any change in the place at which the register is kept lodge with the Registrar notice of the change.

(3) The register shall except when 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 them.

(4) For the purposes of this section a register shall be deemed to be duly closed if closed in accordance with provisions contained 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 during such periods, not exceeding in the aggregate thirty days in any calendar year, as is therein specified.

(5) Every registered holder of debentures and every holder of shares in a company shall at his request be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof on payment of ten ringgit for every page or part thereof 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 the sum of ten ringgit for every page or such less sum as is fixed by the company, or where the copy has to be specially made to meet the request on payment of ten ringgit for every page or part thereof required to be copied.

(7) If inspection is refused, or a copy is refused or not forwarded within a reasonable time, but not more than one month, after a request has been made pursuant to this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(8) 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 the provisions of sections 49, 50, 51, 52, 53, 54 and 620 of this Act shall with such adaptations as are necessary apply to and in relation to the keeping of a branch register of debenture holders.

(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 default penalty of one thousand ringgit for each day during which the offence continues after conviction.

Specific performance of contracts

171. 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

172. Notwithstanding any other law, a condition contained in a debenture or in an agency deed for securing a debenture, whether the debenture or agency deed is issued or made before or after the commencement of this Act, shall not be invalid by reason that the debentures are thereby 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

173. (1) Where a company has redeemed debentures previously issued, then the company may re-issue the debentures, either by re-issuing the same debentures or by issuing new debentures in their place, unless—

- (a) provision to the contrary, express or implied, is contained in the company's constitution or in any contract made by the company, or
- (b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) The re-issue of a debenture or the issue of another debenture in its place under this section is treated as the issue of a new debenture for the purposes of stamp duty.

(4) A person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect of it, unless he had notice, or, but for his negligence, might have discovered, that the debenture was not duly stamped.

Deposit of debentures to secure advances

174. Where a company has deposited any of its debentures to secure advances from time to time 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 so deposited.

Qualifications of trustee for debenture holders

175. (1) Subject to this section every corporation which offers debentures to the public for subscription or purchase in Malaysia shall make provision for the appointment of a trustee corporation as trustee for the holders of the debentures in such debentures or in a trust deed relating to such debentures.

(2) Where a borrowing corporation is required to appoint a trustee for the holders of any debentures in accordance with subsection (1) it shall not allot any of such debentures until the appointment has been made and the trustee corporation has consented to act as trustee.

(3) Without leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that 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 it;
- (c) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or
- (d) a corporation that is by virtue of section 6 deemed to be related to—
 - (i) any corporation of a kind referred to in paragraphs (a) to (c); or
 - (ii) the borrowing corporation.

(4) Notwithstanding anything contained in subsection (3), that subsection shall not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures 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 6 to be related to the trustee corporation any moneys so long as such moneys are—
- (i) moneys that, not taking into account any moneys referred to in subparagraphs (ii) and (iii), do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered to the public, exceed one-tenth of the amount of the debentures proposed to be offered to the public within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount owed by the borrowing corporation to the holders of the debentures;
 - (ii) moneys that are secured by, and 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 pursuant to the same trust deed as that creating 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 by virtue of section 6 deemed to be related to the trustee corporation, is not beneficially entitled; or
 - (iii) money to which the trustee corporation, or a corporation that is by virtue of section 6 deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or
- (b) the trustee corporation, or a corporation that is deemed by virtue of section 6 to be related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are deemed by virtue of section 6 to be related to it, do not carry the right to exercise more than one-twentieth 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 pursuant to any such debentures or trust deed a further offer of debentures is made to the public after the commencement of this Act.

(6) If a corporation contravenes this section, the corporation and any officer who is in default 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 default penalty of one thousand ringgit for each day during which the offence continues after conviction.

Retirement of trustees

176. (1) Notwithstanding anything contained in any Act or in the relevant debentures or trust deed a trustee for the holders of debentures shall not cease to be the trustee until a corporation qualified pursuant to section 175 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.

(2) Where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may subject to section 175, be appointed in accordance with that provision.

(3) Where 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 for appointment pursuant to section 175.

(4) 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 holders of the debentures, appoint as successor to the existing trustee any corporation which is qualified for appointment pursuant to section 175 and which is deemed by virtue of section 6 to be related to the existing trustee.

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section 175 or fails or refuses to act or is disqualified under that section the Court may on the application of the borrowing corporation of the trustee for the holders of the debentures or the holder of any of the debentures or the Minister appoint any corporation qualified pursuant to section 175 to be the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be qualified or which has failed or refused to act as trustee or is disqualified as aforesaid.

(6) Where a successor is appointed to be a trustee in place of any trustee the successor shall within one month after the appointment lodge with the Registrar notice in the prescribed form of the appointment.

(7) The successor who contravenes subsection (6), 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 default penalty of one thousand ringgit for each day during which the offence continues after conviction.

Contents of trust deed

177. (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, pursuant to those debentures or that

deed, borrow and shall contain covenants by the borrowing corporation, or if the debentures do not or the trust deed does not expressly contain those covenants they or it shall be deemed to contain covenants by the borrowing corporation, to the following effect that—

- (a) the borrowing corporation will 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 holders of the debentures or any approved company auditor appointed by the trustee were a director of the corporation the borrowing corporation will—
 - (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and
 - (ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and
- (c) the borrowing corporation will, on the application of persons holding not less than one-tenth in value of the issued debentures to which the covenant relates delivered to its registered office, by giving notice—
 - (i) to each of the holders of those debentures, other than debentures payable to bearer, at his address as specified in the register of debentures; and
 - (ii) by an advertisement in a daily newspaper circulating generally throughout Malaysia addressed to all holders of those debentures,

summon a meeting of the holders of those debentures to consider the accounts and balance sheet which were last lodged with the trustee for the holders of the debentures by the borrowing corporation and to 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 chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of those debentures present at the meeting.

(2) A corporation that issued a debenture which is not in compliance with this section commits an offence and the the corporation and any officer of the corporation who is in default shall, on conviction, be liable to a fine not exceeding one million ringgit.

Power of Court in relation to certain irredeemable debentures

178. 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 if on the application of the trustee for the holders of the debentures or, where there is no trustee, on the application of the holder of any of the debentures the Court is 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 thereon;
- (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 *pari passu*, 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 thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) 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.

Duties of trustees

179. (1) A trustee for the holders of debentures—

- (a) shall 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) shall 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) shall ensure that the borrowing corporation complies with Subdivision 1 of Part V so far as it relates to the debentures and is applicable;
- (d) shall 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) except where it is satisfied that the breach will not materially prejudice the security, if any, for the debentures or the interests of the holders of the debentures, shall take all steps and do all such things as it 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;
- (f) where the borrowing corporation or any of its guarantor corporations fails when so required by the trustee to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee

considers necessary or appropriate and obtain the directions of the holders in relation thereto; and

- (g) where the borrowing corporation submits to those holders a compromise or arrangement, shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due inquiry, the trustee for the holders of the debentures 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 it becomes due, the trustee may apply to the Minister for an order under this subsection and the Minister may, on such application, after giving the borrowing corporation an opportunity of making representations in relation to that application, by order in writing served on the corporation at its registered office in Malaysia, 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 holders of the debentures or the Minister may, and if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under subsection (4) and the trustee shall apply accordingly.

(3) 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 it becomes due; or
- (b) the corporation has contravened or failed to comply with an order made by the Minister under subsection (2),

the trustee may, and where the borrowing corporation has requested the trustee to do so, the trustee shall apply to the Court for an order under subsection (4).

(4) Where an application is made to the Court under subsection (2) or (3), the Court may, after giving the borrowing corporation an opportunity of being heard, by order, do all or any of the following things, namely—

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions 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 holders of debentures of the corporation or to any class of such holders;
- (d) appoint a receiver or receiver and manager of such of the property as constitutes the security, if any, for the debentures; and
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor corporations or the public,

but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.

(5) The Court may vary or rescind any order made under subsection (4) as the Court thinks fit.

(6) A trustee in making any application to the Minister or to the Court shall have regard to the nature and kind of the security given when the debentures were offered to the public, and if no security was given shall have regard to the position

of the holders of the debentures as unsecured creditors of the borrowing corporation.

(7) 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 it has reasonable grounds for believing that such advocate, auditor or officer was competent to give or make the certificate, report or statement.

Power of trustee to apply to the Court for directions, etc.

180. (1) The trustee for the holders of debentures 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 holders of debentures,

and the Court may—

- (a) give such directions to the trustee as the Court deems fit; and
- (b) if satisfied that the determination of the question will be just and beneficial accede wholly or partially to any such application on such terms and conditions as the Court thinks fit or make such other order on the application as the Court thinks just.

(2) The Court may on an application under this section order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the trustee thereon and may give such ancillary or consequential directions as the Court thinks fit.

(3) The meeting shall be held and conducted in such manner as the Court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints.

Obligations of borrowing corporation

181. (1) Where there is a trustee for the holders of any debentures of a borrowing corporation, the directors of the borrowing corporation shall—

- (a) at the end of a period not exceeding three months ending on a day, not later than six months after the commencement of this Act or after the date of the relevant prospectus, whichever is the later, which the trustee is hereby required to notify to the borrowing corporation in writing; and
- (b) at the end of each succeeding period thereafter, being a period of three months or such shorter time as the trustee may, in any special circumstances, allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Registrar and with the trustee.

(2) The report referred to in subsection (1) shall be signed by not less than two of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state—

- (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 upon them respectively by or pursuant to 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 them have

occurred which materially affect any security or charge included in or created by the debentures or any trust deed and if so, particulars of those 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, particulars of that change; and

(f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which pursuant to section 6 is deemed to be related to the borrowing corporation, particulars of—

(i) the total amounts so deposited or loaned and the extent of any liability so assumed during the period covered by the report; and

(ii) the total amounts owing to the borrowing corporation in respect of money so deposited or loaned and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that 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 the holders of the debentures of the borrowing corporation.

(3) Where there is a trustee for the holders of any debentures issued by a borrowing corporation, the borrowing corporation and each of its guarantor corporations which has guaranteed the repayment of the moneys raised by the issue of those debentures shall, within twenty-one days after the creation of the charge, in writing furnish the trustee for the holders of the debentures, whether or not any demand therefor has been made, with particulars of any charge created by the corporation or the guarantor corporation, as the case requires, and when the amount to be advanced on the security of the charge is indeterminate, within seven

days after the advance, with particulars of the amount or amounts in fact advanced but where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

(4) The directors of every borrowing corporation and of every guarantor corporation shall at some date not later than nine months after the expiration of each financial year of the corporation cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures, if any, 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.

(5) Sections 245, 246, 248 and 280(1), (2) and (6) shall with such adaptations as are necessary be applicable to every financial statement made out and lodged pursuant to subsection (4) as if that financial statement were a financial statement referred to in those subsections.

(6) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1) or where 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.

(7) 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

(8) Any director of a borrowing corporation or a guarantor corporation 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Obligation of guarantor corporation to furnish information

182. (1) For the purpose of the preparation of a report that, by this Act, is required to be signed by or on behalf of the directors of a borrowing corporation or any of them, that corporation may, by notice in writing require any of its guarantor corporations to furnish it with any information relating to that guarantor corporation which is, by this Act, required to be contained in that report, and that guarantor corporation shall furnish the borrowing corporation with that information before such date, being a date not earlier than fourteen days after the notice is given, as may be specified in that behalf in the notice.

(2) A corporation which fails to comply with a requirement contained in a notice given pursuant to subsection (1) and every officer of that corporation who is in default 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Loans and deposits to be immediately repayable on certain events

183. (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 from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving that purpose or completing that project.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection 181(1).

(3) When it appears to the trustee for the holders of the debentures 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 holders of the debentures, shall give notice in writing to the corporation requiring it to repay the moneys so received by the corporation and within one month after the notice is given, lodge with the Registrar a copy thereof.

(4) The trustee shall not give a notice pursuant to subsection (3) if it is satisfied—

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of debentures 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) that the failure to achieve the purpose or project was due to circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation at the time that the prospectus was issued.

(5) Upon receipt by the corporation of a notice referred to in subsection (3), the corporation shall be liable to repay, and on demand in writing by him shall immediately repay, to any person entitled thereto, any money owing to him as the result of a loan or deposit made in response to the invitation unless—

- (a) before the moneys were accepted by the corporation the corporation had 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 by notice in writing served on the holders of the debentures—
 - (i) had specified the purpose or project for which the moneys would in fact be applied by the corporation; and
 - (ii) had offered to repay the moneys to the holders of the debentures, and that person had not within fourteen days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the corporation repayment of the money.

(6) Where the corporation has given a notice in writing as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the corporation, this section shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

Liability of trustees for debenture holders

184. (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 holders of debentures secured by a trust deed, shall be void so far as it would have the effect of exempting a trustee thereof from or indemnifying it against liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee.

(2) Subsection (1) shall not invalidate—

- (a) any release 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 such a release to be given—
 - (i) on the agreement thereto 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 its 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 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 was in force.

SUBDIVISION 11

RESTRICTIONS ON ALLOTMENT AND COMMENCEMENT OF BUSINESS

Prohibition of allotment unless minimum subscription received

185. (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 pursuant to a prospectus that is registered under the Capital Markets and Services Act 2007 unless—

- (a) the minimum subscription has been subscribed; and
- (b) the sum 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 it 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 pursuant to 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, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within five months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest or compensation at the rate of ten per centum per annum from the expiration of the period of five months but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section or of subsection 188(1) shall be voidable at the option of the applicant which option may be exercised by written notice served on the company within thirty days after the lodgement of the statutory report under section 337, and not later, or, in any case where the company is not required to lodge a statutory report, or where the allotment is made after the lodgement of statutory report, within thirty days after the date of the allotment, and not later, and the allotment shall be so voidable notwithstanding that the company is in course of being wound up.

(6) Every director of a company who knowingly contravenes or permits or authorizes the contravention of this section or of subsection 188(1) shall, upon conviction, be liable for imprisonment for a term not exceeding five years or a fine not exceeding one million ringgit or 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 thereby 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.

(7) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.

(8) No company shall allot, and no officer or promoter of a company or a proposed company shall authorize or permit to be allotted—

- (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 under the Capital Markets and Services Act 2007 on the basis of a prospectus that is registered under that Act later than such period after the date of issue of the prospectus as the Securities Commission may specify.

(9) If contravention is made to subsection (8) —

- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit; and
- (b) any officer of the company or promoter of a company or a proposed company who is in default 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.

Application moneys to be held in trust until allotment

186. (1) All applications and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public or of any securities for which a prospectus is required under the Capital Markets and Services Act 2007 shall until the allotment be held 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, upon trust for the applicant, but there shall be no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of the moneys so long as the bank or person acts in good faith.

(2) In contravention of this section, every officer of the company in default or, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorizes or permits the default commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine of not more than one million ringgit or to both.

Restriction on allotment in certain cases

187. (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 at least three days before the first allotment of either shares or debentures there has been lodged with the Registrar a statement in lieu of prospectus which complies with the requirements of this Act.

(3) If contravention is made to this section —

- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit; and
- (b) the officer who is in default 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.

Requirements as to statements in lieu of prospectus

188. (1) To comply with the requirements of this Act a statement in lieu of prospectus lodged by or on behalf of a company—

- (a) shall be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing;
- (b) shall contain matters specified in the Third Schedule and in the matters specified in Part I of that Schedule and set out the form as determine by the Registrar; and
- (c) shall, where the persons making any report specified in Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The Registrar shall not accept for registration any statement in lieu of prospectus unless it appears to him to comply with this Act.

(3) Where in any statement in lieu of prospectus, there is any untrue statement or wilful non-disclosure any director, who signed the statement in lieu of prospectus 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 he proves either that the untrue statement or non-disclosure was

immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true or the non-disclosure immaterial.

Restrictions on commencement of business in certain circumstances

189. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares or has issued a prospectus pursuant to the Capital Markets and Services Act 2007 in relation to its shares the company shall not commence any business or exercise any borrowing powers—

(a) if any 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; or

(b) unless—

(i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(ii) every director has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(iii) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that the above conditions have been complied with.

(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 pursuant to the Capital Markets and Services Act 2007 the company shall not commence any business or exercise any borrowing power unless—

- (a) there has been lodged with the Registrar a statement in lieu of prospectus which complies with this Act;
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that paragraph (b) has been complied with.

(3) The Registrar shall, on the lodging of the statutory declaration in accordance with this section notify that the company is entitled to commence business and to exercise its borrowing powers and that notification shall be conclusive evidence thereof.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Where shares and debentures are offered simultaneously by a company for subscription nothing in this section shall prevent the receipt by the company of any money payable on application for the debentures.

(4) 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Restriction on varying contracts referred to in prospectus, etc

190. A company shall not before the lodgement of statutory report under section 337 vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, unless the variation is made subject to the approval of the general meeting.

DIVISION 2

SHAREHOLDERS, DIRECTORS AND OFFICERS OF COMPANIES

SUBDIVISION 1

MEMBERS' LIABILITIES, RIGHTS AND OBLIGATIONS

Liability of members

191. (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 to 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 its 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

192. (1) Where a share renders its holder liable to calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the share for the time being, and not to a prior holder of the share, whether or not the liability

became enforceable before the share was registered in the name of the current holder.

(2) If —

(a) all or part of the consideration payable in respect of the issue of a share remains unsatisfied; and

(b) the person to whom the share was issued no longer holds that share, the liability in respect of that unsatisfied consideration remains with the person to whom shares were issued or of 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

193. A 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,

unless the shareholder agrees in writing to be bound by the alteration.

Members' rights for management review

194. (1) The chairman of a meeting of members of a company shall allow a reasonable opportunity for members at the meeting to question, discuss, or comment 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) Unless passed as a special resolution or unless the constitution so provides, any recommendation under subsection (2) shall not be binding on the Board.

SUBDIVISION 2

DIRECTORS

Directors of company

195. (1) A company shall have a minimum of—
- (b) in the case of a private company, one director; or
 - (c) 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) For the purposes of subsection (1)—
- (a) the minimum directors shall ordinarily reside in Malaysia; and
 - (b) “director” shall not include an alternate or substitute director.
- (4) For the purpose of this section, “ordinarily reside in Malaysia” shall include having principal or only place of residence in Malaysia.
- (5) 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 by subsection (1) and any purported resignation or vacation of office in contravention of this section shall be deemed to be invalid.

Persons connected with directors

196. (1) For the purposes of this Subdivision, a person shall be deemed to be connected with a director if he is—

- (a) a member of that 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 his family is a beneficiary; or
- (d) a partner of that director or a partner of a person connected with that director.

(2) In paragraph (1)(a), "a member of that director's family" means his spouse, parent, child, including adopted child and stepchild, brother, sister and the spouse of his child, brother or sister.

(3) For the purposes of paragraph (1)(b), a body corporate is associated with a director if—

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

Persons disqualified from being a director

197. (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—

- (a) he is undischarged bankrupt either in Malaysia or elsewhere;

- (b) he has been convicted of an offence relating to the promotion, formation or management of a corporation;
- (c) he has been convicted of an offence involving fraud or dishonesty;
- (d) he has been convicted of an offence under sections 211, 212, 212, 214, 215, 216 and 545; or
- (e) he has been disqualified by the Court pursuant to section 199.

(2) Notwithstanding subsection (1), a person who has been disqualified under this section may be appointed or hold office as a director with the leave of the Court.

(3) A person intending to apply for a leave of the Court under subsection (2) shall—

- (a) give the Registrar a notice of not less than fourteen days of his intention to do so; and
- (b) make the Registrar a party to the proceedings.

(4) For the purposes of this section, any person referred to under subsections (1)(b), (c) and (d) 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.

(5) Any person 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 one million ringgit or to both.

Power of the Court to disqualify persons from acting as director

198. (1) The Court may, on application by the Registrar or the Official Receiver in the case of paragraph (a), 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) due to his conduct as a director which contributed wholly or partly to the liquidation of a company and another company which has gone into liquidation within five years of the date which the first mentioned company went into liquidation;
- (b) due to his habitual contravention of this Act; or
- (c) due to his contravention of the duties of a director.

(2) The Court may, before making an order under subsection (1), 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 of or relevant to the company.

(3) After considering the application, 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.

(4) 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.

(5) In the case where the application for an order is made by the Official Receiver, the Registrar shall be made a party to the proceedings.

Power of Registrar to remove name of disqualified director

199. Notwithstanding any provision in this Act or the constitution of a company, the Registrar shall have the power to remove a name of a director who has been disqualified under sections 197 or 198 from the register.

Directors' consent required

200. A person shall not be appointed as a director of a company unless he has consented in writing to be a director and certified that he is not disqualified from being appointed or holding office as a director of a company under this Act.

Named and subsequent directors

201. (1) A person named as a director in an application for registration of a company shall hold office as a director from the date of registration until that person ceases to hold office as a director in accordance with this Act.

(2) All subsequent directors of a company shall, unless otherwise provided in the constitution, be appointed by ordinary resolution.

Appointment of directors of public company to be voted on individually

202. (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 it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(4) For the purposes of this section, 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 company's constitution.

Validity of acts of directors

203. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Retirement of directors

204. (1) Unless there is specific provision in the company's constitution or the term of appointment regarding retirement of directors, the provision under this section shall apply with regards to the retirement of directors.

(2) Notwithstanding subsection (1), a private company may pass a written resolution in accordance with section 292 to determine the retirement of a director.

(3) At the first annual general meeting of the public company all the directors shall retire from office, and 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 one-third, shall retire from office.

(4) A retiring director shall be eligible for re-election as long as he is not disqualified under this Act.

(5) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot.

(6) The company may appoint a retiring director to fill in the vacancy at the meeting and that retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless—

- (a) at that meeting it is expressly resolved not to fill the vacated office; or
- (b) a resolution for the re-election of that director is put to the meeting and lost.

Removal of directors

205. (1) A director may be removed before the expiration of his period of office—

- (a) subject to its constitution, in the case of a private company or its subsidiaries, by ordinary resolution; or
- (b) in the case of a public company or its subsidiaries, 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 his period 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) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(5) Notwithstanding subsection (1), where a director of a public company appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove him shall not take effect until his successor has been appointed.

(6) A person appointed as director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become 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

206. (1) On receipt of special notice for a resolution to remove a director under subsection 205(3), the company shall forthwith send a copy of the special notice to the director concerned and a notice informing the director the date of the meeting to consider the resolution.

(2) The director shall be given the right to make oral representation or a written representation on the resolution to remove him.

(3) Where the director makes written representation within seven days from the receipt of notice under subsection (1), the company shall notify its members of the representation and unless the representations are received too late for the company to do so, the company shall —

- (a) state the fact of the representations having been made in the notice of the resolution given to members of the company; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent.

(4) If the representation is not sent as required by subsection (3), the director may (without prejudice to his right to be heard orally) require that the representation 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.

Vacation of office of director

207. (1) The office of 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 pursuant to sections 197 or 198;
- (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 office in accordance with the constitution of the company.

(2) Subject to subsection 195(5) and section 208, 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 that address or at a later time specified in the notice.

Resignation or death of sole director or last remaining director

208. (1) Subject to subsection 195(5), 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 shareholders to receive 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) In the event of the death of the sole director who is also the sole shareholder of the company, or the last remaining director of the company, for the purpose of appointing a new director or directors, the secretary shall call a meeting of the next of kin, other personal representatives or a meeting of shareholders, 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 (4).

(5) Where the next of kin, personal representatives or shareholders fail to appoint a director within three months of the death of the last director, the Registrar may direct the company to be struck off in accordance with the section 556.

(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 [*Act 615*] to manage his estate may appoint a person as director.

SUBDIVISION 3

DIRECTORS' DUTIES AND RESPONSIBILITIES

Interpretation

209. For the purpose of this Subdivision, 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 the Board

210. (1) The business and affairs of a company shall be managed by, or under the direction of, the board of directors.

(2) The board of directors 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.

Duties and responsibilities of directors

211. (1) A director of a company shall at all times exercise his powers 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, upon conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

Business judgment rule

212. (1) A director who makes a business judgment is deemed to meet the requirements of the duty under section 211(2) and the equivalent duties under the common law and in equity if the director—

- (a) makes the business judgment in good faith for a proper purpose;
- (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

213. (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 in relation to matters concerned;
- (b) any other person retained by the company as to matters involving skills or expertise 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

214. (1) Except as is otherwise provided by this Act, the constitution or any resolution of the board of directors or shareholders of the company, the directors may delegate any power of the board of directors to any committee to the board of directors, director, officer, employee, expert or any other person and where the directors have delegated any power, the directors are responsible for the exercise of such power by the delegatee as if such power had been exercised by the directors themselves.

- (2) The directors are not responsible under subsection (1) 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

215. (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 shareholder, 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 duty to his nominator.

(2) A director who contravenes this section commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

Prohibition against improper use of company's property, position, corporate opportunity or competing with the company

216. (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 or officer 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, upon conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

General duty to make disclosure

217. (1) A director of a company shall give notice in writing to the company—

- (a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the first-mentioned company with the provisions of section 630;
- (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 by the company with the requirements of this Act.

(2) A person required to give notice under subsection (1) shall give the notice—

- (a) in the case of a notice under paragraph (1)(a), within fourteen days after—
 - (i) the date on which the director became a director; or
 - (ii) 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), within fourteen days after the occurrence of the event giving rise to the change referred to in that paragraph; and
- (c) in the case of a notice under paragraph (1)(d), within fourteen days after

the date on which the director became a director.

(3) A company shall within seven days of receiving a notice given under subsection (1) send a copy of the notice to each of the other directors of the company.

(4) In this section a reference to a participatory interest is a reference to an interest within the meaning of the Interest Schemes Act 2013.

(5) In determining, for the purposes of this section, whether a person has an interest in a debenture or participatory interest the provisions of section 7, save for subsections (1) and (3) of that section, have effect and in applying those provisions a reference to a share, shall be read as a reference to a debenture or participatory interest.

(6) In this section—

- (a) a director who contravenes subsections (1) or (2) commits an offence and shall, on conviction, be liable to—
 - (i) in the case of subsection (1), imprisonment not more than ten years or a fine not exceeding three million ringgit or both;

- (ii) in the case of subsection (2), a fine not exceeding ten thousand ringgit;
- (b) a company which contravenes subsection (3) commits an offence and shall, upon conviction, be liable to a fine not exceeding three million 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

218. Sections 212 to 217, shall be in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

Disclosure of interest in contracts, proposed contracts, property, offices, etc.

219. (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 his knowledge, declare the nature of his interest at a meeting of the Board.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director consists only of being a member or creditor of a corporation which is interested in a contract or proposed contract with the first mentioned company if the interest of the director may properly 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 he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(b) in a 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 6 is deemed to be related to the company that he is a director of that corporation,
and 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 by a director to the effect that he 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 so made if it specifies the nature and extent of his interest in the specified corporation or firm and his 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, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(5) Every director of a company who holds any office or possesses any property whereby whether directly or indirectly duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(6) 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.

(7) The secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) For the purpose of this section, an interest in the shares or debenture of a company—

(a) of the spouse of a director who is not a director of the company; or

(b) of 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.

(9) Where a contract is entered into in contravention of this section, the contract 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.

(10) 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.

(11) In this section—

(a) every officer of the company and any other 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 a fine not exceeding three million ringgit or to both;

(b) a company which contravenes this section commits an offence and shall, upon conviction, be liable to a fine not exceeding one million 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.

Interested director not to participate or vote

220. (1) Subject to section 219, 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 207, shall be counted only to make the quorum at the board meeting but shall not participate in any discussion while the contract or proposed contract is being considered at the board 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;
- (d) any contract or proposed contract entered into or to be entered into by a public company or a private company which is 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) Where a contract is entered into in contravention of subsection (1), the contract or 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, upon conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

Approval of company required for disposal by directors of company's undertaking or property.

221. (1) Notwithstanding anything in the constitution of the company, the directors shall not 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 the arrangement or transaction has been approved by the company in a general meeting.

(2) For the purpose of subsection (1), in the case of a company where all or any of its shares are listed for quotation on the official list of a Stock Exchange as defined in the Capital Markets and Services Act 2007, the term 'substantial value' or 'substantial portion' shall mean the same value prescribed by the provisions in the listing requirements of the Stock Exchange—

- (a) which relates to acquisitions or disposals by a company or its subsidiaries to which such provision applies; and
- (b) which would require the approval of shareholders at a general meeting in accordance with the provisions of such listing requirements.

(3) In the case of any company other than a company to which subsection (2) is applicable, 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 a transaction in contravention of subsection (1).

(5) Where an arrangement or transaction is carried into effect in contravention of subsection (1), the arrangement or transaction 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 reciver 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, upon conviction, be liable to a term of imprisonment not exceeding ten years or a fine not exceeding three million ringgit or to both.

Loans to director

222. (1) A company, other than an exempt private company, shall not make a loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person except—

- (a) subject to subsection (2), to anything done to provide such director with funds to meet 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;
- (b) 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
- (c) 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 at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

(2) 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—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) 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 arising therefrom.

(4) 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.

(5) Where 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, upon conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

Prohibition of loans to persons connected with directors

223. (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 in the case of a subsidiary, 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, finance companies or insurance or are subject to supervision by Bank Negara 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 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 in general meeting.

(3) Nothing in this section shall operate to prevent the company 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) Where a company contravenes this section, any director who authorizes the making of any loan or the entering into of any guarantee contrary to this section commit an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

Prohibition of tax free payments to directors

224. (1) A company shall not pay a director remuneration of, 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 a company's constitution or in any resolution of a company or of a company's directors 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 it provided for payment as a gross sum subject to income tax, of the net sum for which it actually provides.

(3) If default is made in complying with this section, the company, every officer of the company and any other person or individual who is in default shall commit an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

Payment to directors for loss of office, etc

225. (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 thereof, have been disclosed to the members of the company and the resolution for the proposal has been approved by 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) The resolution made under subsection (1) shall be subject to the director or substantial shareholder, as the case may be, abstaining from voting on the resolution whether or not to approve the payment.

(3) Where such 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, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, 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 take-overs.

(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 him is in excess of the price which could at the time have been obtained by other holders of the like shares 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, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as 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 the relevant repealed written laws;
- (b) any payment under an agreement, particulars whereof 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 emoluments of the director in the three years immediately preceding his retirement or death; or
- (e) any payment to a director pursuant to an agreement made between the company and him before he became a director of the

company as the consideration or part of the 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 of law 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 6 deemed to be related to the company.

(8) A director who fails to comply with subsection (2) or 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 that subsection and who fails to do so, commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit, and if the requirements of that subsection 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

226. (1) Subject to subsection (2) and section 227, a company shall not carry into effect any arrangement or transaction where a director or a substantial shareholder of the company or its holding company, or a person connected with such 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.

(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 at a general meeting; or

(b) by a resolution of the holding company at a general meeting,

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) The resolution of the company or its holding company at the general meeting of the company or its holding company to consider the arrangement or transaction shall be subject to the director, substantial shareholder or person connected with such director or substantial shareholder, as the case may be, abstaining from voting on the resolution whether or not to approve the arrangement or transaction.

(4) Where an arrangement or transaction is carried into effect by a company in contravention of subsections (1) and (2) that director, substantial shareholder or person connected with such 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.

(5) The Court may, on the application of any member or director of the company, restrain the company from carrying into effect an arrangement or transaction in contravention of subsection (1).

(6) A director or substantial shareholder of a company or its holding company, 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, upon conviction, be liable to a term of imprisonment of not more than ten years or a penalty of not more than three million ringgit or to both.

- (7) For the purposes of subsection (1)—
- (a) “person connected with a substantial shareholder” shall have the same meaning as that assigned to a “person connected with a director” in section 184 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 listed for quotation on the official list of a Stock Exchange as defined under the Capital Markets and Services Act 2007, shall be the same value as the value prescribed by the provisions in the listing requirements of the Exchange—
 - (i) which relates to acquisitions or disposals by a company or its subsidiaries to which such provision applies; and
 - (ii) which would require the approval of shareholders at a general meeting in accordance with the provisions of such listing requirements;
 - (c) in the case of any company other than a company to which paragraph (b) is applicable, 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 asset value provided it is not less than ten thousand ringgit, where—

- (i) the value of the company's assets is determined by reference to the accounts prepared under section 265 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.
- (8) 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 226

227. Section 226 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 an exempt private company which does not have any subsidiary;
- (c) by a company which is being wound up, unless the winding up is a members' voluntary winding up;

- (d) 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;
- (e) 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;
- (f) by a company made in pursuance of a scheme of arrangement approved by the Court under section 431; or
- (g) by a company in connection with a takeover offer made in accordance with the relevant law applicable to such offers.

Proceedings of Board

228. Subject to the constitution of a company, the provisions set out in the Fourth Schedule shall govern the proceedings of the Board.

Approvals for remuneration of directors

229. (1) The remuneration of the directors of a public company and any benefits payable to the directors including any compensation for loss of employment of a director or former director shall be approved at a general meeting.

(2) In the case of a private company, subject to its constitution, the Board may approve the remuneration 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 pursuant to subsection (2) shall be recorded in the minutes of the directors' meeting and the Board shall notify the shareholders of the approval of the remuneration within fourteen days from the date of the approval.

(4) Where a payment is made or other benefit provided 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 one month after he has knowledge of such payments, may require the directors to pass a resolution either by way of written resolution or at a general meeting to approve the payment.

(5) Unless an approval has been obtained through a resolution passed pursuant to subsection (4), the payment shall constitute a debt by the director due to the company.

(6) If contravention is made to subsection (1), 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 and any payment in contravention of subsection (1) shall constitute a debt by the director to the company.

(7) If contravention is made to subsection (3), the officer who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit.

(8)

Directors' service contracts

230. (1) For the purposes of this Part 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 director or otherwise) for the public company, or for a subsidiary of the public company; or
- (b) services (as director or otherwise) that a director of the public company undertakes personally to perform are made available by

a third party to the public company, or to a subsidiary of the public company.

(2) The provisions of this Part 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.

(3) A shadow director is treated as a director for the purposes of the provisions of this Subdivision.

Copy of contracts to be available for inspection

231. (1) A public company shall keep available for inspection a copy of every director's service contract with the company or with its subsidiaries; or

(2) All the copies of contracts shall be kept available for inspection at the company's registered office.

(3) The copies of contracts shall be retained by the company for at least one year from the date of termination or expiry of the contract and shall be kept available for inspection during that time.

(4) The company shall give notice to the Registrar—

(2) of the place at which the copies of the contracts are kept available for inspection, and

(3) of any change in that place,

unless they have at all times been kept at the company's registered office.

(5) If default is made in complying with subsection (1), (2) or (3), or default is made, every officer of the company who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit.

(6) The provisions of this section apply to a variation of a director's service contract as they apply to the original contract.

Right of member to inspect and request copy

232. (1) Every copy of the contract required to be kept under section 219 shall be open to 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 copy or memorandum.

(3) The copy shall be provided within seven days after the request is received by the company.

(4) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), every officer of the company who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding one million 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

233. (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 must, unless the contract is in writing, ensure that the terms of the contract are either—
- (a) set out in a written memorandum; or
 - (b) recorded in the minutes of the first meeting of the directors of the company following the making of the contract.
- (3) For the purposes of this section, “director” includes shadow director.
- (4) Failure to comply with this section in relation to a contract does not affect the validity of the contract.
- (5) This section shall be in addition to and not in derogation of any other rule of law applying to contracts between a company and a director of the company.
- (6) If a company fails to comply with this section, every officer who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding one million ringgit.

SUBDIVISION 4
SECRETARY

Requirement for a secretary

- 234.** (1) Every company shall have at least one secretary who shall be—
- (a) a natural person;
 - (b) 18 years of age and above; and
 - (c) a citizen or permanent resident of Malaysia.
- (2) The office of secretary of a company shall not be left vacant for more than thirty days at any one time.
- (3) No person shall be appointed as secretary unless—
- (a) he has consented in writing to be appointed as a secretary;
 - (b) he is qualified under section 235; and
 - (c) he is not disqualified under section 236.
- (4) If contravention is made to this section, the company and every director who is in default commits an offence.

Qualification of a secretary

- 235.** A secretary shall be—
- (a) a member of a prescribed body as set out in the Fifth Schedule; or
 - (b) a person approved by the Registrar pursuant to section XXX under the Companies Commission of Malaysia Act 2001.

Disqualification to act as a secretary

- 236.** (1) A person shall be disqualified to act as a secretary if—
- (a) he is an undischarged bankrupt;

- (b) he is convicted whether within or outside Malaysia of any offence mentioned in section 197;
- (c) he ceases to be a member of the body as stated under paragraph 236(a); or
- (d) he ceases to be a holder of a practicing certificate issued by the Registrar.

(2) Notwithstanding subsection (1), the Registrar may require a 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, if he is of the opinion that that person has failed to act honestly or has failed to use reasonable diligence in the discharge of his duties as a secretary.

(3) If a person continues to act as a secretary for a company after he is so disqualified under this section without leave of the Court, he and every director who knowingly permits him to act in that capacity commit an offence against this Act.

Requirement to register with Registrar

237. (1) The Registrar shall cause a register of company 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 under section 235(a);
and
- (d) such other information the Registrar may require from time to time.

(2) Any person who is qualified to act as a secretary and who desires to act as a secretary shall apply to be registered under this section before he can act as a secretary.

(3) Any person who contravenes subsection (2) commits an offence.

(4) The Registrar, before registering such person, may—

(a) require him to produce any evidence to his satisfaction of the qualification as stated under section 235(a); or

(b) impose any other conditions that he may deem fit.

(5) On or after the commencement of this Act, a person who is a secretary of a company and who is not registered under the Register of Company Secretaries may continue to act as a secretary to the company for a period of not more than twelve months or such longer period as the Registrar may allow.

(6) After the expiry of the period referred to under subsection (5), a person who fails to comply with the requirement to register is deemed not to be registered under this section.

Appointment, resignation and removal of a secretary

238. (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) Subject to the constitution of the company, a secretary may resign by giving a thirty-day notice to the Board.

(4) Subject to the constitution of the company, the Board may remove a secretary in accordance to the terms and conditions of the appointment referred to under subsection (1).

(5) The office of a secretary shall not be left vacant for more than thirty days at any one time.

(6) Notwithstanding subsection (5), where none of the directors of the company can be communicated with at the last-known residential address, the secretary may, notwithstanding section 234(1), notify the Registrar of that fact and of his intention to vacate the office of secretary.

(7) Where the secretary has lodged a notice in accordance with subsection (5), the secretary shall cease to be the secretary of the company on the expiry of thirty days from the date of the notice.

(8) Nothing in subsections (5) and (6) shall relieve the secretary from liability for any act or omission done before the secretary vacated that office.

(9) The company shall notify the Registrar of any changes in relation to the appointment, resignation or removal of a secretary within thirty days or such change or such further period as the Registrar may on application allow.

(10) Notwithstanding subsection (9), if any person who ceases to be a secretary reasonably believes that the company has not notified the fact of the cessation to the Registrar; such secretary may lodge the notification of cessation with the Registrar.

Acting in dual capacity

239. A provision requiring or authorizing a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

**DIVISION 3
ACCOUNTS AND AUDIT**

**SUBDIVISION 1
ACCOUNTS AND REPORT**

Compliance with approved accounting standards

240. (1) In this Part unless the contrary intention appears, “approved accounting standards” shall have the meaning assigned to it under section 2 of the Financial Reporting Act 1997 [*Act 558*].

(2) The approved accounting standards shall apply to the accounts of a company or the consolidated accounts of a holding company if, at the time when the accounts or consolidated accounts 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 accounts or consolidated accounts relate; and
- (b) are relevant to those accounts or consolidated accounts.

(3) Without prejudice to the generality of the provisions of this Subdivision, the directors of a company shall ensure that the accounts of the company and, if the company is a holding company for which consolidated accounts are required, the consolidated accounts of the company,

- (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,

are made out in accordance with the applicable approved accounting standards.

(4) Notwithstanding subsection (3), the directors of a company or holding company shall not be required to ensure that the accounts or consolidated accounts, as the case may be, are made out in accordance with a particular approved accounting standard if they are of the opinion that making out the accounts or consolidated accounts in accordance with the approved accounting standard would not give a true and fair view of the matters required by section 245 to be dealt with in the accounts or consolidated accounts or would not give a true and fair view 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 accounts.

(5) Where the accounts of a company or consolidated accounts of a holding company are not made out in accordance with a particular approved accounting standard under subsection (4), the directors of the company shall—

- (a) disclose by way of a note on the accounts their reason for not making out the accounts or consolidated accounts in accordance with the approved accounting standard; and
- (b) give particulars in the note of the quantified financial effect on the accounts or consolidated accounts if the relevant approved accounting standard was complied with.

(6) Where any conflict or inconsistency arises between the provisions of an applicable approved accounting standard and a provision in this Act in their respective applications to the accounts of a company or consolidated accounts of a holding company, the provisions of the applicable approved accounting standard shall prevail.

Accounts to be kept

241. (1) Every company and the directors and managers thereof shall cause to be kept such accounting and other records as will 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 from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(2) Every company and the directors and managers thereof shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which they 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 they respectively relate.

(4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place in Malaysia as the directors think fit and shall at all times be open to 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 and there shall be sent to and kept at a place in Malaysia and be at all times open to inspection by the directors, such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto.

(6) If any accounting and other records are kept at a place outside Malaysia pursuant to subsection (5), the company shall, if required by the Registrar to produce those records at a place in Malaysia, comply with the requirements.

(7) 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, but only upon an undertaking in writing given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

- (8) If contravention is made to this section—
- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit; and
 - (b) the officer who is in default 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.

System of internal control

242. (1) Except as otherwise provided for in the listing requirement of a Stock Exchange in relation to companies whose shares are listed for quotation on the Stock Exchange, 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) assets of the company are safeguarded against loss from unauthorized use or disposition; and
- (b) all transactions are properly authorized and that they are recorded as necessary to enable the preparation of true and fair profit and loss accounts and balance sheets and to give a proper account of the assets.

(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 and a fine not exceeding five hundred thousand ringgit or to both.

As to accounting periods of companies within the same group

243. (1) Subject to subsections (11) and (12) the directors of every holding company that is not a foreign company shall take such steps as are necessary 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 such steps as are necessary to ensure that without the consent of the Registrar the financial year of the holding company or any of its subsidiaries is not altered so that all such financial years do not coincide.

(3) Where 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 of their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply such information relating to the operation of the holding company and of any corporation that is deemed by virtue of section 6 to be related to the holding company as he thinks necessary for the purpose of determining the application.

(6) 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 rely upon any report obtained pursuant to subsection (6) from the approved company auditor.

(8) 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.

(9) Where the applicants are aggrieved by any order made by the Registrar, the applicants may, within two months after the service of the order upon the holding company, appeal against the order to the Minister.

(10) 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 might have exercised in relation to the original application.

(11) Where 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.

(12) 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, but where an application for such an order 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, have 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.

Directors shall prepare financial statements

244. (1) The directors of every company shall prepare financial statements in every calendar year, at an interval of not more than fifteen months.

(2) Notwithstanding subsection (1), the directors shall prepare financial statements within 18 months of its incorporation.

(3) The financial statements shall comply with sections 245 to 251.

(4) The financial statements referred to under subsection (1) shall be duly audited before they are sent to any member pursuant to section 254 or laid before an annual general meeting pursuant to section 338.

(5) If, in relation to any financial statements a copy of which shall be sent to a member under section 254 or otherwise circulated, published or issued by the company or laid before a company in annual general meeting under section 338, any director of the company who fails to comply with this section commits an

offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

General requirements for financial statements

- 245.** (1) The annual financial statements for a financial year—
- (a) shall give a true and fair view of the financial position of the company as at the end of the financial year; and
 - (b) shall give a true and fair view of the financial performance of the company for the financial year.
- (2) The annual consolidated financial statements for a financial year—
- (a) shall give a true and fair view of the financial position of the company, and all its subsidiary, companies, enterprises and entities whether incorporated or unincorporated, as a whole as at the end of the financial year; and
 - (b) shall give a true and fair view of the financial performance of the company, and all its subsidiary companies, enterprises and entities whether incorporated or unincorporated, as a whole for the financial year.
- (3) The financial statements for a financial year shall also comply with—
- (a) any other requirements of this Act in relation to the financial statements; and
 - (b) the approved accounting standards applicable to the financial statements.
- (4) Notwithstanding anything in this Act, in the case where financial statements are required to be prepared for or lodged with the authorities referred to under section 26D of the Financial Reporting Act 1997, such financial statements shall be made out in accordance with the applicable approved accounting standards subject to any specifications, guidelines or regulations as may be issued by such authorities.

(5) For the purposes of this Division, apart from the information required by the authorities referred to under section 26D of the Financial Reporting Act 1997 in the financial statements of persons reporting to such authorities as referred under subsection (4), the Registrar may require additional information as he deems fit.

(6) 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' emoluments;
- (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.

(7) 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, by 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, by a statement to the effect that the reserve is being so used.

(8) To the extent that any company registered under any written law relating to insurance 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 is made out in accordance with that law but if the company carries on business other than insurance 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, it shall be necessary for the company to comply with this section and the approved accounting standards.

Undertakings of the subsidiary companies and enterprises to be included in annual consolidated financial statements

246. (1) The consolidated financial statements for a financial year shall include all the undertakings of the subsidiary companies and enterprises of the company.

(2) Notwithstanding subsection (1), where consolidated financial statements are not submitted or where the consolidated financial statements do not deal with a subsidiary of a company—

- (a) the directors shall disclose by way of a note on the financial statements their reason for not causing the financial statements for such one or more subsidiaries to be consolidated; and
- (b) the financial statements of each subsidiary of which are not consolidated together with the auditor's report thereon, shall be annexed to the financial statements of the holding company.

(3) In the case of a subsidiary company 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 paragraph applies, it shall be sufficient if the separate profit and loss account or balance sheet, as the case requires, of the subsidiary company 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.

Financial statements to be approved by the Board

247. (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 to give a true and fair view of the results of the business and the state of affairs of the company.

(3) In respect to any financial statements a copy of which is circulated, published or issued by the company, if contravention is made to subsection (1)—

- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit; and
- (b) the officer who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to both.

Directors must prepare directors' report

248. (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 244.

- (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 338, or sent to a member under section 254 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 of a company who fails to take all reasonable steps to secure compliance under subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

(5) If this subsection (2) is contravened, the company, and every officer of the company, commit an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

Contents of directors' report

- 249.** (1) A directors' report for a financial year shall contain—
- (a) the name of every person who was a director of the company and its subsidiary companies—
 - (ii) during the financial year; and
 - (iii) during the period beginning with 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; and
 - (c) matters set out in Sixth Schedule.

(2) This section shall have effect in relation to a directors' report required to be prepared under section 248(2) 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.

Form and contents of directors' report and financial statement of a banking corporation, etc.

250. 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 banking corporation and a licensed finance company, a licensed discount house, a licensed money-broker, a scheduled institution in respect of which the Minister charged with responsibility for finance has made an order under subsection 24(1) of the Financial Services Act 2012 [Act 372] and a non-scheduled institution in respect of which such Minister has made an order under subsection 93 (1) of that Act with such modifications and exceptions as are determined either generally or in any particular case by the Bank Negara Malaysia.

Directors' report to also include business review

251. (1) The directors' report prepared under section 248 may also contain 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
- (g) subject to subsection (7), 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 paragraphs 2(a) to (f), 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 annual accounts.

(5) In relation to a group directors' report this section has effect as if the references to the company include references to its subsidiary companies and enterprises included in the consolidation.

(6) Nothing in this section 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 seriously prejudicial to the interests of the company.

(7) Nothing in paragraph (2)(g) requires the disclosure of information about a person if the disclosure would, in the opinion of the directors, be seriously prejudicial to that person and contrary to the public interest.

(8) For the purposes of this section, “key performance indicators” means factors by reference to which the development, performance or position of the company’s business can be measured effectively.

Relief from requirements as to form and contents of financial statement and directors’ report

252. (1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of financial statement or consolidated financial statement or to the form and content of the directors’ report required by sections 248 and 249 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 statement or consolidated financial statement or directors’ report as the Registrar deems fit to impose.

(2) 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 statement or consolidated financial statement or to the form and content of the directors’ report required by sections 248 and 249 and the order 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 statement or consolidated financial statement or directors’ report as the Registrar deems fit to impose.

(3) 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 statement or consolidated financial statement 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.

(4) The Registrar may make an order under subsection (1) or (2) which may be limited to a specific period and may from time to time either on application by the directors or without any such application, in which case the Registrar shall give to the directors an opportunity of being heard, make a decision to vary, suspend or revoke any such order.

Power of Registrar to require a statement of valuation of assets

253. (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 and in his absolute discretion, extend the period of time so specified in the notice referred to in subsection (1).

Duty to circulate copies of financial statements and reports

254. (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 holder of the company's debentures;
- (c) every auditor of the company; and
- (d) every person who is entitled to receive notice of general meetings.

(2) Copies need not be sent to a person for whom the company does not have a current address.

(3) A company has a “current address” for a person if—

- (a) an address has been notified to the company by the person as one at which documents may be sent to him; and
- (b) the company has no reason to believe that documents sent to him at that address will not reach him.

(4) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.

(5) Where copies are sent out over a period of days, references in this Act to the day on which copies are sent out shall be read as references to the last day of that period.

(6) Any member of a company, whether he is or is not entitled to have sent to him copies of the financial statements, to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last financial statement of the company, including every document required by this Act to be attached thereto, together with a copy of the auditor’s report thereon.

(7) If contravention is made to this section—

- (a) the company commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit; and
- (b) the officer who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to both.

Time allowed for sending out copies of financial statements and reports

255. (1) The circulation of financial statements and reports for a private company shall be within six months of its financial year end.

(2) The circulation of financial statements and reports for a public company shall be at least twenty one days before the date of its annual general meeting.

(3) Notwithstanding subsection (2), the financial statements and reports may be circulated at a shorter period provided that it was so agreed by all the members entitled to attend and vote at the annual general meeting.

(4) If default is made in complying with this section, the company and every officer of the company who are in default commit an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

Duty to lodge financial statements and reports with the Registrar

256. (1) The directors of 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 one month after the accounts and reports are circulated to its members under section 255;
- (b) in the case of a public company, within one month after 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 not otherwise, and if such financial statements and reports are in a language other than the national language or English language there must be annexed to it a translation thereof in the national language

or English language certified to be a correct translation in the manner to be determined by the Registrar.

(2) If, for any special reason the Registrar deems fit he may, on an application made before the expiry of the period referred to under paragraph 1(a) or (b), extend that period by such further periods as may be specified in the notice.

(3) If default is made in complying with this provision, every officer who is in default commits an offence and shall, upon 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.

(4) For the purpose 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

257. (1) Within one month after the financial statements and reports are circulated pursuant to section 255, the directors of 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 256(1)(a).

(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 they would fall due.

(3) If default is made in complying with this section, every officer who is in default commits an offence and shall, upon 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

258. (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 included any comment made under subsection 280(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 they fall due.

(2) If default is made in complying with this section, the company and every officer of the company who are in default commit an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit and in 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

Company auditors to be approved by Minister charged with responsibility for finance

259. (1) Any person may apply to the Minister charged with responsibility for finance to be approved as a company auditor for the purposes of this Act.

(2) The Minister charged with responsibility for finance 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 charged with responsibility for finance pursuant to this section 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 thereof unless sooner revoked by the Minister charged with responsibility for finance.

(5) The Minister charged with responsibility for finance 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 dissatisfied with any decision of the Minister charged with responsibility for finance under this section 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 who may in his discretion confirm, reverse or vary the decision.

Company auditors

260. (1) A person shall not knowingly consent to be appointed, and shall not knowingly act, as 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—

- (a) if he is not an approved company auditor;
- (b) if he is indebted to the company or to a corporation that is deemed to be related to that company by virtue of section 6 in an amount exceeding two thousand five hundred ringgit;
- (c) if he is—
 - (i) an officer of the company;
 - (ii) a partner, employer or employee of an officer of the company;
 - (iii) a partner or employee of an employee of an officer of the company; or
 - (iv) a shareholder or his spouse is a shareholder of a corporation whose employee is an officer of the company; or
- (d) if 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 holders of debentures of the company.

(2) For the purposes of subsection (1), 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 6 or except where the Minister if he

thinks fit in the circumstances of the case directs otherwise, if he has, at any time within the preceding period of twelve months, been an officer or promoter of the company or such a corporation.

(3) For the purposes of this section, a person shall not be deemed to be an officer by reason only of his having been appointed as auditor of a corporation.

(4) A firm of auditors shall not knowingly consent to be appointed, and shall not knowingly act, as 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 is disqualified under subsection (1)(b), (c) or (d) from acting as the auditor of the company.

(5) No company or person shall appoint a person as auditor of a company unless that last-mentioned person has prior to the appointment consented in writing to act as such auditor, and no company or person shall appoint a firm as auditor of a company unless the firm has prior to the appointment consented, in writing under the hand of at least one partner of the firm, to act as such auditor.

(6) The appointment of a firm in the name of the firm as auditors of a company shall take effect and operate as an appointment as auditors of the company of the persons who are members of that firm at the time of the appointment.

(7) Any person who is appointed as an auditor in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

(8) Any firm who is appointed as an auditor in contravention of subsection (4) commits an offence and each of its partners shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Registration of firms of auditors

261. (1) Within one month after the date of commencement of business, a new firm of auditors shall notify the Registrar of the following particulars—

- (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 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 considers 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 partners or by reason of the admission of a new partner or new partners or where there is a change in any particulars relating to the firm or its partners, there shall be lodged a notification with the Registrar

indicating the relevant alteration and the date of the alteration within one month of such alteration.

(5) A report or notice that purports to be made or given by a firm appointed as 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 pursuant to a notification under subsection (1); and
 - (c) “partners”, in relation to a firm of auditors, includes a sole-proprietor of a firm.

Appointment of auditors of private company

262. (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 based on 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, at least thirty days before the end of the period for the submission of the financial statements to the Registrar; or
- (b) if the Board should have appointed an auditor as required under subsection (3) but failed to do so.

(5) An auditor of a private company shall only be appointed in accordance with subsection (3) or (4).

(6) If default is made in complying with this section, the company and each of its directors commit an offence of this Act.

Power of Registrar to appoint auditors of private company

263. Notwithstanding section 262, if a private company fails to appoint an auditor, the Registrar may appoint one or more persons to fill the vacancy upon application in writing from any member of the company.

Term of office of auditors of private company

264. (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; and
- (b) he cease to hold office thirty days after the circulation of the financial statements to the members unless re-appointed.

(2) Where the office of an auditor is vacant pursuant to paragraph 264(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 company's constitution require actual re-appointment;
- (c) the deemed re-appointment is prevented by the members under section 265; or
- (d) the members have resolved that he should not be re-appointed.

(3) The provision in subsection (2) is without prejudice to the provisions of this Part as to removal and resignation of auditors.

Prevention by members of deemed re-appointment of auditor

265. (1) An auditor of a private company shall not be deemed to be re-appointed under section 264(2) 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 the person or persons giving it; and

- (c) shall be received by the company at least thirty days before the circulation of the financial statements to the members.

Appointment of auditors of public company

266. (1) An auditor of a public company shall be appointed for each financial year of the company.

(2) Notwithstanding the generality of 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 the first annual general meeting.

(4) The members shall appoint an auditor by ordinary resolution—

- (a) in the case of subsequent financial years following the first annual general meeting of the company, at each annual general meeting; or
- (b) if the Board should have appointed an auditor under subsection (2) but failed to do so.

(5) If a company fails to comply with this section, the company and each of its directors commit an offence.

Power of the Registrar to appoint auditors of public company

267. If a public company fails to appoint an auditor in accordance with section 266, the Registrar may appoint one or more persons to fill the vacancy upon application in writing from any member of the company.

Term of office of auditors of public company

268. (1) 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, and
- (b) he ceased to hold office at the conclusion of the annual general meeting next following their appointment, unless re-appointed.

(2) The provision in subsection (1) is without prejudice to the provisions of this Part as to removal and resignation of auditors.

Fixing of auditor's remuneration

269. (1) The remuneration of an auditor appointed by the members of a company shall be fixed by the members by ordinary resolution or in such manner as the members may by ordinary resolution determine.

(2) The remuneration of an auditor appointed by the Board shall be fixed by the Board.

(3) The remuneration of an auditor appointed by the Registrar shall be fixed by the Registrar.

(4) For the purposes of this section "remuneration" includes sums paid in respect of expenses and payment otherwise than cash.

Obligation to furnish particulars of payment made to auditors

270. (1) If a company is served with a notice sent by or on behalf of—

- (a) at least five per centum of the total number of members of the company; or

- (b) the holders in aggregate of not less than five per centum in nominal value of the company's issued share capital,

requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or 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 emoluments paid to or receivable by the auditor or other person 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) lay the statement before the company in general meeting.

(2) If a company fails to comply with this section, the company and every officer who is in default, commit an offence.

Resolution removing auditor from office

271. (1) The members of a company may remove an auditor from office at any time—

- (a) by ordinary resolution at a meeting; and
- (b) in accordance with section 272.

(2) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination of his appointment as 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 removing auditor from office

272. (1) Special notice shall be required for a resolution at a general meeting of a company removing an auditor from office.

(2) On receipt of notice by any member of the company of such an intended resolution, the company shall immediately send a copy of it to the auditor proposed to be removed.

(3) The auditor may within seven days after the receipt by him of the special notice make representations in writing to the company, not exceeding a reasonable length, 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) The company shall, unless the representations are received by it too late for it to do so, send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because the representations were received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(6) Copies of the representations need not be circulated and the representations 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 Registrar is satisfied that the auditor is using the provisions of this section to secure needless publicity or the matter is defamatory or on some other grounds that Registrar deems reasonable.

Notice to Registrar of resolution removing auditor from office

273. (1) Where a resolution is passed under section 271, the company shall give notice of that fact to the Registrar within fourteen days.

(2) If default is made in complying with this section, the company and every officer who is in default commit an offence.

Procedure to appoint auditors by written resolution

274. (1) This section applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has expired or is to expire.

(2) The company shall send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor.

(3) The outgoing auditor may, within fourteen days after receiving the notice, make with respect to the proposed resolution, representations in writing to the company, not exceeding a reasonable length, and request their circulation to members of the company.

(4) The company shall send a copy of the representations to every member of the company to whom resolution under this section has been circulated.

(5) The company shall circulate the resolution in accordance to sections 296 or 298, and where this subsection and subsection (4) apply—

(a) the period allowed under section 298(4) for service of copies of the proposed resolution is twenty-eight days instead of twenty-one days; and

- (b) the provisions of section 298(6) and (7) apply in relation to a failure to comply with that subsection as in relation to a default in complying with that section.

(6) Copies of the representations need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the Registrar is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory or on other grounds that the Registrar deems reasonable.

Procedure to appoint auditor at a meeting of members

275. (1) This section applies to a resolution at a general meeting of a company whose effect would be to appoint a person as auditor in place of a person (the “outgoing auditor”) whose term of office has expired or is to expire.

- (2) Special notice is required of such a resolution if—
 - (a) in the case of a private company—
 - (i) no period for appointing auditors has ended since the outgoing auditor ceased to hold office; or
 - (ii) such a period has ended and an auditor or auditors should have been appointed but were not,
 - (b) in the case of a public company—
 - (i) there has been no annual general meeting since the outgoing auditor ceased to hold office; or
 - (ii) there has been an annual general meeting at which an auditor or auditors should have been appointed but were not.

(3) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be appointed and to the outgoing auditor.

(4) The outgoing auditor may make with respect to the intended resolution representations in writing to the company, not exceeding a reasonable length, and request their notification to members of the company.

(5) The company shall, unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(6) If a copy of any such representations is not sent out as required because received too late or because of the company's default, the outgoing auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(7) Copies of the representations need not be sent out and the representations 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 the provisions of this section to secure needless publicity for defamatory matter.

(8) The court may order the company's costs on the application to be paid in whole or in part by the outgoing auditor, notwithstanding that he is not a party to the application.

Resignation of auditor

276. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

(2) An effective notice of resignation operates to bring the auditor's term of office to an end after twenty-one days on which the notice is deposited or on such later date as may be specified in it.

Notice to Registrar of resignation of auditor

277. (1) Where an auditor resigns his office, the company shall within seven days of the deposit of a notice of resignation, send a copy of the notice to the Registrar.

(2) If default is made in complying with this section, an offence is committed by the company, and every officer of the company.

Rights of resigning auditor of a public company

278. (1) This section applies where the notice of resignation of an auditor of a public company is accompanied by a statement of the circumstances connected with his resignation.

(2) The auditor may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such 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 to its members—
- (a) before the meeting convened on his requisition; or
 - (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation, a statement in writing, not exceeding a

reasonable length, of the circumstances connected with his resignation.

(4) The company shall, unless the statement is received too late for it to comply—

- (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; 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 within twenty-one days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given.

(6) If default is made in complying with subsection (5), every director who failed to take all reasonable steps to secure that a meeting was convened commits an offence.

(7) If a copy of the statement mentioned above is not sent out as required because received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the statement be read out at the meeting.

(8) Copies of a statement need not be sent out 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 the provisions of this section to secure needless publicity for defamatory matter.

(9) 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 he is not a party to the application.

(10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 313 in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above.

(11) For the purpose of this section, any references in section 315 to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Duty to inform upon cessation of office

279. Where an auditor has made written representations to the company pursuant to subsection 272(3) or if an auditor gives notice to the directors of the company pursuant to section 276(1), he shall within seven days of the submission of the written representations or the submission of his notice of resignation, submit a copy of the written representations or his written explanation of his resignation, to the Registrar and, to the Stock Exchange where the company is a company whose shares or debentures are listed on the official list of a Stock Exchange as defined in the Capital Markets and Services Act 2007.

Powers and duties of auditors

280. (1) Every auditor of a company shall report to the members on the financial statements required to be laid before the company in general meeting and on the company's financial statements 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.

- (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 245 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 under section 26D of the Financial Reporting Act 1997, such financial statements shall be made out 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 by section 245 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 240, his opinion concerning the particulars; and
 - (iv) in a case to which neither subparagraph (ii) nor (iii) applies, 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) whether the accounting and other records and the registers required by this Act to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with this Act;
 - (d) in the case of consolidated financial statements the the names of the subsidiaries, if any, of which he has not acted as auditor;
 - (e) 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
 - (f) 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) It is the duty of an auditor of a company to form an opinion as 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 he shall state in his report 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 has a right of access at all reasonable times to the accounting and other records, including registers, of any subsidiary, if necessary, and is entitled to require from any officer or auditor of any subsidiary, companies, enterprises and entities whether incorporated or unincorporated 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, companies, enterprises and entities whether incorporated or unincorporated 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 to inspection by any member at any reasonable time.

(7) An auditor of a company or his agent authorized by him in writing for the purpose 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 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 to 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 purpose 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 fifteen 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 611, 612, 613, 614 and 615.

(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 access, in accordance with this section, to any accounting and other records (including registers) of the corporation in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, commits an offence and shall, upon conviction, be liable to imprisonment to 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 ten years or to a fine not exceeding three million ringgit.

Attendance of auditors at general meetings where financial statements are laid

281. (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) If an auditor fails to attend a meeting as required by sub-section (1), the auditor 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; or
- (c) if the auditor is a member of a firm, the person attending the meeting in place of the designated auditor is a member of that firm.

(3) 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.

(4) If an auditor fails to comply with sub-section (3), the auditor 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; or
- (c) if the auditor is a member of a firm, the person attending the meeting in place of the designated auditor is a member of that firm.

(4) Any auditor who fails to comply with this section commits an offence.

Auditors and other person to enjoy qualified privilege in certain circumstances

282. (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 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 by or under this Act to be lodged with the Registrar.

(3) No auditor shall be liable to be sued in any court or be subject to any criminal or disciplinary proceedings for any report under section 280 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

283. (1) The auditor of a borrowing corporation shall, within seven days after furnishing the corporation with any balance sheet or profit and loss account 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, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof.

(2) Where in the performance of his duties as 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 holders of debentures of the corporation he shall, within seven days after so becoming aware of the matter, send by post a report in writing on the matter to the borrowing corporation and a copy thereof to the trustee.

(3) No auditor shall be liable to be sued in any court or be subject to any criminal or disciplinary proceedings for any report under section 280 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 fails to comply with this section commits an offence and, upon conviction, shall be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a default penalty of five hundred ringgit for each day during which the offence continues after conviction.

DIVISION 4

INDEMNITY AND INSURANCE FOR DIRECTORS, OFFICERS AND AUDITORS

Indemnity and insurance for directors, officers and auditors

284. (1) Except as provided in this section, a company shall not indemnify, or directly or indirectly effect insurance for, a director or officer or auditor of the company in respect of—

- (a) liability for any act or omission in his capacity as a director or officer or auditor; or
- (b) costs incurred by that director or 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) Subject to its constitution, a company may indemnify a director or officer or auditor of the company for any costs incurred by him or the company in respect of any proceedings—

- (a) that relates to liability for any act or omission in his capacity as a director or officer or auditor; and
- (b) in which judgement is given in his favour or in which he is acquitted or in which he is granted relief under section 600, or where proceedings are discontinued or not pursued .

(4) Subject to its constitution, a company may indemnify a director or officer or auditor of the company in respect of—

- (a) liability to any person, other than the company, for any act or omission in his capacity as a director or 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.

(5) Subsection (4) and paragraphs (6)(a) and (b) shall not apply to any liability including criminal liability in respect of a breach, in the case of a director, of the duty specified in section 211(1).

(6) Subject to its constitution, a company may with the prior approval of the Board, effect insurance for a director or officer or auditor of the company in respect of—

- (a) liability, not being criminal liability, for any act or omission in his capacity as a director or officer or auditor; and
- (b) costs incurred by that director or officer or auditor in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that director or 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 a director or officer or auditor—

- (i) in which that person is acquitted; or
- (ii) in which he is granted relief under section 600; or
- (iii) where proceedings are discontinued or not pursued.

(7) The Board 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 annual report, the particulars of any indemnity given to, or insurance effected for, any director, officer or auditor of the company.

(8) Where an insurance is effected for a director or officer or auditor of a company and the provisions of subsection (6) or (7) have not been complied with, the director or officer or auditor shall be personally liable to the company for the cost of effecting the insurance unless the director or officer or auditor satisfies the court that he is not so liable.

(9) In this section—

“officer” includes a former officer;

“effect insurance” includes pay, whether directly or indirectly, the costs of the insurance; and

“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

285. (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

286. (1) An ordinary resolution of the members or a class of members of the 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) A 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 entitled to vote in person or where proxies are allowed, by a duly appointed proxy.

(3) A resolution passed on a poll taken at a meeting shall be passed by a simple majority if it is passed by members representing a simple majority of

members who are entitled to vote in person or by persons who are duly appointed as proxies.

(4) Subject to the provision of the constitution of a company, any matter that may be passed by ordinary resolution may also be passed by special resolution.

Special resolutions

287. (1) A special resolution of the members or class of members means a resolution passed by a majority of more 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) Where 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) A special resolution passed at a meeting on a show of hands if it is passed by not less than seventy-five per centum of—

- (a) the members who are entitled to vote and do vote in person on the resolution; and
- (b) the persons who vote on the resolution as duly appointed proxies of members who are entitled to vote.

(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

288. Unless otherwise provided in the constitution—
- (c) 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 each stock held by him;
 - (ii) on a vote on a resolution on a show of hands at a meeting, every member present in person shall have one vote in respect of each share or stock held by him; 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 units of stock held by him; and
 - (d) in the case of a company not having a share capital, every member shall have one vote.

Votes by proxy

289. (1) 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 proxies—

- (c) the proxies shall only be entitled to vote on poll; and

- (d) the appointment shall not be valid unless he specifies the proportions of his holdings to be represented by each proxy.

Votes of joint holders of shares

290. (1) In the case of joint holders of shares of a company, they shall be considered as one shareholder and only one vote shall be counted by the company.

- (2) For the purpose of subsection (1)—
 - (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;
 - (b) if they 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

291. A member of a company shall have a right to object to a person's entitlement to vote on a resolution in accordance with the constitution, subject to the provisions of this Act.

SUBDIVISION 2
WRITTEN RESOLUTIONS

Written resolutions of private companies

- 292. (1) A resolution shall be proposed as a written resolution—
 - (a) by a director of a private company; or
 - (b) by a member of a private company.
- (2) The following shall not be passed as a written resolution—

- (a) a resolution under section 205 removing a director before the expiration of his term of office; or
- (b) a resolution under section 271 removing an auditor before the expiration of his term of office.

Eligibility of members to receive written resolution

293. (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 the persons entitled to vote on a written resolution change 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 his agreement.

Circulation date

294. 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 sent or submitted to members on different days, to the first of those days.

Manner in which a written resolution to be circulated

295. (1) A written resolution shall be circulated—

- (a) in hard copy form; or
- (b) in electronic form.

(2) Unless otherwise provided in the constitution, a written resolution—

- (a) circulated in hard copy form 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) circulated in electronic form shall be transmitted to the electronic address supplied by the member to the company for such purpose.

Circulation of written resolutions proposed by directors

296. (1) Where the Board proposes a written resolution, the company shall circulate the resolution to every eligible member.

(2) The company shall do so by circulating copies of the written resolutions at the same time, so far as reasonably practicable, to all eligible members in hard copy form or in electronic form.

(3) 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.

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

(5) 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

297. (1) Any member of a private company having a total of five percent 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—

- (a) it would, if passed, be ineffective whether by reason of inconsistency with any written law or the company's constitution;
- (b) it is defamatory of any person; or
- (c) it is frivolous or vexatious.

(3) Where a member requires a company to circulate a written resolution the member may require the company to circulate with it a statement of not more than one thousand words on the subject matter of the resolution.

(4) A company is required to circulate the written resolution and any accompanying statement once it has received requests that it do so from members representing not less than five per centum-or such lower percentage as is specified in the company's constitution of the total voting rights of all members entitled to vote on the resolution.

(5) A request shall—

- (a) be in hard copy form or in electronic form;
- (b) state the resolution and provide any accompanying statement; and
- (c) be signed or authenticated by the member making it.

Circulation of written resolution proposed by members

298. (1) If a company receives a request made under subsection 297(1) to circulate a written resolution, the company shall circulate to every eligible member—

- (a) a copy of the resolution; and

(b) a copy of any accompanying statement.

(2) The company shall do so by circulating 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 form or in electronic form.

(3) The company shall send or submit the copies, or if copies are sent or submitted to members on different days, the first of those copies, not more than twenty-one days after it becomes subject to the requirement under section 297 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 it is not passed.

(5) If default is made in complying with this section, every officer who is in default commits an offence and, upon conviction, shall be liable to a fine not exceeding twenty thousand ringgit.

(6) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

Expenses of circulation

299. (1) The expenses of the company in complying with subsection 298(1) shall be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

(2) Unless the company has previously resolved otherwise, it is not bound to comply with subsection 298(1) provided there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

Application not to circulate a member's written resolution

300. (1) A company shall not be required to circulate a member's written resolution under subsection 298(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 297 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 he is not a party to the application.

Procedure for signifying agreement to written resolution

301. (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 form or in 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 it.

Period for agreeing to written resolution

302. (1) Unless otherwise provided in the constitution, a proposed written resolution made under sections 297 or 298 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 signified after the expiry of that period.

Sending documents relating to written resolutions by electronic means

303. Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it shall be deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address.

SUBDIVISION 3

PASSING RESOLUTIONS AT MEETINGS OF MEMBERS

Resolutions at meetings of members

304. Unless otherwise provided in the constitution, a resolution of the members of a company 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.

Board's power to convene meetings of members

305. The Board may convene a meeting of members of the company.

Members' power to require directors to convene meetings of members

306. (1) The members of a company may request the directors to convene a meeting of members of the company.

(2) The directors shall call a meeting of members once the company has received requests 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 to vote at meetings of members.

(3) Notwithstanding subsection (2), 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 request a meeting of members to be convened if more than twelve months has elapsed—

- (a) since the end of the last meeting of members convened in pursuance of a requirement under this section; and
- (b) the proposed resolution is not vexatious or frivolous.

(4) A request under subsection (1)—

- (a) shall state the general nature of the business to be dealt with at the meeting; and
- (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

(5) A resolution may properly be moved at a meeting unless—

- (a) it would, if passed, be ineffective whether by reason of inconsistency with any written law or the company's constitution;

- (b) it is defamatory of any person, or
 - (c) it is frivolous or vexatious.
-
- (6) A request shall—
 - (a) be in hard copy form or in electronic form; and
 - (b) be signed or authenticated by the person making it.

Directors' duty to call meetings required by members

307. (1) Directors required under section 306 to call a meeting of members of the company shall call a meeting—

- (a) within fourteen days from the date on which they become subject to the requirement; and
- (b) to be held on a date not more than twenty-eight days after the date of the notice convening 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 are considered as not having duly called the meeting if they do not give the required notice of the resolution in accordance with subsection 287(1).

Power of members to convene meeting of members at company's expense

308. (1) If the directors—
- (a) are required under section 306 to call a meeting of members; and
 - (b) do not do so in accordance with section 307,

the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a meeting of members.

(2) Where the requests 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 become subject to the requirement to call a meeting of members.

(4) The meeting shall be convened in the same manner, as nearly as possible, as that in which meetings are required 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 requesting 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 such of the directors as were in default.

Power of court to order meeting

309. (1) This section applies if for any reason it is impracticable—
- (a) to call 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 company's 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 directions as it 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

310. Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors the resolution shall for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

SUBDIVISION 4
NOTICE OF MEETINGS

Notice required of meetings of members

311. (1) A meeting of members of a private company 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 of—

- (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 shorter notice than that otherwise required if shorter notice is 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 shorter notice than that otherwise required if shorter notice is agreed by the majority in 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 is—

- (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 company's constitution;

- (b) in the case of a public company, ninety-five per centum.

Notice of adjourned meetings of members

312. When a meeting of members is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of the original meeting.

Manner in which notice to be given

313. (1) Notice of a meeting of meetings of a company shall be given—
- (a) in hard copy form;
 - (b) in electronic form; or
 - (c) partly by hard copy form and partly electronic form.
- (2) Unless otherwise provided in the constitution, a notice—
- (a) given in hard copy form 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.

Publication of notice of meeting of members on website

314. (1) Notice of a meeting of members shall not be validly given by a company by means of a website unless it 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 state—
- (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 in subsection (2) until the conclusion of the meeting.

Persons entitled to receive notice of meetings of members

315. (1) Notice of a meeting of members shall be given to —

- (a) every member;
- (b) every director; and
- (c) every auditor,

of the company.

(2) In subsection (1), the reference to a member 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 if the company has been notified of the person's entitlement.

(3) No other person shall be entitled to receive notice of a meeting of members.

Contents of notices of meetings of members

316. (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.

Resolution requiring special notice

317. (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 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.

(3) Where that is not practicable, 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 the national language and one widely circulated newspaper in English Language; or
- (b) in any other manner as specified in the company's constitution.

(4) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty eight days or less after the notice has been given, the notice is deemed to have been properly given, though not given within the time required.

Accidental omission to give notice of resolution or meeting

318. Where a company gives notice of—

- (a) a meeting of members; or
- (b) a resolution intended to be moved at a meeting of members,

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.

Members' power to require circulation of statements

319. (1) The members of a public company may request the company to circulate, to members of the company entitled to receive notice of the next annual general meeting, a statement of not more than one thousand words with respect to—

- (a) a matter referred to in a proposed resolution to be dealt with at that meeting; or
- (b) other business to be dealt with at that meeting.

(2) A company shall be required to circulate a statement once it has received requests to do so from—

- (a) members representing at least five per centum of the total voting rights of all the members who have a relevant right to vote; or
- (b) at least one hundred 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.

(3) In subsection (2), a “relevant right to vote” means—

- (a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate; and
- (b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request made under subsection (1) shall be —

- (a) in hard copy form or in 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 resolution requiring notice, at least twenty eight days before the meeting; or
 - (ii) in the case of any other statement, at least seven days before the meeting.
- (5) 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 it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

Company's duty to circulate members' statement

320. (1) Subject to sections 303 and 322, a company that is required under section 319, to circulate a statement shall send a copy of it to each member of the company 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) If default is made in complying with this section, every officer of the company who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

Application not to circulate a member's statement

321. (1) A company shall not be required to circulate a member's statement under section 320 if, on an application by the company or another person who

claims to be aggrieved, the court is satisfied that the rights conferred by section 319 are being abused.

(2) The court may order any member who requested the circulation of the statement to pay the whole or part of the company's costs on such an application, even if he is not party to the application.

Sending documents relating to a meeting in electronic form

322. Where a company has given an electronic address in a notice calling a meeting, it is deemed to have 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

323. (1) Subject to its constitution, a company may hold a meeting of members at more than one venues using any technology that enables the members of the company to participate and to exercise their right to speak and vote at the meeting.

(2) For the purpose of subsection (1), the chairman shall be at the main venue of the meeting which must be in Malaysia.

Quorum at meetings

324. (1) In the case of a company having only one member, one member personally present at a meeting shall be a quorum.

(2) In any other case, two members personally present at a meeting shall be a quorum unless a higher number is specified in the company's 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.

Chairman of meetings of members

325. (1) A member may be elected to be the chairman of a meeting of members by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's constitution that states who shall be the chairman.

Declaration by chairman on a show of hands

326. (1) If it is apparent to the chairman that on a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution—

- (a) has or has not been passed; or
- (b) has been passed with a particular majority,

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.

(2) An entry in respect of such a declaration in the minutes of the meeting recorded in accordance with section 342 is conclusive evidence of that fact.

(3) 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

327. A provision of a company's constitution shall be void in so far as it would have the effect—

- (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question or matter other than the election of the chairman 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;
 - (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.

- (c) requiring the instrument of appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than forty eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

Voting on a poll

328. 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 used in the same way.

Representation of corporations at meetings of members

329. (1) If a corporation is a member of a company, it may by resolution of its Board or other governing body authorise a person or persons to act as its representative or representatives at any meeting of members of the company.

(2) Where the corporation authorises only one person, he shall be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

(3) Where the corporation authorises more than one person as its representative, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3)—

- (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way; or

- (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

**SUBDIVISION 6
PROXIES**

Appointment of proxies

330. (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 proxies in relation to a meeting, provided that the member specifies the proportion of the member's shareholdings to be represented by each proxy.

Notice of meetings of members to contain statement of rights to appoint proxies

331. (1) In every notice calling a meeting of members of a company there shall appear, with reasonable prominence, a statement informing the member of his rights under section 330.

(2) If default is made in complying with subsection (1), every officer who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) Failure to comply with this section does not invalidate the proceedings of the meeting.

(4) 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 thereat by proxy, commits an offence and, upon conviction, shall be liable to a fine not exceeding ten thousand ringgit.

A proxy as a chairman of a meeting of members

332. A proxy may be elected to be the chairman of a meeting of members by a resolution of the company passed at the meeting, unless expressly prohibited in the constitution.

Right of proxy to demand for a poll

333. (1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join in demanding, a poll on that matter.

(2) In applying the provisions of subsection 327(2), 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;
- (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

334. (1) Unless the company receives notice of the 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 chairman 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 company's constitution require or permit members to give the notice of termination in subsection (2) 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 company's 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 the subsection.

(4) Any provision of the company's 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.

(5) In calculating the periods mentioned in subsections (2) and (5) no account shall be taken of any part of a day that is not a working day.

SUBDIVISION 7

APPLICATION TO CLASS MEETINGS

Application to class meetings

335. (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 subject to the modifications specified in this Subdivision.

(2) Sections 306 to 309 shall not apply in relation to a meeting of holders of a class of shares.

(3) Sections 324 and 326 shall not apply in relation to a meeting of holders of a class of shares in connection with a meeting in respect of the variations of rights attached to the class of shares (“variation of class rights meeting”).

(4) The quorum for a variation of class rights meeting 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);
- (b) for an adjourned meeting, one person present holding shares of such class unless otherwise provided in the constitution.

(5) For the purposes of subsection (4), where a person is represented by 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) At a variation of class rights meeting, any holder of shares of such class present may demand a poll.

(7) For the purposes of this section—

- (a) any amendment of a provision contained in a company’s constitution for the variation of the rights attached to a class of shares, 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 include references to their abrogation.

Companies without a share capital

336. (1) The provisions of Subdivisions 5 of this Division in relation to meetings shall apply to a meeting of holders of a class of shares subject to the modifications specified in this Subdivision.

(2) Sections 306 to 309 shall not apply in relation to a meeting of holders of a class of shares.

(3) Sections 324 and 326 shall not apply in relation to a meeting of holders of a class of shares in connection with a meeting in respect of the variations of rights attached to the class of shares (“variation of class rights meeting”).

(4) The quorum for a variation of class rights meeting 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;
- (b) for an adjourned meeting, one member of the class present, in person or by proxy, unless otherwise provided in the constitution.

(5) At a variation of class rights meeting, any member present, in person or by proxy, may demand a poll.

(6) For the purposes of this section—

- (a) any amendment of a provision contained in a company’s constitution for the variation of 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 of a class of members include references to their abrogation.

SUBDIVISION 8

ADDITIONAL REQUIREMENTS FOR PUBLIC COMPANIES

Requirement for lodgment of statutory report

337. (1) Every public company having a share capital shall prepare a statutory report within a period of not less than one month and not more than three months from its incorporation.

(2) The directors shall circulate a copy of the statutory report to every member of the company within fourteen days after it was prepared.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

- (a) the total number of shares allotted distinguishing shares allotted as fully or partly paid up in cash or otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;
- (c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report exhibiting under distinctive headings the receipts from shares and debentures and other sources the payments made thereof and

particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;

- (d) the names and addresses and descriptions of the directors, trustees for holders of debentures, if any, auditors, if any, managers, if any, and secretaries of the company; and
- (e) the particulars of any contract.

(4) The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of those shares and to the receipts and payments on capital account, be examined and reported upon by the auditors, if any.

(5) The directors shall cause a copy of the statutory report and the auditor's report, if any, to be lodged with the Registrar within fourteen days after it was prepared.

(6) If default is made in complying with this section, every officer who is in default commits an offence and shall, upon 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.

Annual general meeting

338. (1) Every public company shall hold an annual general meeting in every calendar year in addition to any other meetings held during that period.

(2) For the purpose 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), the first annual general meeting of a company shall not be required to hold an annual general meeting in the year of its incorporation or in the following year so long as the company hold its first annual general meeting within eighteen months of its incorporation.

(4) Notwithstanding subsections (1), (2) and (3), the company may apply to the Registrar to extend the periods referred to in those subsections and upon being satisfied with the reasons provided, the Registrar may extend such periods as he deems appropriate.

(5) If a company fails to comply with subsection (1) or (3), the company and every officer of the company who are in default commit an offence and shall, upon conviction, be liable to a fine not exceeding twenty thousand ringgit.

Notice of annual general meeting

339. (1) A notice calling for an annual general meeting shall be in written form and state that the meeting is an annual general meeting.

(2) An annual general meeting may be called by shorter notice than that required by section 311 or by the company's constitution, as the case may be, if all the members entitled to attend and vote at the meeting agree to the shorter notice.

Members' power to require circulation of resolutions for annual general meeting

340. (1) Any member of a public company may require the company to circulate, to members of the company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting.

(2) A resolution may properly be moved at an annual general meeting unless—

- (a) it would, if passed, be ineffective, whether by reason of inconsistency with any law or the company's constitution or otherwise;
- (b) it is defamatory of any person; or
- (c) it is frivolous or vexatious.

(3) A company shall be required to give notice of a resolution once it has received requests that it do so from—

- (a) members representing at least five per centum of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate, excluding any voting rights attached to any shares in the company held as treasury shares, or
- (b) at least one hundred members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least five hundred ringgit.

(4) A request made under subsection (1) shall be —

- (a) in hard copy form or in electronic form;
- (b) accompanied with the resolution to be circulated;
- (c) signed or authenticated by the person making it; and
- (d) received by the company—
 - (i) at least twenty eight days before the meeting to which the request relate; or
 - (ii) if later, on or before the day at which the notice is given of that meeting.

(5) 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 it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

Company's duty to circulate members' resolutions for annual general meeting

341. (1) A company that is required under section 340 to give notice of a resolution shall send a copy of it to each member of the company entitled to receive notice of the annual general meeting—

- (a) in the same manner as 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 business which may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with this section.

(3) If default is made in complying with this section, every officer who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding ten thousand ringgit.

SUBDIVISION 9

RECORD OF RESOLUTIONS AND MEETINGS

Records of resolutions and meetings

342. (1) Every company shall keep records comprising—

- (a) all resolutions of members passed otherwise than at 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) If default is made in complying with this section, every officer who is in default commits an offence and shall, upon 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.

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) Where 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 minutes of proceedings of a meeting of members, if purporting to be signed by the chairman of that meeting or by the chairman of the next meeting of members, are sufficient evidence of the proceedings at the meeting.

(4) Where 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 duly held and convened;

- (b) all proceedings at the meeting are deemed to have duly taken place;
and
- (c) all appointments at the meeting are deemed valid.

Details of decisions provided by a sole member

344. (1) Where the member of a sole member 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, upon 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).

Inspection of records of resolutions and meetings

345. (1) The records referred to in section 342 relating to the previous seven years shall be kept available for inspection—

- (a) at the company's registered office; 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 company's registered office, the company shall give notice to the Registrar of the place where the records are kept or of the change of the place thereof 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) If default is made in complying with this section, any officer who is in default commits an offence and shall, upon conviction, be liable to a fine not exceeding ten thousand ringgit and, in the case of a continuing offence, to a default penalty of five hundred ringgit for each day during which the offence continues after conviction.

DIVISION 6
REMEDIES

Oppression

346. (1) Any member or holder of a debenture 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 holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
- (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures 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 holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing 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 future;
- (c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures 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 the company's capital; or
- (e) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to paragraph (2)(e) the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any company's 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 after the making of the order.

Statutory derivative action

347. (1) A complainant may, with the leave of the Court, bring, intervene in or defend an action 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.

(4) For the purposes of this section and sections 348 and 351, "complainant" means—

- (a) a member of a company, or a person who is entitled to be registered as member of a company;
- (b) a former member of a company if the application relates to circumstances in which the member ceased to be a member; or
- (b) any director of a company.

Leave of Court

348. (1) An application for leave of the Court under section 347 shall be made by originating summons and no appearance need 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 pursuant to 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 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.

Leave to discontinue, compromise or settle proceedings

349. Any proceedings brought, intervened in or defended under section 348 shall not be discontinued, compromised or settled except with the leave of the Court.

Effect of ratification

350. If members of a company, ratify or approve the conduct, 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

351. In granting leave under this section and sections 348 and 349, the Court may make such orders as it 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 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 indemnification for costs.

Injunction

352. (1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute—

- (e) a contravention of this Act;
- (f) an attempt to contravene this Act;
- (g) an attempt that aids, abets, advises or procures a person to contravene this Act;
- (h) an attempt to induce, whether by threats, promises or otherwise, a person to contravene this Act;
- (i) 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
- (j) 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) Where a person has refused or failed, is refusing or failing, or is intending to refuse or fail, 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 first-mentioned person to do that act or thing.

(3) The power of the Court to grant an injunction restraining 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 the first-mentioned person engages in 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 the first-mentioned 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, as a condition of granting an interim injunction, to give an undertaking as to damages.

(6) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(7) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(8) The Court may revoke or vary an injunction granted under subsection (1), (2) or (7).

(9) In granting an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

**DIVISION 7
CHARGES AND RECEIVERSHIP**

**SUBDIVISION 1
CHARGES**

Registration of charges

353. (1) A company that creates a charge over its property or any of its undertakings to which this section applies shall lodge with the Registrar for registration, a statement of particulars of the charge in such manner as may be determined by the Registrar together with the prescribed fee, within thirty days after the creation of the charge.

(2) If a company fails to comply with subsection (1), the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company.

(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) Where a charge requiring registration under this section is created before the lapse of thirty days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the court that it was given in good faith 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) 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 Bank Negara Malaysia pursuant to the Financial Services Act 2013 or the Islamic Financial Services Act 2013;
- (b) if the person interested in the charge is Bank Negara Malaysia.

(6) For the purposes of subsections (5)(a) and (b), the charges shall be treated as if it were a charge registered under subsection (1) and shall be valid against the liquidator and any creditor of the company.

Types of charges require registration

354. The requirement for registration under section 353 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 therein;
- (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) 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

355. Where a charge created in Malaysia affects property outside Malaysia, the statement of the prescribed particulars may be lodged for registration in accordance with section 353 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

356. (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 are

lodged with the Registrar for registration within thirty days after 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 (5) where more than one issues is made of debenture in the series there shall be lodged within thirty days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.

(3) Where 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 so paid or made, but omission so to do 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 (4) be treated as the issue of the debentures at a discount.

Duty to register charges

357. (1) Notwithstanding section 353(1), any person interested in the charge may lodge with the Registrar particulars of the charge before the end of the period allowed for registration.

(2) Where 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 him on the registration.

(3) The company and every officer who is in default of sections 353(1) and 355, 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 of company to register charges existing on property acquired

358. (1) Where—

- (a) a company acquires property which is subject to a charge 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; or
- (b) a foreign company becomes registered in Malaysia and has prior to such registration created a charge which if it had been created by the company while it was registered in Malaysia would 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 shall lodge with the Registrar for registration, the particulars of the charge as determined by the Registrar within thirty days after 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.

(2) The company or the foreign company and every officer of the company or the foreign company that contravenes subsection (1) commit an offence and shall, on conviction be liable to a fine not exceeding ten thousand ringgit and penalty for 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

359. (1) The Registrar shall keep 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, such particulars as are required to be contained in a statement furnished under section 356(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 it 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 notice of registration of charge in such form as the registrar may determine and the notice shall be conclusive evidence that the requirements as to registration have been complied with.

(4) Upon application by a company or any interested person and on payment of the prescribed fee, the Registrar may, issue a certificate of a registration of charge.

Endorsement of certificate of registration on debentures

360. (1) The 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 so registered—

- (a) a copy of the certificate of registration, if any; 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) The company and every officer of the company that contravenes subsection (1) commit an offence and shall, on conviction be liable to a fine not exceeding ten thousand ringgit.

Assignment and variation of charge

361. (1) Where, after a charge on property of a company has been created and registered under this Subdivision, a person other than the original chargee becomes

the new holder of the charge, the new holder of the charge shall, within thirty days after he becomes the holder of the charge 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 the company a copy of the notice.

(2) Where, after a charge on 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) increasing the amount of the debt or increasing the 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, within thirty days after the variation occurs and upon payment of a prescribed fee, lodge with the Registrar a notice setting out the particulars of the variation as may be determined by the Registrar.

(3) Where 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 chargee to the company in accordance with the terms of the charge shall not be regarded, for the purpose of subsection (2), to be a variation in the terms of the charge.

(4) A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture or debentures and there is a trustee for the debenture holders, be construed as a reference to the trustee for debenture holders.

(5) The new holder of the charge who contravenes 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.

Satisfaction and release of property from charge

362. (1) Where, 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 thereof has been released from the charge or has been ceased to form part of the company's property or undertaking,

the company shall, within 14 days after the payment, satisfaction, release or cessation referred to above, lodge with the Registrar the particulars as may be determined by the Registrar of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be and the Registrar shall enter that particulars in the register.

(2) The prescribed information relating to the satisfaction of charge shall be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or ceasing referred to in subsection (1).

(3) For the purpose of subsection (1), any other person or parties entitled to the charge may lodge the prescribed information referred to in that subsection.

Registrar's power to grant extension of time to register charges

363. (1) In the absence of any exceptional circumstances, the Registrar, if he is satisfied that the failure to lodge the prescribed information in respect of a charge, as required in this Subdivision—

- (a) was accidental or due to inadvertence or some other sufficient cause; or
- (b) is not of a nature to prejudice the positions of creditors or shareholders of the company,

may, on the application of the company or any interested person and on such terms and conditions as seem to the Registrar just and expedient and upon payment of the prescribed fee, extend the period for registration of the charge.

(3) (2)“Exceptional circumstances” in this section include:

- (a) a winding up petition has been presented to court under Subdivision 3 of Division 1 of Part IV;
- (b) a meeting has been convened to pass a resolution for a creditor’s voluntary winding up;
- (c) a judicial management order has been obtained.

Rectification of register of charges

364. Where the Court is satisfied that a particular with respect to a registrable charge on property of a company has been omitted from or misstated in the register of charge and that the omission or misstatement—

- (a) was accidental or due to inadvertence or some other sufficient cause; or
- (b) is not of a nature to prejudice the positions of creditors or shareholders of the company;
- (c) that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the company or any interested person and on such terms and conditions as seem to the Registrar just and expedient (including a term or condition that the 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 omission or misstatement be rectified.

Company to keep instruments of charges and register of charges

365. (1) Every company shall cause the instrument creating any charge requiring registration under this Subdivision or a copy thereof to be kept at the registered office of the company but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.

(2) 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) (except in the case of securities to bearer) the names of the persons entitled to it.

(3) The instruments or copies thereof and the register of charges kept in pursuance of this section shall be open for inspection—

- (a) by any creditor or member of the company for a fee of RM5; and
- (b) by any other person on payment of such fee not exceeding RM10 for each inspection as is fixed by the company.

(4) Any person shall, on application to a company and on payment of a fee not exceeding ten ringgit as is fixed by the company, for every page or part thereof, be furnished with a copy of any instrument of charge or debenture kept by

the company in pursuance of this section within three days of his making the application.

(5) If the company contravenes this section, the company and every officer who is in default 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.

Documents made out of Malaysia

366. Where 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, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of Malaysia, be extended by seven days or such further period as the Registrar may from time to time allow.

Charges, *etc.*, created before commencement of the Act

367. This Subdivision shall apply to any charge that on 15 April 1966 was registrable under any of the repealed written laws but which at that date was not registered under any of those laws.

Application of this Subdivision to foreign company

368. A reference in this Subdivision to a company shall be read as including a reference to a foreign company to which Subdivision 2 of Division 1 of Part V applies, but nothing in this Part applies to a charge on property outside Malaysia of a foreign company.

SUBDIVISION 2

RECEIVERS AND RECEIVERS AND MANAGERS

Qualification for appointment of receiver or receiver and manager

369. (1) Except for the Official Receiver, any person who is an approved liquidator pursuant to section 457 of this Act shall be qualified to be appointed as receiver or receiver and manager.

Disqualification for appointment as receiver or receiver and manager

370. (1) Subject to section 369, 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;
- (c) a mortgagee of any property of the company, an auditor of the company or an officer of the company or of any corporation which is a mortgagee of the property of the company;
- (d) any person who is not an approved liquidator; and
- (e) any person who is not the Official Receiver.

(2) Notwithstanding subsection (1), nothing in paragraph (2)(a) or (d) shall apply to any corporation authorized by any written law to act as receiver or receiver and manager of the property of a company.

(3) Nothing in this section shall disqualify a person from acting as receiver or receiver and manager of the property of a company if acting under an appointment validly made before the commencement of this Act or any previous corresponding laws.

Appointment of receiver or receiver and manager

371. (1) A receiver or receiver and manager may be appointed—

- (a) under any instrument that confers on a debenture holder the power to appoint a receiver; or
- (b) by the Court.

(2) An instrument that creates a charge in respect of property and undertaking of a company may confer on the charge holder the power to appoint a receiver or a receiver and manager of the property and undertaking or of that part which is secured by the charge.

Appointment of receiver or receiver and manager under instrument

372. (1) Where an instrument confers on the debenture holder the power to appoint a receiver, the debenture holder may appoint a receiver by an instrument in writing signed by him or on his behalf.

(2) A receiver appointed by, or under a power conferred by, an instrument, is the agent of the company, unless the instrument expressly provides otherwise.

(3) A person appointed as a receiver may act as receiver and manager unless the instrument appointing him excludes appointment as manager.

(4) A power conferred by an instrument to appoint a receiver includes, unless the instrument expressly provides otherwise, the power to appoint—

- (a) two or more receivers;
- (b) a receiver additional to a receiver in office; and
- (c) a receiver to succeed a receiver whose office has become vacant.

Appointment of receiver by Court

373. (1) The Court may appoint a receiver or a receiver and manager on the application of a debenture holder or of any other interested person and on 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, of 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 do so to ensure the preservation of the secured property for the benefit of the holder.

(2) A person appointed by the Court as a receiver shall be appointed receiver and manager unless the Court directs that the person is to be appointed only as receiver.

Notice of appointment of receiver or receiver and manager

374. (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, within seven days after he has obtained the order or made the appointment, lodge with the Registrar in a notice of appointment of that fact.

(2) 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.

Vacancy in office of receiver or receiver and manager

375. (1) The office of a receiver shall become vacant if the person holding office—

- (a) resigns;
- (b) dies;
- (c) becomes disqualified by any of the reasons under section 370(1)(b), (c) or (d);
- (d) is terminated or removed under the instrument appointing him or where there is no instrument appointing him, by the Court;
- (e) assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to 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 appointed under a power conferred by an instrument may resign from office by giving not less than seven days written notice of his intention to resign to the person by whom he was appointed.

(3) A receiver 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 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, the Court may make any order that it considers necessary or desirable to facilitate the performance of his duties.

Notice of cessation of office

376. (1) A person who ceases to act as receiver by—

- (a) reason stated under section 375(1)(a), (c), (d) or (e), or
- (b) having obtained leave to resign from the Court,

he shall, within twenty one days after the occurrence of such vacancy, lodge with the Registrar, a notice of cessation of that fact, in such manner as the Registrar may determine.

(2) If a vacancy is caused by reason stated under section 375(1)(b), the notice under subsection (1) shall be lodged to the Registrar by the personal representative of a receiver.

(3) If a vacancy is caused by reason stated under section 375(1)(f), the notice under subsection (1) shall be lodged to the Registrar by the debenture holder after the relevant facts have come to his knowledge .

(4) 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.

Statement relating to appointment of receiver or receiver and manager

377. (1) Where 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) If the company contravenes this section, the company and every officer who is in default commit an offence.

Liability of receiver or receiver and manager

378. (1) Any receiver or other authorized person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession, for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge, as to be a mortgagee in possession.

(3) For the purpose of this section “a mortgagee in possession” means a chargee who personally or as or through an agent exercises a power to—

- (a) receive income from charged property;
- (b) enter into possession or assume control of charged property; or

- (c) sell or otherwise alienate charged property.

Liability for contract

379. (1) Notwithstanding section 378, a receiver is personally liable for a contract entered into by him in the exercise of any of his powers unless as specifically provided for under the instrument appointing him.

(2) The terms of a contract referred to in subsection (1) may exclude or limit the personal liability of the receiver other than a receiver appointed by the Court.

Power of receiver or receiver and manager

380. (1) A receiver or receiver and manager shall have the powers and authorities expressly or impliedly conferred by the instrument or 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 shall have and may exercise the powers set out in Seventh Schedule.

Application to Court for directions

381. (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 his functions.

(2) Where a receiver or receiver and manager has been appointed to enforce any charge for the benefit of holders of the debenture 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 manager.

Appointment of liquidator as receiver or receiver and manager in cases of winding up

382. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of the company which is being wound up by the court, the liquidator may be so appointed.

Powers of receiver or receiver and manager on liquidation

383. (1) After the commencement of winding up of a company, a receiver may continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company that has been put into liquidation provided that he obtains consent from the liquidator or if the liquidator withholds his consent, the consent of the Court.

(2) A receiver holding office in respect of property 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 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

384. (1) The Court may, on 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, where no previous order has been made with respect thereto—

- (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) where 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 requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

(3) The power conferred by subsection (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, on an application made either by the liquidator or by the receiver or receiver and manager, vary or amend an order made under this section.

Provisions as to information where receiver or receiver and manager appointed

385. (1) Where a receiver or receiver and manager of the property of a company is appointed - the receiver or receiver and manager shall, within seven days, send notice to the company of his appointment;

(a) the company shall, within fourteen days after receipt of the notice or such longer period as may be allowed by the Court or by the receiver, submit a statement as to the affairs of the company in accordance to section 387; and

(b) the receiver or receiver and manager shall within thirty days after receipt of the statement under paragraph (b) or such longer period as the Court may allow—

(i) lodge with the Registrar a copy of the statement and of any comments the receiver sees fit to make on the statement;

(ii) send to the company a copy of any such comments or, if the receiver does not see fit to make any comment, a notice to that effect; and

(iii) where the receiver is appointed by or on behalf of debenture holders, send to the debenture holders' representative a copy of the statement of the receiver's comments thereon or, if the receiver does not see fit to make any comment, a notice to that effect.

(2) Subsection (1) 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;

(b) in place of a receiver or receiver and manager dying or ceasing to act,

except that, where that subsection applies to a receiver or receiver and manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (1)(b) and (c) to the receiver shall, subject subsection (3) include references to his successor and to any continuing receiver or receiver and manager.

(3) Where the company is being wound up, this section and the subsequent provisions (statement of affairs) shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) The receiver or manager 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.

Obligations of company and directors to provide information to receiver or receiver and manager

386. (1) Where a receiver is appointed in respect of the property of a company, the company and every director of the company shall—

- (a) within seven days, after receipt of notice under section 386(1)(a), make available to the receiver all books, documents and information relating to the property in receivership in the company's possession or under the company's control;
- (b) if required to do so by the receiver, verify by affidavit that the books, documents and information are complete and correct;
- (c) give the receiver such assistance as he may reasonably require; and
- (d) where the company has a seal, make the seal available for use by the receiver.

(2) If the company contravenes this section, the company and every officer who is in default 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.

Submission of statement of affairs

387. (1) Statement as to the affairs of a company required by section 386(1)(b) shall show as at the date of the receiver's appointment—

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (b) securities held by creditors respectively;
- (c) the dates when the securities were respectively created; and
- (d) such further or other information as maybe prescribed.

(2) statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver may require to submit and verify the statement, that is to say—

- (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 receiver's appointment;

- (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 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 out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver may consider reasonable, subject to an appeal to the Court.

(4) Any person who contravenes subsections (1) and (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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Lodging of accounts of receiver or receiver and manager

388. (1) Every receiver or manager of the property of a company or of the property within Malaysia of any other corporation shall—

- (a) within thirty days after the expiration of the period of 180 days from the date of his appointment and of every subsequent period of 180 days and within thirty days after he ceases to act as receiver or manager, lodge with the Registrar a detailed account showing—
 - (i) his receipts and his payments during each period of 180 days, or, where he ceases to act as receiver or 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 of his so ceasing;

- (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
- (iii) where he has been appointed pursuant to 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 180 days after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, 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 therein.

(2) The Registrar may of his own motion or on the application of the company or other corporation or a creditor cause the accounts to be audited by an approved company auditor appointed by the Registrar.

(3) For the purpose of audit under subsection (2), the receiver or manager shall furnish the auditor with such vouchers and information as he 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 thereto.

(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 unless the Registrar otherwise determines.

(6) Every receiver or manager 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

Order of priorities in receivership (Payments of certain debts out of assets subject to floating charge in priority to claims under charge.)

389. (1) Where a receiver 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 a floating charge, then if the company is not at the time in the course of being wound up, debts which in every winding up of preferential debts and due by way of wages, salary, vacation leave or superannuation or provision fund, payments and any amount which in a winding up is payable in pursuance of subsection 525(3) or (5) shall be paid out of any assets coming to the hand of the receiver or other person taking possession in priority to any claim for principle or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by the section in respect of those debts and amounts;

- (a) for his expenses and remuneration and any indemnity to which he is entitled to from out of the property of the company;
- (b) 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;
- (c) 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 laws relating to—

- (i) employees 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
- (ii) employees social security contributions under the Employees' Social Security Act 1969; and
- (d) 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) For the purposes of subsection (1) the references in paragraphs (a), (b), (c), (d) and (e) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or receiver and manager of possession being taken as aforesaid, as the case requires.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

(4) Notwithstanding paragraph (1) the receiver shall have priority in payment for his expenses, remuneration and any indemnity to which he is entitled to from out of the property of the company.

Enforcement of duty of receiver or receiver and manager, *etc.*, to make returns

390. (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 after the service on him by any member or creditor of the company or trustee for debenture holders of a notice requiring him to do so.

(2) The Court may, on an application made by the person who has given the notice under subsection (1), make an order directing him to make good of 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 duty in relation to the company, the Court may, on the application of any creditor or contributory or of the liquidator, examine into the conduct of the receiver or receiver and manager and compel him to repay or restore the money or property or any part thereof 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.

(4) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

DIVISION 8
CORPORATE RESCUE MECHANISM

SUBDIVISION 1
JUDICIAL MANAGEMENT

**Application to Court for a company to be placed under judicial management
and for appointment of a judicial manager**

391. Where a company or its creditor or creditors consider 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,

an application may be made to the Court under section 392 for an order that the company should be placed under the judicial management of a judicial manager.

Power of Court to make a judicial management order and appoint a judicial manager

392. (1) Where a company or its directors, pursuant to a resolution of its members or the board of directors, or a creditor or creditors, including any contingent or prospective creditor or creditors or all or any of those parties, together or separately, pursuant to section 391, makes an application, referred to in this section as an application for a judicial management order, for an order that the company should be placed under the judicial management of a judicial manager, the Court may make a judicial management order in relation to the company if, and only if—

- (a) it is satisfied that the company is or will be unable to pay its debts;
and
- (b) it 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 431 of a compromise or arrangement between the company and any such persons as are mentioned in that section;
 - (iii) a more advantageous realization of the company's assets would be effected than on a winding up.

(2) 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 for the purpose by the Court; and such an order shall specify the purpose or purposes for whose achievement the order is made.

(3) 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, it may make such orders, as it thinks just and equitable, to redress any injustice that may have resulted.

- (4) Nothing in this section shall preclude a Court—
- (a) from making a judicial management order and appointing a judicial manager if it 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, if the Court sees fit, be the person nominated in the application for a judicial management order. The interim judicial manager so appointed may exercise such functions, powers and duties as the Court may specify in the order.

(4) 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 or personal, 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.

(5) The definition in section 447 of “inability to pay debts” shall apply for the purposes of this section as it applies for the purposes of Subdivision 3 of Part IV.

Duration of judicial management order and its extension

393. (1) A judicial management order shall, unless it is otherwise discharged, remain in force for a period of 180 days from the date of the making of the order but the Court may, on application of a judicial manager, extend this period for another 180 days subject to such terms as the Court may impose.

(1) If an application to extend the period of another 180 days as referred to in subsection (1) is made, the judicial manager shall give notice of that effect to—

- (a) all directors;
- (b) all members;
- (c) all creditors; and
- (d) any person who are entitled to appoint a receiver or receiver and manager,

of the company, provided that such period shall not be taken as part of any limitation period as specified under any written law.

Nomination of judicial manager

394. (1) In any application for a judicial management order under section 391 the applicant shall nominate a person who is an approved liquidator, who is not the auditor of the company, to act as a judicial manager.

(2) The Court may reject the nomination of the applicant under subsection (1) and may appoint another person in his stead.

(3) Where a nomination is made by the company, a majority in number and 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, invite the creditors to nominate a person in his stead and, if it sees fit, adopt their nomination.

(4) Nothing in this subsection shall prevent the Minister from himself nominating a person to act as a judicial manager if he considers that the public interest so requires and in such a case the Minister may be heard in support of his nomination and for this purpose may be represented.

(5) Notwithstanding subsection (1), where a person is appointed by the Court or nominated by the Minister to act as a judicial manager that person need not be an approved liquidator.

Notice of application for judicial management order

395. (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 published in a local daily in Bahasa Melayu or English newspaper ; 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 and manager of the whole, or substantially the whole, of a company's property under the terms of any debentures of a company secured by a floating charge or by a floating charge and one or more fixed charges. In the case of any such floating charge created by an instrument before the coming into force of this Act, it shall be deemed to contain a power

to appoint a receiver and manager in the event that an application under this section is made with the result that the holder of the floating charge shall, in accordance with this paragraph, be given notice of the application.

- (2) The applicant shall inform the Registrar of any application made under subsection (1) in such manner as the Registrar may determine.

Dismissal of application for judicial management order

396. (1) Subject to subsection 392(4), 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 subsection 395(1)(b)(ii) has been or will be appointed; or
- (b) the making of the order is opposed by a person who has appointed or is entitled to appoint such a receiver or receiver and manager.

(2) On 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 it thinks fit.

(3) A judicial management order shall not be made in relation to a company—

- (a) after the company has gone into liquidation;
- (b) where the company is a bank, a financial institutions or an insurance company licensed under the Financial Services Act 2013 and Islamic Financial Service Act 2013.

Effect of application for a judicial management order

397. 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

398. (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 subsection (1)(a)—

- (a) his remuneration and any expenses properly incurred by him; and
- (b) any indemnity to which he 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 subsection (1)(a) shall be required on or after so vacating office to take steps to comply with any duty imposed on him by section 388.

- (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 395 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 leave of the Court and, where the Court gives 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, where the Court gives leave, subject to such terms as the Court may impose.

Notification that a company is under judicial management order

399. (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) If the company contravenes this section, the company, the judicial manager and every officer who is in default 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.

Vacancy in appointment of judicial manager

400. 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 or creditors of the company or the Minister, by order, fill the vacancy.

General powers and duties of judicial manager

401. (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 sanction.

(4) Without prejudice to the generality of subsection (3)(a), the powers conferred by that subsection shall include the powers specified in Eighth 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 authorising 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 in pursuance of 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 to which section 403 applies.

(7) The judicial manager of a company may, if he thinks fit, at any time summon a meeting of the company's creditors; and the judicial manager shall summon such a meeting if he is directed to do so by the Court.

(8) Any alteration in the company's constitution made by virtue of an order under subsection (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.

(9) A sealed copy of an order under subsection (3)(b) sanctioning the alteration of the company's constitution shall, within fourteen days from the making of the order, be delivered by the judicial manager to the Registrar.

(10) 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.

402. (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 this subsection applies as if the property were not subject to the security.

(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 subject to a security to which this subsection applies; 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) Subsection (1) applies to any security which, as created, was a floating charge and subsection (2) applies to any other security.

(4) Where any property is disposed of under subsection (1), the holder of the security 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 subject to the security.

(5) 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.

(6) Where a condition imposed in pursuance of subsection (5) 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 their priorities.

(7) A copy of an order made under subsection (2) shall, within fourteen days after the making of the order, be sent by the judicial manager to the Registrar.

(8) The judicial manager making an application to the Court to dispose of property subject to a security under subsection (2) shall give a notice within seven days before the making of the application, to the holder of the security or to the owner of the goods which are subject to any of the agreements mentioned in that subsection and the holder or the owner, as the case may be, may oppose the disposal of the property.

(9) If the judicial manager, without reasonable excuse, contravenes subsection (7), commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and a penalty for continuing offence in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day the offence continues after conviction.

(10) Nothing in this section shall be regarded as prejudicing an application to the Court under section 420.

Agency and liability for contracts

403. (1) The 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 403(2) applies.

(2) Where a contract entered into by the company is adopted by the judicial manager, he may, by notice given to the other party, disclaim any personal liability under the contract.

(3) For the purpose of this section, the 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 twenty eight days after the making of the judicial management order.

- (4) Nothing in this section shall—
- (a) limit the right of a 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 personally liable for payment of rent under leases held by the company at the time of appointment.

Vacation of office and release

404. (1) The judicial manager of a company may at any time be removed from office by order of the Court and may, with leave of the Court and subject to such conditions as the Court may impose, resign his office by giving notice of his resignation to the Court.

- (2) The judicial manager of a company shall vacate office if —
- (a) being an approved liquidator or insolvency practitioner at the time of his appointment, he ceases to be an approved liquidator or 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 he 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 402(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 by him in the management of the company or otherwise in relation to his conduct as a judicial manager but nothing in this section shall relieve him of any of the liabilities referred to in section 411(4).

Information to be given by and to judicial manager

405. (1) Where a judicial management order has been made, the judicial manager shall —

- (a) within seven days of the making of the order, send to the Registrar and the company a copy of the order, and publish a notice of the order in a widely circulated Bahasa Melayu or an English newspaper; and
- (b) within twenty eight days after the making of the order, unless the Court otherwise directs, send such a notice to all creditors of the company, so far as he is aware of the addresses,

and the Registrar shall enter the copy of the order in his records of the company.

(2) The company shall, within twenty one days after receipt of the notice or such longer period as may be allowed by the judicial manager but not exceeding sixty days, submit a statement as to the affairs of the company in accordance to section 406; and

(3) Any person, without reasonable excuse, fails to comply with this section, shall commit an offence and on conviction shall 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.

Company's statement of affairs

406. (1) The company's statement of affairs required by section 405 to be submitted to the judicial manager 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 further or other information as may be prescribed.

(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 judicial management order, the directors of the company and by the person who was at that date the secretary of the company, or by such persons mentioned in subsection (3) as the judicial manager may require to submit and verify the statement, that is to say—

- (a) persons who are or have been officers of the company;
- (b) persons who have taken part in the company's formation at any time within one year before the date of the judicial management order;
- (c) those 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 judicial 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 company which is or within that year was, and officer of the company to which the statement relates.

(3) In this subsection “employment” includes employment under a contract for services.

(4) 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.

(5) Any statement of affairs prepared under this section may be used in evidence against any person making or concurring in making it.

(6) A copy of the company’s statement of affairs shall within seven days be delivered by the judicial manager to the Registrar.

(7) Any person, without reasonable excuse, 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.

Statement of proposals

407. (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 to the Registrar and to all creditors a statement of his proposals for achieving one or more of the purposes mentioned in section 406(1)(b) for whose achievement the order was made; and
- (b) lay a copy of the statement before a meeting of the company’s creditors summoned for the purpose 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; or
 - (b) publish a notice in a Bahasa Melayu or an English local daily newspaper stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

Consideration of proposals by creditors' meeting

408. (1) A meeting of creditors, summoned under section 407, shall decide whether to approve the judicial manager's proposals.

(2) At such meeting the seventy five per cent majority in value of creditors, present and voting either in person or by proxy whose claims have been accepted by the judicial manager, may approve the proposals with modifications but shall not do so unless the judicial manager consents to each modification.

(3) Once approved by the required majority under subsection (2), the proposals, with or without modifications, shall be binding on all creditors of the company whether or not they have voted in favour of the proposals.

(4) The judicial manager shall report the result of the meeting, which shall, subject to subsection (2), be conducted in accordance with regulations, 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 proposals, with or without modifications, the Court may by order discharge the judicial management order

and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit. A copy of any order of Court made under this subsection shall be published in a Bahasa Melayu or an English local daily newspaper

(6) Where the judicial management order is discharged, the judicial manager shall within seven days of the making of the order, send to the Registrar a copy of the order effecting the discharge.

(7) If the judicial manager, without reasonable excuse, contravenes subsection (6) 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.

Committee of creditors

409. Where a meeting of creditors summoned under section 407 has approved the judicial manager's proposals with or without modifications the meeting may, if it thinks fit, establish a committee of creditors which may require the judicial manager from time to time to attend before it and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Duty to manage company's affairs, etc., in accordance with approved proposals

410. (1) Where the judicial manager's proposals have been approved by a meeting of creditors summoned under section 407, then, subject to any order under section 412, it shall be the duty of the judicial manager to manage the affairs,

business and property of the company in accordance with the proposals as from time to time revised by him.

(2) Where the judicial manager proposes to make substantial revisions of his proposals as so approved, he shall—

- (a) send to all creditors of the company so far as he is aware of their addresses a statement of his proposed revisions; and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than fourteen days' notice.

(3) The judicial manager shall also either—

- (a) send a copy of the statement, so far as he is aware of their addresses to all members of the company; or
- (b) publish a notice in a Bahasa Melayu or an English local daily newspaper stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(4) At the meeting of creditors, summoned under subsection (2), the seventy five per cent majority in value of creditors, present and voting 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 to 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

411. (1) The judicial manager of a company shall apply to the Court for the judicial management order to be discharged if it appears to him that the purpose or each of the purposes 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 discharge the judicial management order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.

(3) Where the judicial management order is discharged, the judicial manager shall within seven days of the making of the order of discharge, send to the Registrar a copy of the order effecting the discharge.

(4) Where a judicial management order has been discharged under this Subdivision or where a person ceases to be a judicial manager pursuant to section 404, the judicial manager may apply to the Court for his release and the Court may, if it thinks fit, make an order releasing him from liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as judicial manager but any such release shall not relieve him from liability for any misapplication or retention of money or property of the company or for which he 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

412. (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—

- (a) that 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 himself, or of a single creditor that represents one quarter in value of the claims against the company; or
- (b) that any actual or proposed act or omission of the judicial manager is or would be so prejudicial.

(2) On an application for an order under this section, the Court may make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

- (3) Subject to subsection (4), an order under this section may—
- (a) regulate the future management by the judicial manager of the company's affairs, business and property;
 - (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 has complained he 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;
 - (d) discharge the judicial management order and make such consequential provision as it thinks fit.

(4) An order under this section shall not prejudice or prevent the implementation of any composition or scheme approved under subsection 431.

(5) Where the judicial management order is discharged, the judicial manager shall within seven of days of the making of the discharged order, send to the Registrar a copy of the order affecting the discharge.

(6) If the judicial manager, without reasonable excuse, 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 continuing offence to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

Undue preference in case of judicial management

413. (1) Subject to this Act and such modifications as may be prescribed, a settlement, a conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a company which if it had been made or incurred by a natural person would in the event of his becoming a bankrupt be void as against the Official Assignee as provided for under the Bankruptcy Act 1967 shall, in the event of the company being placed under judicial management, be void as against the judicial manager.

(2) For the purposes of subsection (1), the date that corresponds with the date of the application for a bankruptcy order in the case of a natural person and the date on which a person is adjudged bankrupt is the date on which an application for a judicial management order is made.

Delivery and seizure of property

414. (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—

- (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; and
 - (c) any trustee for, or any banker, agent or officer of, the company.
- (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 he is entitled, whether in pursuance of 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.

Duty to co-operate with judicial manager

415. (1) Each of the persons mentioned in subsection (2) shall—
- (a) 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
 - (b) attend on the judicial manager at such times as the judicial manager may reasonably require.
- (2) The persons referred to in subsection (1) are—

- (a) those who are or have at any time been officers of the company;
and
- (b) those who have taken part in the formation of the company at any time within 1 year before the date of the judicial management order.

(3) Any person, without reasonable excuse, contravenes any obligation imposed by 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 default penalty of one thousand ringgit for each day during which the offence continues after conviction.

Inquiry into company's dealings, etc.

416. (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 or supposed to be indebted to the company; or
- (c) 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 as is mentioned in paragraphs (a) to (c) 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 (c).

(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 to a police officer—

- (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 authorise 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 subsection (1)(c).

(4) If it appears to the Court, on consideration of 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 deliver the whole or any part of 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 certain provisions in Scheme of Arrangements and Winding Up (Offences) to a company under judicial management

417. At any time when a judicial management order is in force in relation to a company under judicial management—

- (a) section 433 shall apply as if for subsections (1) and (3) thereof there were substituted the following:
 - (i) Where a compromise or arrangement is proposed between a company and its creditors, the Court may on the application of the judicial manager order a meeting of creditors to be summoned in such manner as the Court directs.
 - (ii) If 75% in value of the creditors present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if approved by the Court, be binding on all the creditors and on the judicial manager.
- (b) sections 542, 544, 545 and 546 shall apply as if the company under judicial management were a company being wound up and the judicial manager were the liquidator, but this shall be without prejudice to the power of the Court to order that any other section in Subdivision 4 of Division 1 of Part IV shall apply to a company under judicial management as if it applied in a winding up by the Court and any reference to the liquidator shall be taken as a reference to the judicial manager and any reference to a contributory as a reference to a member of the company.

SUBDIVISION 2

CORPORATE VOLUNTARY ARRANGEMENT

Interpretation

418. For the purposes of this Subdivision—

“nominee” is any person who is qualified to be appointed as an approved liquidator and the powers and duties conferred to a nominee by this subdivision shall include the powers and duties specified in Tenth Schedule.

Those who may propose an arrangement

419. (1) The directors of a company other than a company which is under judicial management or is being wound up, may make a proposal under this Part, to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affair.

(2) A composition in satisfaction of a company’s debts or a scheme of arrangement of a company’s affairs under this Part shall refer to, in either case, as a “voluntary arrangement”.

(3) A proposal under this Subdivision is one which provides for a nominee in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation.

(4) A proposal may also be made—

- (a) by a judicial manager where a company is under a judicial management order; or
- (b) by a liquidator where a company is being wound up.

Moratorium

420. (1) Where the directors of a company intend to make a proposal for a voluntary arrangement they may take steps to obtain from the Court, a moratorium for the company

(2) For the purpose of subsection (1), the directors shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement;
 - (b) a statement of the company's affairs containing—
 - (i) particulars of the company's creditors and of its debts and other liabilities and of its assets as may be prescribed; and
 - (ii) other information as may be required by the nominee to comply with section 422.
- (3) The provisions of Ninth Schedule have effect with respect to-
- (a) the duration and extension of such a moratorium;
 - (b) the effects of such a moratorium; and
 - (c) the procedure applicable in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

Documents to be submitted to Court

421. For the purpose of section 420, directors of a company shall file with the Court —

- (a) a document setting out the terms of the proposed voluntary arrangement;
- (b) a statement of the company's affairs containing—
 - (i) particulars of the company's creditors and of its debts and other liabilities and of its assets as may be prescribed; and
 - (ii) other information as may be prescribed,
- (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; and
- (e) a statement from the nominee

Statement by nominee

422. (1) For the purpose of section 421 paragraph (e), 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 it during the proposed moratorium to enable the company to carry on its business; and that
- (c) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) The nominee is entitled to rely on information submitted to him under subsection 420(2) in forming his opinion on matters required under subsection (1) unless he has reason to doubt its accuracy.

Summoning of meetings

423. (1) Where a moratorium is in force, the nominee shall summon a meeting of the company and its creditors for such a time, date and place as he thinks fit, within the period specified in Eighth Schedule of this Act

(2) Where the nominee is the liquidator or judicial manager, he shall summon a meeting of the company and its creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this section are every creditor of the company of whose claim and address the nominee is aware.

(4) Meetings summoned under this section shall be conducted in accordance with the rules of meeting under the Act.

Decisions of meetings

424. (1) Any meeting, either the company's or creditors' meetings, summoned under section 423, shall decide whether to approve the proposed voluntary arrangement.

(2) The required majority to approve a proposal for voluntary arrangement in creditors' meeting shall be seventy five per cent 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 company's meeting.

(4) 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 they have voted in favour of the proposal.

(5) No modification in respect of the proposal shall be allowed to be made in any of the meeting under section 423.

(6) After the conclusion of either meeting, the chairman of the meeting 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

425. (1) This section applies where a voluntary arrangement has effect under section 423.

(2) 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 423,

(b) on other qualified person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the Court; and on the application the Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor—

- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) 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 it.

(5) The Court may, whenever—

- (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,

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.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Challenge of decisions

426. (1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—
- (a) that a voluntary arrangement has unfairly prejudices the interests of a creditor, member or contributory of the company;
 - (b) that there has been some material irregularity at or in relation to either of the meetings.
- (2) The persons who may apply under this section are—
- (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
 - (b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;
 - (c) the nominee or any person who has replaced him under Eighth Schedule; and
 - (d) if the company is being wound up or is under judicial management, the liquidator or judicial manager.
- (3) An application under this section shall not be made —
- (a) after the end of the period of twenty eight days beginning with the first day on which each of the reports required by section 424(6) has been made to the court; or
 - (b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of twenty eight days beginning with the day on which he became aware that the meeting had taken place, but (subject to that) an application made by a person within subsection (2)(b) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.
- (4) On an application for an order under this section, the Court may—

- (a) revoke or suspend any decision approving the voluntary arrangement;
- (b) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct;
- (c) make such order as it thinks fit for giving relief in respect of the matters complained of.

(5) In a case where the Court, on an application under this section with respect to any meeting—

- (a) gives a direction under subsection (4)(b), or
- (b) revokes or suspends an approval under subsection (4)(a),

the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

(6) Except in pursuance of the preceding provisions of this section, a decision taken at a meeting summoned under section 423 is not invalidated by any irregularity at or in relation to the meeting.

False representations, etc

427. (1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything, he 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) Subsection (1) applies even if the proposal is not approved.

Prosecution of delinquent officers of company

428. (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, as the case may be, voluntary arrangement 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) Where a report is made to the Registrar under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 439 of Part VII to investigate a company's affairs.

(4) Where the Registrar institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present, other than the accused, shall give the Registrar all assistance in connection with the prosecution which he is reasonably able to give.

- (5) For this purpose—

“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,

Arrangements coming to an end prematurely

429. For the purposes of this Subdivision, a voluntary arrangement the approval of which has taken effect under section 425 comes to an end prematurely if—

- (a) it ceases to have effect;
- (b) it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 424(4).

SUBDIVISION 3
ARRANGEMENTS AND RECONSTRUCTIONS

Interpretation

430. In this Subdivision—

“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 these methods;

“company” means any corporation or society liable to be wound up under this Act.

Power of Court to order compromise with creditors of members

431. The Court may, on an application under this Subdivision, by either —

- (a) the company;

- (b) any creditor or member of the company;
- (c) if the company is being wound up, the liquidator; or
- (d) if the company is under judicial management, the judicial manager

order a meeting in a summary way to be summoned in such manner as the Court directs.

Power of Court to appoint an approved liquidator

432. The Court may, on application under this Subdivision, appoint an approved liquidator to assess the viability of the scheme proposed for the compromise or arrangement.

Meetings of creditors or members

433. (1) A meeting held pursuant to an order of the Court made under subsection (3) may be adjourned from time to time if the resolution for adjournment is approved by a seventy five per cent of the total value of creditors or class of creditors or members or class of members present and voting at the meeting either in person or by proxy the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting.

- (2) The compromise or arrangement shall be binding on—
 - (a) all the creditors or class of creditors; or
 - (b) the members or class of members; and
 - (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 cent 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.

(3) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(4) An order under subsection (2) shall have no effect until a sealed 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.

(5) Subject to subsection (6), a copy of every order made under subsection (2) shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(6) The Court may, by order, exempt a company from compliance with the requirements of subsection (5) or determine the period during which the company shall so comply.

(7) Where 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 companies 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 so 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 maybe; 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 as provided in section (3).

(8) If a company contravenes subsection (5) or (7), the company and any officer who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Power of Court to restrain proceedings

434. (1) Where no order has been made or resolution passed for the winding up of a company and any such 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 of 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 such terms as the Court imposes.

(2) The Court may grant a restraining order under subsection (1) to a company for a period of not more than ninety days and the court may on the application of the company, extend this period for another two hundred seventy days if the Court is satisfied that—

- (a) 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 restraining order is necessary to enable the company and its creditors to formalize the scheme of compromise or arrangement for the approval of the creditors or members pursuant to section 431;
- (c) a statement in the prescribed form as to the affairs of the company made up to a date not more than before the application is lodged together with the application; and

- (d) it approves the person nominated by a majority of the creditors in the application by the company under subsection (9) to act as a director or if that person is not already a director, notwithstanding the provisions of this Act or the constitution of the company, appoints the person to act as a director.

(3) The person approved or appointed by the Court to act as a director of the company under subsection (2) shall have 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 such information and explanation as he may require for the purposes of his duty.

(4) Any disposition of the property of the company, including things in action and any acquisition of property by the company, other than those made in the ordinary course of business, made after the grant of the restraining order by the Court shall, unless the Court otherwise orders, be void.

(5) Where a company disposes or acquires any property, other than in the ordinary course of its business, without leave of the Court, the company and any officer who is in default with this requirement, commits an offence and shall, on conviction, be liable to imprisonment for a term not less than ten years or to a fine not exceeding three million ringgit or to both.

(6) Where an order is made under subsection (1), every company in relation to which the order is made shall, within 7 days —

- (a) lodge a sealed copy of the order with the Registrar; and
- (b) publish a notice of the order in a daily newspaper circulating generally throughout Malaysia,

and the company and any officer who is in default with this requirement, commits 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.

(7) An order made by the Court under subsection (1) shall not have the effect of restraining further proceedings in any action or proceeding that should be taken against the company by the Registrar or the securities market regulator.

(8) An order made by the Court under subsection (1) shall not have the effect of restraining further proceedings in any action or proceeding against any person other than the company that had applied for the restraining order.

(9) For the purpose of subsection (8), the term “any person” includes a guarantor of the company.

Information as to compromise with creditors and members

435. (1) Where a meeting is summoned under this Subdivision—

- (a) every notice summoning the meeting which is sent to a creditor or member shall be accompanied by a statement complying with this section; and
- (b) every notice summoning the meeting which is given by advertisement shall either—
 - (i) include such a statement; or
 - (ii) state where and how the creditors or members entitled to attend the meeting may obtain copies of such statement.

(2) The statement in subsection (1) shall explain 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 thereon of the compromise or arrangement so far as it is different from the effect on the like interests of other persons.

(3) 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.

(4) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(5) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section within seven days of the receipt of a request in writing for information as to those matters.

(6) The company and any officer who is in default with the requirement 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 one million ringgit or to both.

(7) For the purpose of subsection (6) the liquidator of the company and any trustee for debenture holders shall be deemed to be an officer of the company.

(8) Notwithstanding subsection (6) 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 his interests.

Reconstruction and amalgamation of companies

436. (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 shown 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 (in this section referred to as the “transferor company”) is to be transferred to another company (in this section referred to as the “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 like 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,

free in the case of any particular property if the order so directs, 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 a sealed copy of the order—

- (a) with the Registrar within seven days of the making of the order; and
- (b) where the order relates to land, with the appropriate authority concerned with the registration or recording of dealings in that land.

(5) The company and any officer who is in default with the requirement of this subsection 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 default penalty of five hundred ringgit for each day during which the offence continues after conviction.

(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) In this section—

- (a) “liabilities” includes duties;
- (b) “property” includes property rights and powers of every description.

(7) Notwithstanding the provisions of section 430, “company” in this section does not include any company other than a company as defined in section 430.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

437. (1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (in this section referred to as the “transferor company”) to another company or corporation (in this section referred to as the “transferee company”) has within four months after the making of the offer in that behalf by the transferee company been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than nine-tenths in value of those 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, the transferee company may at any time within two months after the offer has been so approved give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares and when such a notice is given the transferee company shall, 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 pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, 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.

(2) Where a transferee company has given notice to any dissenting shareholder that it desires to acquire his shares the dissenting shareholder shall be entitled to require the company by a demand in writing served on that company within one month from the date on which the notice was given to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee company shall not be entitled or bound to acquire the share of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.

(3) Where in pursuance of 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 first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and
- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question,

and where 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 it, or on such other terms

as are agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(4) Where 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, after the expiration of one month after the date on which the notice has been given or, after fourteen days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, 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, and pay, allot or transfer to the transferor company 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, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

(6) Where any consideration other than cash is held in trust by a company for any person under this section or under any corresponding previous enactment, it 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 it, transfer the same to the Minister charged with the responsibility for finance.

(7) The Minister charged with the responsibility for finance shall sell or dispose of any consideration so received in such manner as he thinks fit and shall

deal with the proceeds of the sale or disposal as if it were moneys paid to him pursuant to the law relating to unclaimed moneys.

(8) In this section “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

**PART IV
CESSATION OF COMPANIES**

**DIVISION 1
COMPULSORY AND VOLUNTARY WINDING UP**

**SUBDIVISION 1
PRELIMINARY**

Modes of winding up

438. (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 commenced by a resolution passed by the company.
- (2) A voluntary winding up may be effected either –
- (a) by a members’ voluntary winding up where the company is solvent and the liquidator is appointed by members at the members’ meeting ; or

- (b) by a creditors' voluntary winding up where the company is insolvent and the liquidator is appointed by creditors at the creditors' meeting.

Application of winding up provisions

439. Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding up apply to the winding up of a company either of those modes as specified in subsection 438(1).

Government bound by certain provisions

440. 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

441. (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 themselves.

- (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;
 - (iii) unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of 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 he 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 whereby—
 - (i) the liability of 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 of 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 themselves.

(2) In the winding up of a limited company any director, whether past or present, whose liability is unlimited shall in addition to his liability, if any, to

contribute as an ordinary member be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company.

(3) 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 of the company, 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.

(4) On the winding up of a company limited both by shares and guarantee every member shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Nature of liability of contributory

442. 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

443. (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 his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

Contributories in case of bankruptcy of member

444. If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he 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

WINDING UP BY COURT

Petition of winding up

445. (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—

- (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 pursuant to section 548;
- (f) in the case of a company which is a licensed institution, or a scheduled institution in respect of which the Minister charged with responsibility for finance has made an order under subsection 24(1) of the Banking and Financial Institutions Act 1989, or a non-scheduled institution in respect of which such Minister has made an order under subsection 93(1) of that Act, Bank Negara Malaysia;
- (g) in the case of a company which is licensed under the Insurance Act 1996, Bank Negara Malaysia;
- (h) the Registrar on the ground specified in paragraph 445(1)(l) or (m);
- (i) in the case of a member institution under the Malaysia Deposit Insurance Corporation Act 2005, the Malaysia Deposit Insurance Corporation under section 71 of that Act,

or of any two or more of those parties.

- (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 445(a), (b), (c), (d) or (h) unless the share in respect of which the contributor was a contributory or some of them 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, if the ground of the petition is default in lodging the statutory report, be presented by any person except a contributory or the Minister nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

- (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 it 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

446. (1) The Court may order the winding up if—
- (a) the company has by special resolution resolved that it be wound up by the Court;
 - (b) default is made by the company in lodging the statutory report;
 - (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;
 - (d) the company is unable to pay its debts;
 - (e) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which appears to be unfair or unjust to other members;
 - (f) an inspector appointed under Subdivision 8 has reported that he is of opinion—
 - (i) that the company cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;
 - (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 opinion that it is just and equitable that the company be wound up;
- (i) the company has held a licence under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, and that licence has been revoked or surrendered;
- (j) the company has carried on Islamic banking business, licensed business, or scheduled business, or it has accepted, received or taken deposits in Malaysia, in contravention of the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989, as the case may be; or
- (k) the company has held a licence under the Insurance Act 1996 and—
 - (i) that licence has been revoked;
 - (ii) Bank Negara Malaysia has petitioned for its winding up under subsection 58(4) of the Insurance Act 1996; or
 - (iii) an order under paragraph 59(4)(b) of the Insurance Act 1996 has been made in respect of it;
- (l) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; or
- (m) the company is being used for any purpose prejudicial to national security or public interest.

(2) For the purpose of winding-up actions commenced by the Registrar under subsection (1)(l) and (m), 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 purpose of this Act be received as prima facie evidence until proven otherwise.

Definition of inability to pay debts

447. (1) A company shall be deemed to be unable to pay its debts if—
- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five thousand ringgit then due has served on the company, by leaving it at the registered office, a written demand under his hand or under the hand of his agent there unto lawfully authorized requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable 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 Court within six months from the expiry date of the notice of demand issued under subsection (1)(a).

Commencement of winding up by the Court

448. (1) Where before the presentation of the 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 otherwise to direct, 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

449. (1) Where a person other than a company itself or a liquidator, presents a petition under section 445 and a winding up order is made, that person shall at his own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Division.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.

(3) Where the company has no assets or not sufficient 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 thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding three thousand ringgit, be reimbursed to the petitioner out of moneys provided by Parliament for the purpose.

(4) Where any winding up order is made upon the petition of the company or the liquidator thereof, 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

450. (1) On hearing a winding up petition, the Court may—

- (a) dismiss it with or without costs;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim or other order that it thinks fit,

but the Court shall not refuse to make a winding up order on the ground only that—

- (d) the assets of the company have been mortgaged to an amount equal to or in excess of those assets;
- (e) the company has no assets; or
- (f) in the case of a petition by a contributory there will be no assets available for distribution, amongst the contributories.

(2) 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 notices be given or any steps 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 thereto;
- (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.

(3) 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

451. (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 proceedings accordingly on such terms as it thinks fit.

(2) Within fourteen days after the making of the order under subsection (1), the applicant, to whom the order is granted, shall lodge with the Registrar and with the Official Receiver the sealed copy of the order.

Actions stayed on winding up order

452. (1) When a winding up order has been made or a provisional 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 under subsection (1) shall be made in the court granting the winding up order and shall be served to the liquidator.

(3) The sealed copy of the order made under subsection (1) shall be lodged by the company 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

453. (1) Any disposition of the property of the company, other than an exempt disposition, including things in action and 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, in relation to a company that has commenced to be wound up by the Court, means a disposition made by a liquidator, or by a interim liquidator of the company pursuant to a power conferred on him by this Act or rules of the Court 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

454. 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

455. (1) The petitioner shall, within seven days after the making of a winding up order, lodge with the Registrar notice of—

- (a) the order and its date; and
- (b) the name and address of the liquidator.

(2) The petitioner shall within seven days upon receiving the sealed copy of the winding up order —

- (a) lodge a sealed 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) If the petitioner contravenes subsection (1) or (2), he 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

456. 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 4

PROVISIONS RELATING TO LIQUIDATORS IN WINDING UP BY COURT

Qualification of liquidator in winding up by court

457. (1) Subject to this section, a person other than the Official Receiver who is appointed interim liquidator or liquidator in a winding up by Court shall not, except with the leave of the Court, be qualified for 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 6 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 becomes bankrupt;
- (g) he assigns his estate for the benefit of his creditors or has made an arrangement with his creditors pursuant to any law relating to bankruptcy; or
- (h) he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more.

(2) Subsection (1)(a) and (c) shall not apply—

- (a) to a members' voluntary winding up; or
- (b) to 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 those paragraphs or either of them shall not apply.

(3) For purposes of subsection (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, and the Minister, if satisfied as to the experience and capacity of the applicant, may on payment of the prescribed fee approve such person as a liquidator for the purposes of this Act.

(4) For the purpose of subsection (4), the Minister charged with the responsibility for finance may prescribe a body to be a recognized professional body.

(5) For the purposes of subsection (1), 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 6 or has, at any time within the preceding period of twenty-four months, been an officer or promoter of the company or of such a corporation.

(5) A person shall not be appointed as liquidator of a company unless he has prior to the appointment consented in writing to act as such liquidator.

(6) Nothing in this section shall affect any appointment of a liquidator made before the commencement of this Act.

Interim liquidator

458. (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 by the rules or as the Court may specify in the order appointing him.

Appointment, style, etc., of liquidators

459. (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 thereon 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 liquidator, by the style of “the liquidator”, and, where the Official Receiver is 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.

(2) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(3) Subject to this Act the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Appointment of other person as liquidator other than Official Receiver

460. Where a person other than the Official Receiver is 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
 - (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 generally such assistance as may be required for enabling that officer to perform his duties under this Act.

Remuneration of liquidators

461. (1) An interim 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 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—

- (a) by agreement between the liquidator and the committee of inspection, if any;
- (b) failing such agreement or where there is no committee of inspection, by 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) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

(3) Where the salary or remuneration of a liquidator 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 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 provisional 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

462. Where a person other than the Official Receiver is the liquidator in a winding up of a company by Court, the Official Receiver—

- (a) shall take cognizance of his conduct and 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 if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient;

- (b) may at any time 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; and
- (c) may direct a local investigation to be made of the books and vouchers of the liquidator.

Control of Official Receiver by Minister

463. The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receivers 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 thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of that person.

Resignation or removal of liquidator in winding up by Court

464. A liquidator appointed by the Court may resign or, on good cause shown, be removed from office by the Court.

Custody and vesting of company's property

465. (1) Where a 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) The Court may, on the application of the liquidator, 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 which it 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 a sealed copy of the order with the Registrar; and
- (b) where the order relates to land, lodge a sealed copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(4) Every liquidator who contravenes with 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.

(5) No vesting order referred to in this section shall have any effect to transfer or otherwise vest land until the appropriate entries are made with respect to the vesting by the appropriate authority.

Submission of statement of affairs of company

466. (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 the liquidator requires,

shall be made out 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, directors and by the secretary of the company, or by such of the following persons as the liquidator may, subject to the direction of the Court, require—

- (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 by any of the persons in subsection (2) within fourteen days after 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 after the receipt of the statement in subsection (2), 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 in the case of a company which is an insurer, whether or not its license under the Insurance Act 1996 is revoked, Bank Negara Malaysia and 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 and about the preparation and making of the statement as the liquidator considers reasonable subject to an appeal to the Court.

(6) Any person who contravenes with the requirements of this section commits an offence and shall, on conviction, be liable to imprisonment of not more than three years or a fine not exceeding ten thousand ringgit or 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

467. (1) The liquidator shall as soon as practicable and not more than thirty days after 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) The liquidator may also, if he thinks fit, make further reports stating 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, and whether any officer of the company has contravened or failed to comply with this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

(3) The liquidator of a company which is an insurer shall submit the preliminary report in subsection (1) and the further reports in subsection (2) to Bank Negara Malaysia at the same time as he submits them to the Court.

Powers of liquidator in winding up by Court

468. (1) Where a company is being wound up by the court, the liquidator may—

- (a) with the authority of the court or the committee of inspection, exercise any of the powers specified in Part I of the Eleventh Schedule; and
- (b) with or without that authority, exercise any of the general powers specified in Part II of the Eleventh 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

469. (1) Subject to this Division the liquidator shall in the administration of the assets of the company and in the distribution thereof 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 in case of conflict override any directions given by the committee of inspection.

(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 one-tenth 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

470. (1) Every liquidator shall, in the manner and at the times 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) 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

471. (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 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 in pursuance of 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 therein as contributories.

Release of liquidators and dissolution of company

472. 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 can in his opinion 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

473. (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) on the liquidator complying 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 with the consequence of any act or default which he may have done or made contrary to his duty.

(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, his release shall operate as a removal from office.

(6) Where the Court has made—

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and the company be dissolved,

an office copy of the order shall within fourteen days after the making thereof be lodged by the liquidator with the Registrar and the Official Receiver.

(7) Any liquidator who fails to comply with 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 5

COMMITTEE OF INSPECTION IN WINDING UP BY COURT

Appointment of committee of inspection

474. (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 who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall decide the difference and make such order as it thinks fit.

Constitution and proceedings of committee of inspection

475. (1) The committee of inspection shall consist of creditors and contributories of the company or persons holding—

- (a) general powers of attorney from creditors or contributories; or
- (b) special authorities from creditors or contributories authorizing the persons named therein to act on such a committee, appointed by the meetings of creditors and contributories in such proportions as are agreed or in case of difference as are determined by the Court.

(2) The committee shall meet at such times and places as they from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The Committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) 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 pursuant to 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 thereupon become vacant.

(6) 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.

(7) A vacancy in the committee shall be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power or special authority as specified in subsection (1).

(8) The liquidator may, at any time of his own motion and shall, within seven days after the request in writing of a creditor or contributory, summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7) 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 subsection (1), as the case requires, in his stead.

(9) The continuing members of the committee if not less than two may act notwithstanding any vacancy in the committee.

SUBDIVISION 6

GENERAL POWERS OF COURT IN WINDING UP BY COURT

Power of Court to stay winding up

476. (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 the winding up of the company for a limited 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 the order by the Court.

Power of Court to terminate winding up

477. (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 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) satisfaction of the debts;
- (b) agreement by both parties; or
- (c) other facts that the Court consider 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 him 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

478. (1) On any such application under sections 476 and 477, 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 476 and 477 or at any time thereafter, make such other order as it thinks fit in connection with the staying or termination of the winding up.

(3) An office copy of every order made under sections 475 and 476 shall be lodged by the company with the Registrar and the Official Receiver within fourteen days after the making of the order.

(4) If a company contravenes this section, the company and any officer who is in default 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.

Debts due by contributory to company and extent of set off

479. 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 in pursuance of this Act, and may—

- (a) in the case of an unlimited company, allow to 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; and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance,

and in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls

480. 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,

and in making a call may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company

481. (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 some 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 pursuant to this division shall be subject in all respects to orders of the Court.

Order on contributory conclusive evidence

482. An order made by the Court under this sections 476, 477 and this section, shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby 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

483. (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 which may appoint 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 manager, as are entrusted to him 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

484. (1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they 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 thereto.

(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 by creditors and contributories

485. 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, but not further or otherwise.

Power to summon persons connected with company

486. (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 him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may

reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he 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 487 may, if the Court so directs and subject to the rules, 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 486 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 not 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.

487. (1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that 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 that 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 the Court may after consideration of the report direct that 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 any

person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day 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 thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by an advocate.

(3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(4) 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.

(5) A person ordered to be examined under this section shall before his examination be furnished with a copy of the liquidator's report.

(6) Where a person directed to attend before the Court under subsection (1) 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 him to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as in its discretion it thinks fit.

(7) Notes of the 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 him; and

- (d) shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may if it thinks fit adjourn the examination from time to time.

Power to arrest absconding contributory

488. 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) had absconded;
- (c) is about to quit 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 –

- (f) evading payment of calls;
- (g) is avoiding examination respecting the affairs of the company; or
- (h) is 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 him and them to be safely kept until such time as the Court orders.

Delegation of powers of Court to liquidator

489. 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 conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) 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

490. (1) Any powers by this Act conferred on the Court shall be in addition to and not in restriction 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 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.

SUBDIVISION 7

VOLUNTARY WINDING UP

Circumstances in which company may be wound up voluntarily

- 491.** (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 resolves by special resolution.
- (2) A company shall—
- (a) within seven days after the passing of a resolution for voluntarily winding up lodge a printed copy of the resolution with the Registrar; and
 - (b) within ten days after the passing of the resolution give notice of the resolution in a newspaper circulating generally throughout Malaysia.
- (3) If a company contravenes subsection (2), the company and any officer who is in default, 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.
- (4) A company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, shall not be wound up voluntarily before the transfer of the whole of its insurance business to another insurer under section 128 of that Act.

Date of commencement of winding up

- 492.** A voluntary winding up shall commence—
- (a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in section 492 was lodged with the Registrar; and
 - (b) in any other case, at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up

493. (1) The company shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its constitution, continue until it is dissolved.

(2) 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

494. (1) Where it is proposed to wind up a company voluntarily, the director or in the case of a company having more than two directors, the majority of the directors may—

- (a) make a written declaration to the effect that they 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 prescribed information,—

- (a) the assets of the company, and the total amount expected to be realized there from;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up, made up to the latest practicable date before the making of the declaration.

(4) The declaration so 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, or on that date but before the passing of the resolution; 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 of not more than ten years or a fine not exceeding three million ringgit or both and, in the case of a continuing offence, to a default penalty of five hundred ringgit for each day during which the offence continues after conviction.

(5) If the company is wound up in pursuance of 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.

(6) If a declaration required by subsection 4(c) to be lodged with the Registrar is not lodged within the time stated in that subsection, the company and any officer, commits 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.

Disqualification of Liquidators

495. (1) Subject to this section a person shall not, except with the leave of the Court, consent to be appointed, and shall not act, as liquidator of a company-

- (a) if he is not an approved liquidator.
- (b) if he is indebted to the company or to a corporation that is deemed to be related to the company by virtue of section 6 in an amount exceeding two hundred and fifty thousand ringgit;
- (c) if he is—
 - (i) an officer of the company
 - (ii) a partner, employer or employee of an officer of the company; or
 - (iii) a partner or employee of an employee of an officer of the company
- (d) if he becomes bankrupt;
- (e) if he assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any law relating to bankruptcy; or

(f) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for ninety days or more.

(2) Paragraphs (1)(a) and (c) shall not apply—

(a) to a members' voluntary winding up; or

(b) to a creditors' voluntary winding up if, by 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 those paragraphs or either of them shall not apply.

(3) For the purposes of subsection (1), 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 6 or has, at any time within the preceding period of 24 months, been an officer or promoter of the company or of such a corporation.

(4) A person shall not be appointed as liquidator of a company unless he has prior to the appointment consented in writing to act as such liquidator.

(5) Nothing in this section shall effect any appointment of a liquidator made before the commencement of this Act.

SUBDIVISION 8

MEMBERS' VOLUNTARY WINDING UP

Duty of liquidator to call creditors' meeting in case of insolvency

496. (1) If the liquidator is at any time 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 493, he 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 them by subsection (2).

(2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person under subsection (2) the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(4) Within seven days after a meeting has been held pursuant to subsection (1) 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.

(5) If the liquidator or the person appointed as liquidator by the creditors contravenes subsection (4), he 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.

(6) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than three months before the end of that year.

SUBDIVISION 9

CREDITOR'S VOLUNTARY WINDING UP

Interim liquidators

497. (1) Where the directors of a company have made a statutory declaration, the particulars of which have been lodged with the Registrar and with the Official Receiver—

- (a) that the company cannot by reason of its liabilities continue its business; and
- (b) that meetings of the company and of its creditors have been summoned for a date within one month of the date of the declaration,

the directors shall forthwith appoint an approved liquidator to be the interim liquidator.

(2) An interim liquidator shall have and may exercise 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.

(3) The appointment of an interim liquidator under this section shall continue for one month 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 first occurs).

(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 some newspaper circulating generally throughout Malaysia.

(5) An interim liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

Meeting of creditors

498. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices 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.

(2) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

- (a) give to the creditors at least seven clear days' notice by post of the meeting; and
- (b) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(3) 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 a newspaper circulating generally throughout Malaysia.

(4) 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 their number to attend the meeting.

(5) The director so appointed 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.

(6) The creditors may appoint one of their number or the director appointed under subsection (4) to preside at the meeting.

(7) The chairman 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.

(8) If the chairman 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.

(9) 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.

(10) If the company contravenes this section, the company and any officer who is in default, commits an offence and shall, on conviction, be liable to to a fine not exceeding ten thousand ringgit.

Liquidators in creditors voluntary winding up

499. (1) The company shall and the creditors may at their respective meetings nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and 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.

(2) Notwithstanding subsection (1) where different persons are nominated any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors approve the continuance.

(5) 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 the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

Appointment of Committee of inspection

500. (1) The creditors at the meeting summoned pursuant to section 496 or 498 or at any subsequent meeting may, if they 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 in general meeting, appoint such number of persons but not more than five as it thinks fit to act as members of the committee.

(2) Notwithstanding subsection (1) the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be

members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and the rules the provisions of Subdivision 5 of Division 1 relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section.

Property and proceedings

501. (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 imposes.

SUBDIVISION 10

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

Distribution of property of company

502. Subject to the provisions of this Act, as to preferential payments the property of a company shall, on its winding up be applied *pari passu* in satisfaction of its liabilities, and subject to that application shall, unless the constitution otherwise provide, be distributed among the members according to their rights and interests in the company.

Appointment or removal of liquidator by Court

503. (1) Where there is no liquidator acting in 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.

Review of liquidator's remuneration

504. (1) Any member or 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 shall be final and conclusive.

(2) Notwithstanding subsection 461(2) in the case of a company which is an insurer, no person, other than Bank Negara 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 Bank Negara Malaysia.

Act of liquidator valid, etc.

505. (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, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, be valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing 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 and duties of liquidator

506. (1) The liquidator may—

- (a) 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 under the Eleventh Schedule to a liquidator in a winding up by the Court;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;
- (c) 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 liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls; or
- (e) 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 he thinks fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than two.

Power of liquidator to accept shares, etc., as consideration for sale of property of company

507. (1) Where it is proposed that the whole or part of the business or property of a company be transferred or sold to another corporation, the liquidator of the company, may, 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-

- (a) receive in compensation or part compensation for the transfer or sale 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 thereto, 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 there from in writing addressed to the liquidator and left at the registered office of the liquidator within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by 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 under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators; and 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.

(6) 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

508. (1) If the winding up continues for more than one year, the liquidator shall summon a general meeting—

- (a) of the company in the case of a members' voluntary winding up;
and
- (b) of the company and the creditors in the case of a creditors' voluntary winding up,

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 thereafter, and shall lay before the meeting an account of his acts 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 sent by post to the creditors simultaneously with the sending 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

509. (1) As soon as the affairs of the company are fully wound up the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company, or in the case of a creditor's voluntary winding up a meeting of the company and the creditors, for the purpose of laying before the general meeting the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement published in a newspaper circulating generally throughout Malaysia, which advertisement shall specify the time, place and object of the meeting and shall be published at least one month before the meeting.

(3) The liquidator shall, within seven days after the meeting, 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.

(4) If the return or copy of the account is not so lodged pursuant to 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.

(5) The quorum at a meeting of the company shall be two 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 account attached) that the meeting was duly summoned and that no quorum was present thereat, 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.

(6) 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.

(7) Notwithstanding subsection (6) 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.

(8) The person on whose application an order of the Court under this section is made shall, within fourteen days after the making of the order, 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 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) If the liquidator fails to call a meeting as required by this section he commits an offence and on conviction shall be liable on conviction 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

510. (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) on 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 him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard 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, the liquidator, or the creditor.

(4) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon as it thinks just amend, vary or confirm the arrangement.

Application to Court to have questions determined or powers exercised.

511. (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 might exercise if the company were being 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 it thinks fit or may make such other order on the application as it thinks just.

Costs

512. All proper 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

513. 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 without the leave of the Court resolve that it be wound up voluntarily.

DIVISION 2

PROVISIONS APPLICABLE TO EVERY WINDING UP

SUBDIVISION 1

GENERAL

Books and papers to be kept by liquidator

514. 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 them.

Control of Court over liquidators

515. (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 thereto, the Court shall inquire into the matter and take such action as it thinks fit.

(2) The Registrar or the Official Receiver may report to the Court any matter which in his opinion 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 estate of the company has sustained thereby and make such other order as it 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 him 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

516. 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

517. (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 by this Act authorized or required 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 by this Act required to be done by, or subject to any direction or permission given by the Committee.

Appeal against decision of liquidator

518. 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.

Notice of appointment and address of liquidator

519. (1) A liquidator or interim liquidator shall, within fourteen days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his appointment and of the situation of his office and in the event of any change in the situation of his office shall, within fourteen days after the change, lodge with the Registrar and with the Official Receiver notice in the prescribed form of the change.

(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 interim liquidator shall, within fourteen days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in such manner as may be determined by Registrar.

(4) A liquidator or 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

520. (1) Every liquidator shall, within thirty days after the expiration of the period of one hundred and eighty days from the date of his appointment and of every subsequent period of one hundred and eighty days and in any case within thirty days after he ceases to act as liquidator and forthwith after obtaining an order of release, lodge with the Registrar and with the Official Receiver, and in the case of a company which is an insurer, whether or not its license under the Insurance Act 1996 is revoked, Bank Negara Malaysia, 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 .

(2) 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.

(3) The Official Receiver may cause the account of any liquidation to be audited by an approved company auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he 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 next forwarding any report, notice of meeting, notice of call or dividend; and
- (b) in the notice inform 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.

Liquidator to make good defaults

521. (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 he is by law required to lodge, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him 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

522. (1) Where a company is being wound up every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words “in liquidation” added after the name of the company where it first appears therein.

(2) Every officer of the company or liquidator and every receiver or manager who contravenes this section and who knowingly and wilfully authorizes or permits the contravention commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Books and papers of company

523.(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, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

(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 dissolution of the company and at the expiration of that period may destroy them.

(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) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be

interested therein if the book or paper has been 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.

Investment of surplus funds on general account

524. (1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities issued by the Government of Malaysia or of any State of Malaysia or place it on deposit at interest or with return with any bank, and any interest received in respect thereof shall form part of the assets of the company.

(2) 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 said securities as is necessary.

Unclaimed assets to be paid to Receiver of revenue

525. (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 property of the company,

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, 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 thereof and may direct him 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 thereto shall, with such adaptations as are prescribed, apply to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, 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 shall authorize payment thereof to be made to him out of the Account or, if it has been paid into the Consolidated Fund, may authorize payment of a like 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 in pursuance of 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 Account of the Fund, 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 under this section paid out of the Account 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.

Expenses of winding up where assets insufficient

526. (1) Unless expressly directed to do so by the Official Receiver, 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) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and if the Official Receiver so directs gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

Resolutions passed at adjourned meetings of creditors and contributories

527. Subject to subsection 498(9) 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

528. (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 it by any sufficient evidence, and may if it 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 chairman of any such meeting and to report the result thereof 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

529. (1) The Sessions Court Judges shall be 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 hereby appointed 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 of summoning and examining witnesses, of requiring

the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by 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

530. (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 winding up by the Court or resolution has been passed in 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 estimate 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 contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any such estimate may appeal to the court.

(6) If in the opinion of the court the value of the debt or liability is incapable of being fairly estimated the court may make an order to that effect, and thereupon the debt or liability shall for the purposes of this Act be deemed to be 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

531. (1) A secured creditor may—

- (a) realise property subject to a charge, if entitled to do so; or
- (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 property subject to a charge pursuant to paragraph (1)(a) —

- (a) may, unless the liquidator has accepted a valuation and claim by the secured creditor under subsection (6) of this section, 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 satisfaction of the debt, including interest payable 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 pursuant to paragraph (1)(a), if any, the valuation and any claim shall be made in the a 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 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); or
 - (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 after 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 subsection (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 subsection (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 subsection (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 authorises 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 authorises 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

532. (1) Every creditor shall prove his debt as soon as may be after the making of a winding up order.

(2) A debt may be proved by delivering or sending through the post in a prepaid letter to the liquidator an affidavit verifying the debt.

(3) The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor or his estate. If made by a person so authorized, it shall state his authority and means of knowledge.

(4) The affidavit shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated. The liquidator may at any time call for the production of the vouchers or books of account.

(5) The affidavit shall state whether the creditor is or is not a secured creditor.

(6) A creditor shall bear the cost of proving his debt unless the court otherwise specially orders.

(7) Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

(8) A creditor proving his debt shall deduct therefrom 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

533. (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 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

534. (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 449, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 520;

- (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 from time to time 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 paragraph (1) shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(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 paragraphs (1)(b), (d) and (e) and any amount payable in priority by virtue of paragraph (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 anything in 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 (f) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom 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 them 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

535. (1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company unable to pay its debts, as they 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 after 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 a voluntary winding up, the date upon which the winding up is deemed by this Act to have commenced.

(2) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Effect of floating charge

536. A floating charge on the undertaking or property of the company created within six months of—

- (a) the presentation of 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, unless it is proved that the company immediately after the creation of the charge was solvent, 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.

Liquidator's right to recover in respect of certain sales to or by company

537. (1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of two years before, in the case of winding up by Court, the presentation of the winding up petition against the company or in the case of voluntary winding up, the passing of the resolution to wind up the company—

- (a) from a person who was at the time of the acquisition a director of the company or a person connected with a director; or
- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company or a person connected with a director, the liquidator may recover from the person or company from which the property, business or undertaking was acquired 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.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of two years before the commencement of the winding up of the company—

- (a) to a person who was at the time of the sale a director of the company or a person connected with a director; or
- (b) to a company of which at the time of the sale a person was a director who was also a director of the company first mentioned in this subsection or a person connected with a director,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) 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.

(4) 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

538. (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 thereof 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 thereto, may, with the leave of the Court or the committee of inspection and subject to this section, by 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; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within twelve months after he has become aware thereof or such extended period as is allowed by the Court.

(2) 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.

(3) 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 in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him 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 after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the 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.

(5) 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 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.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or 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 thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and an office copy thereof being lodged 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 therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7) Notwithstanding anything in subsection (6), 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 interest in and 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 estates, incumbrances and interest created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Interpretation

539. For the purposes of sections 540 and 541—

“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

540. (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 so 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 them 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

541. (1) Subject to subsection (3) where any goods of a company are taken in execution and, before the sale thereof 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 provisional 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 thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3) 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; and if within that time notice is served on him 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.

(3) 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.

SUBDIVISION 4 OFFENCES

Offences by officers of companies in liquidation

542. (1) Every person who, being a past or present officer or a contributory of a company which is being wound up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property movable and immovable of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, 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, or as he directs—
 - (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 next before the commencement of the winding up or at any time thereafter—
 - (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) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within twelve months next before the commencement of the winding up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within twelve months next before the commencement of the winding up or at any time thereafter, [has been guilty of any] has committed 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,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) It shall be a good defence to a charge under paragraph (1)(a), (b) or subparagraph (c)(i), (vii) or (viii) or paragraph (d) if the accused 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.

(3) 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 not exceeding ten years or to a fine not exceeding three million ringgit or to both.

Inducement to be appointed liquidator

543. 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.

544. 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

545. (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 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 who is in default, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, commits an offence and shall, on conviction, be liable to imprisonment for a term 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 of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts 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 thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if the books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3) If in the course of the winding up of a company or in any proceedings against a company it appears that an officer of the company who was knowingly 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, the officer 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

546. (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 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 it 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 545(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 it 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 pursuant to subsection (1) or (2), it 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 him, or on any charge or any interest in any charge on any assets of the company held by or vested in him 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 purpose 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, not including 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 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 apart from this section 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 himself give evidence or call witnesses.

Power of Court to assess damages against delinquent officers, etc.

547. (1) If in the course of winding up it appears that any person who has taken part in the formation or promotion of the company or 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 thereof with interest or compensation 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 appearing 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

548. (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 himself to prosecute the offender 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 sen 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, if he thinks expedient, 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 thereupon, 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 aforesaid 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 in pursuance of subsection (2).

(6) If, 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 purpose 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 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.

**SUBDIVISION 5
DISSOLUTION**

Power of Court to declare dissolution of company void

549. (1) Where a company has been dissolved the Court may, at any time within two years after the date of dissolution, on 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 thereupon 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 after 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.

**DIVISION 3
WINDING UP OF UNREGISTERED COMPANIES**

“Unregistered company”

550. 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.

Provisions of Division cumulative

551. The provisions 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.

Winding up of unregistered companies

552. (1) Subject to this Division any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:

- (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; and
 - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up;

- (iv) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; and
- (v) the company is being used for any purpose prejudicial to national security or public interest.

(2) An unregistered company shall be deemed to be unable to pay its debts if—

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five thousand ringgit then due has served on the company, by leaving at its principal place of business in Malaysia or by delivering to the secretary or some director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks 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) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in Malaysia or by delivering it to the secretary or some director, manager or principal officer of the company or by otherwise serving it in such manner as the Court approves or directs, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;

- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company or any member thereof as such 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 or 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 same meaning as it has in section 580.

Contributories in winding up of unregistered company

553. (1) On an unregistered company being wound up every person shall be a contributory—

- (a) 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, who immediately before the dissolution was so liable, and every contributory 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 respectively shall apply.

Power of Court to stay or restrain proceedings

554. (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 winding up 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

555. (1) Where an unregistered company, 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 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, 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, by the operation of this section, be and become vested, for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Malaysia, sections 561 to 565 shall, with such adaptations as may be necessary, apply in respect of that company.

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 of the register

556. Notwithstanding any provision in this Act, the Registrar may strike a company off the register, if—

- (a) the Registrar has reasonable cause to believe that the company is not carrying on business or is not in operation;
- (b) the company has contravened this Act;
- (c) the Registrar has reasonable cause to believe that it would be prejudicial to national interest if the company remains on the register;
- (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; or
 - (ii) the affairs of the company are fully wound up in a voluntary winding 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 pursuant to a Court winding up 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

557. (1) Subject to section 556, the Registrar may strike a company off the register either on his own motion or upon an application by any interested party.

(2) “Interested party” in this Subdivision means:

- (a) a director;
- (b) a shareholder or a member; or
- (c) a liquidator,

of the company.

Notice of intention to strike-off company

558. (1) Before the name of a company can be struck off the register under section 555, 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 the register 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 the care of some 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 subscribed the memorandum of the company, addressed to him at the address mentioned in the memorandum.

Objection to striking off

559. (1) Where a notice of intention to strike off a company from the register is given under subsection 558(1), any person may lodge with the Registrar, not later than thirty days from the date specified in the notice, an objection to the striking off of the company on any 1 or more of the following grounds:

- (a) that the company is still carrying on business or there is other reason for it to continue in existence; or
- (b) that the company is a party to legal proceedings; or
- (c) that the company is in receivership, or liquidation, or both; or

- (d) that the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company; or
- (e) that the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Division 6; 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 subsection (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 shareholder 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 company's constitution or this Act to receive or share in the company's surplus assets; or

(ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

(3) If an objection under subsection (1) is received together with the payment of a prescribed fee, 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

560. Subject to a payment of a prescribed fee, an applicant referred to in section 557 may withdraw the application under section 557 by lodging a notice of withdrawal to the Registrar.

Effect of striking off

561. (1) Where a company is struck off the register under section 556, 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.
- (b) Nothing in section 557 shall affect the power of the Court to wind up a company, the name of which has been struck off the register.

Power of Court to restore struck off company into register

562. (1) If any person feels aggrieved by the name of the company having been struck off the register, the Court on an application made by the person at any time within seven years after the name of the company has been so struck off may, if 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 restored to the register, and upon an office copy of the order being lodged with the Registrar the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order 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 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.

(2) Upon the lodgement of the information relating to the restoration with the Registrar under subsection (1), 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

563. (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 thereto some purely administrative act not discretionary, should have been done by or on behalf of the company if still existing,

the Registrar may as 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 in pursuance of 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

564. (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 so dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator, the property except called and uncalled capital shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all the estate and interest therein, 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 then had in respect thereof.

(2) 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, for the purposes of this section, make, exercise or avail himself of that claim, right or remedy without that approval or concurrence.

Disposal of outstanding interests in property

565. (1) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of section 564 or by operation of any corresponding previous written law or of a law of a designated country corresponding with section 555 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 thereof as he sees 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 such commission, whether by way of percentage or otherwise, as is 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 thereto and thereafter 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

566. (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 imposed 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 they are in the opinion of the Registrar properly available for and applicable to the payment.

Accounts and audit

567. (1) The Registrar shall—

- (a) record in the register of companies 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 therewith;
- (b) keep accounts of all moneys arising therefrom and of how they 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

INVESTMENT AND FOREIGN COMPANIES

SUBDIVISION 1

INVESTMENT COMPANIES

Interpretation

568. In this Subdivision unless inconsistent with the context or subject matter—
- (a) “investment company” means a corporation, not being a private company, for the time being declared by order of the Minister to be an investment company;
 - (b) “net tangible assets” means tangible assets at book values less total liabilities at book values and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

Power of Minister to declare of investment companies

569. (1) The Minister may, by order published in the *Gazette*, declare any corporation which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control to be an investment company.

(2) For the purposes of subsection (1), the Minister may impose any conditions that he deems fit and he shall have the power to revoke such order by publishing in the *Gazette*.

Restriction on borrowing by investment companies

570. An investment company shall not borrow an amount if that amount or the sum of that amount and any amounts previously borrowed by it and not repaid exceeds an amount equivalent to twice its net tangible assets.

Restriction on investments of investment companies

571. (1) An investment company shall not invest an amount—

- (a) in any corporation if that amount, or the sum of that amount and amounts previously invested by it in that corporation and still so invested exceeds an amount equivalent to ten per centum of its net tangible assets; or
- (b) in the ordinary shares of a corporation if that amount, or the sum of that amount and amounts previously invested by it in the ordinary shares of that corporation and still so invested exceeds an amount equivalent to ten per centum of the subscribed ordinary share capital of the corporation.

(2) Subsection (1) shall not apply in respect of a wholly-owned subsidiary of an investment company for the purpose of carrying out nominee, underwriting, dealing or other functions incidental to the business of an investment company.

Restriction on underwriting by investment companies

572. (1) An investment company shall not underwrite—
- (a) any issue of authorized securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other authorized securities, not being an amount or amounts in respect of which the underwriting obligation has been discharged, exceeds an amount equivalent to forty per centum of its net tangible assets; or
 - (b) any issue of non-authorized securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other non-authorized securities, not being an amount or amounts in respect of which the underwriting obligation has been discharged, exceeds an amount equivalent to twenty per centum of its net tangible assets.
- (2) In this section—

“authorized securities” means securities in which, by any written law trustees are authorized to invest trust funds in their hands;

“non-authorized securities” means securities other than authorized securities.

Provisions for unloading securities underwritten and not taken up

573. (1) Where—
- (a) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened subsection 572(1)(a) or (b); and
 - (b) the investment company, as a result of the underwriting, invests in a corporation, being an investment contrary to section 571, the investment company shall be deemed not to have contravened that section by reason of so investing in the corporation if, at the expiration of twelve months after so investing—
 - (i) the amount invested by it in the corporation does not exceed an amount equivalent to ten per centum of the net tangible assets of the investment company; and
 - (ii) it does not hold more than five per centum of the subscribed ordinary share capital of the corporation.
- (2) This section extends to and in relation to sub-underwriting as if the sub-underwriting were underwriting.

Special requirements as to constitution and prospectus

574. An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus specifies—
- (a) the type of security in which it is among the objects of the company to invest; and

- (b) whether it is among the objects of the company to invest within Malaysia or outside Malaysia or both.

Investment companies not to hold shares in other investment companies

575. No investment company shall purchase or after the expiration of three years after it is declared to be an investment company hold any shares in or debentures of—

- (a) any other investment company; or
- (b) any corporation incorporated outside Malaysia which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control and which is specified by order of the Minister.

Investment companies not to speculate in commodities

576. (1) No investment company shall for the purpose of profit buy or sell or deal in any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in those materials or goods.

- (2) Subsection (1) shall not apply to or in relation to—
 - (a) any buying, selling or dealing by an investment company in pursuance of a contract entered into by the investment company before it was declared to be an investment company; or
 - (b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company before it was so declared.

Balance sheets and accounts

577. (1) An investment company shall attach to its balance sheet a complete list of all the investments of the company as at the date of the balance sheet showing the descriptions and quantities of those investments.

(2) An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown therein, income from underwriting, including sub-underwriting.

Investment fluctuation reserve

578. The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called the “investment fluctuation reserve”.

Penalties

579. (1) If default is made by an investment company in complying with this Subdivision, the investment company and every officer of the investment company who is in default commit an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million ringgit or 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.

(2) Notwithstanding, no transaction entered into by the company which is in contravention of this Subdivision shall be invalid by reason only of the default.

SUBDIVISION 2
FOREIGN COMPANIES

Prohibition to carry on business in Malaysia except registered under this Act

580. (1) A foreign company shall not carry on a business in Malaysia unless it 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 within Malaysia it carries on activities as specified in Twelveth Schedule.

(3) If default is made in complying with subsection (1), the company and every officer who is in default commit an offence.

Registration of foreign companies

581. (1) For the purpose of registration under this Act, the 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, 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;
- (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 form 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 purpose of paragraph (1)(c), “list of shareholders or members” means a list of all of its shareholders or members, provided that if 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 company has more than five hundred shareholders or members and that 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

582. (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 company;
- (b) be answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Act; and

- (c) be personally liable to all penalties imposed on the company for any contravention of this Act unless he satisfies the court hearing the matter that he should be not so liable.

(2) For the purpose of subsection (1), a foreign company shall appoint an agent in Malaysia by lodging with the Registrar an instrument of appointment as determined by the Registrar.

(3) A foreign company or its agent may lodge with the Registrar a notice in writing stating that the agent has ceased to be the agent 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 after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (5), whichever is the earlier; or
- (b) if the notice states a date on which he is to so cease and the date is later than the expiration of that period, on that date.

(5) Where an agent ceases to be the agent and the company is then without an agent in Malaysia, if the company continues to carry on business or has a place of business in Malaysia it shall, within twenty-one days after the agent ceases to be an agent, appoint an agent.

(6) In this Subdivision, unless the contrary intention appears, “agent” means the person appointed under subsection (2).

Name of foreign company and its publication

583. (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 25.

(2) Any change in the name of a foreign company shall not be registered if the name is not available under section 25.

(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 Subdivision.

(4) If default is made in complying with this section, the foreign company, every officer and agent who is in default commit an offence and shall, upon 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

584. (1) A foreign company shall—
- (a) conspicuously exhibit outside its registered office and every place of business established by it in Malaysia in romanised letters its name and the place where it is formed or incorporated;
 - (b) cause its name, company number and the place where it is formed or incorporated to be stated in legible romanised letters on all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and
 - (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 it and in all its bill-heads, letter paper, notices, and other official publications in Malaysia; and
 - (ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Malaysia.

- (d) Where the name of a foreign company is indicated on the outside of its registered office or any place of business established by it in Malaysia or on any of the documents referred to in subsection (1) in characters or in any other way than by the use of romanised letters, the provisions of this section relating to the exhibition or statement of its name shall be deemed not to have been complied with unless the name of the company is exhibited outside its office or place of business or stated on the document in romanised letters not less large than any of the characters so exhibited or stated on the relevant office, place of business or document.

(2) 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

585. (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 for not less than five hours between the hours of nine o’clock in the morning and five o’clock in the evening each day, Saturdays, weekly and public holidays excepted.

(2) Every foreign company shall, within one month after 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 on each day, weekly and public holidays excepted, the days and hours during which it is open and accessible to the public.

Return to be filed where documents, *etc.*, altered

586. (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 of the days or hours during which it 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 thirty 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 the regulations require.

(2) Upon receipt of the aforesaid particulars of the change or alteration the Registrar shall, subject to this Act, register the change or alteration.

(3) If a foreign company increases its authorized share capital it shall, within thirty days or within such further period as the Registrar in special circumstances allows after the increase, lodge with the Registrar notice of the amount from which and of the amount to which it has been so increased.

(4) If a foreign company not having a share capital increases the number of its members beyond the registered number it shall, within thirty days or within such further period as the Registrar in special circumstances allows after the

increase was resolved on or took place, lodge with the Registrar notice of the increase.

(5) If any order is made by a Court under any law in force in the country in which a foreign company is incorporated which corresponds to section 429 the company shall, within thirty days or within such further period as the Registrar in special circumstances allows after the order was made, lodge with the Registrar an office copy of that order.

The branch register

587. (1) Subject to this section, a foreign company which has a share capital and has any member who is resident in Malaysia, shall 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 who apply to have the shares registered therein.

(2) The company shall not be obliged to keep a branch register pursuant to 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) If default is made in complying with subsection (1), the foreign company, every officer and agent who is in default commit an offence and shall, upon 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.

(4) 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 company.

(5) 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.

(6) Where a foreign company opens a branch register in Malaysia it shall, within fourteen days after the opening thereof, lodge with the Registrar notice of that fact specifying the address where the register is kept.

(7) Where any change is made in the place where the register is kept or where the register is discontinued the company shall, within fourteen days of the change or discontinuance, lodge notice of the change or discontinuance with the Registrar.

(8) Where a company or corporation is entitled pursuant to a law of the place of incorporation of a foreign company corresponding with section 431 to give notice to a dissenting shareholder in that foreign company that it 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.

Registration of shares in branch register

588. Subject to this Act, on application in that behalf by a member resident in Malaysia, the 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.

Removal of shares from branch register

589. 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 shares from the branch register and register them in such other register within Malaysia as is specified in the application.

Index of members, inspection and closing of branch registers

590. Sections 49, 50, 51, 52, 53 and 54 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

591. Sections 104, 105, 106 and 621 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a foreign company.

Branch register to be *prima facie* evidence

592. A branch register shall be *prima facie* evidence of—

- (a) any matters by this Subdivision directed or authorized to be inserted therein; 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

593. (1) Every foreign company and the directors and managers thereof shall cause to be kept such 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 shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(2) The records referred to in subsection (1) shall be audited by a person approved under section 259.

(3) Every foreign company and the directors and managers thereof shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which they relate.

(4) Subsections 241(3), (4), (7) and (8) shall apply to foreign companies as if for references to “company” there were substituted references to “foreign company”.

Financial statements

594. (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 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 company shall prepare and lodge with the Registrar a financial statement within such period, in such form and containing such particulars and to annex thereto such documents as the directors of the company would have been required to prepare or obtain if the 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 with the financial statement and other documents a duly audited statement showing its assets used in and liabilities arising out of its operations in Malaysia as at the date to which its financial statement was made up and a duly audited profit and loss account which, so far as is practicable, complies with the applicable approved accounting standards and which gives a true and fair view of the profit or loss arising out of the company's operations in Malaysia for the last preceding financial year of the company:

Provided that—

- (a) the company shall be entitled to make such apportionments of expenses incurred in connection with 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; and

- (b) the Registrar may waive compliance with this subsection in relation to any foreign company if he is satisfied that—
 - (i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Malaysia;
 - (ii) it would be of no real value having regard to the amount involved;
 - (iii) it would involve expense unduly out of proportion to its value; or
 - (iv) it would be misleading or harmful to the business of the company or to any company which is deemed by virtue of section 6 to be related to the company.

(6) Financial statements shall be deemed to have been duly audited for the purposes of subsection (5) if it is accompanied by a report by an approved company auditor which complies with section 280 and accompanied by 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

595. (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 determines.

- (2) The annual return shall contain the following particulars—
 - (a) the address of its registered office;
 - (b) the address of its business place(s) 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 the Registrar may require from time to time.

(3) The return shall be lodged not later than thirty days after the anniversary of its registration date or within such further period as the Registrar, in special circumstances, allows.

Service of notice

596. Any document required to be served on a foreign company shall be sufficiently served—

- (a) if addressed to the foreign company and left at or sent by post to its registered office in Malaysia;
- (b) if 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 addressed to the foreign company and left at or sent by post to its registered office in the place of its incorporation.

Cessation of business in Malaysia

597. (1) If a foreign company ceases to have a place of business or to carry on business in Malaysia, it shall within seven days after so ceasing, lodge with the Registrar notice to that fact, and as from the day on which the notice is so lodged

its obligation to lodge any document, other than a document that ought to have been lodged before that day, shall cease, and the Registrar shall, upon the expiration of twelve months after the lodging of the notice, remove the name of that foreign company from the register.

(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin—

- (a) each person who, immediately prior to the commencement of the liquidation proceedings, was an agent shall, within one month after 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, until a liquidator for Malaysia is duly appointed by the Court, have the powers and functions of a liquidator for Malaysia.

(3) A liquidator of a foreign company appointed for Malaysia by the Court or a person exercising the powers and functions of such a liquidator—

- (a) shall, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally 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 prior to the distribution;
- (b) shall not, without obtaining an order of the Court except as otherwise provided in subsection (7), pay out any creditor to the exclusion of any other creditor of the foreign company; and
- (c) shall, unless otherwise ordered by the Court, only recover and realize the assets of the foreign company in Malaysia and shall, 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.

(4) 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 in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved the Registrar shall remove the name of the company from the register.

(6) 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 adaptations as are necessary, extend and apply accordingly.

(7) Section 534 shall apply to a foreign company wound up or dissolved pursuant to this section as if for references to a company there were substituted references to a foreign company.

Power of foreign companies to hold immovable property

598. Subject to and in accordance with any written law, a foreign company registered under this Subdivision shall have power to hold immovable property in Malaysia.

**DIVISION 2
ENFORCEMENT & SANCTIONS**

SUBDIVISION 1
ENFORCEMENT OF THE ACT

As to rights of witnesses to legal representation

599. Any person summoned for examination under section 486 or 487 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

600. (1) In any proceeding for negligence, default, breach of duty or breach of trust against a 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 in respect thereof, 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) Where 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) A person to whom this section applies is —
- (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

601. (1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby 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 of 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 any breach of this Act has occurred, or whereby there has been default in the observance of the constitution of the company or whereby any proceedings at or in connection with any meeting of the company or of the directors thereof or any assembly purporting to be such a meeting have been rendered ineffective including the failure to make or lodge any declaration of solvency pursuant to section 489, the Court –

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to:
 - (ii) rectify or cause to be rectified or to negative or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity; or

- (iii) to 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;
- (b) 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 thereof;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice or summons is 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 it should be given or served and whether it 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.

Privileged communications

602. (1) Nothing in this Act requires an advocate and solicitor to disclose a privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if—

- (a) it is a confidential communication, whether oral or written, passing between—
 - (i) an advocate and solicitor in his professional capacity and another legal practitioner in that capacity; or

- (ii) an advocate and solicitor in his professional capacity and his client,
whether made directly or indirectly through an agent; and
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

Disposal of shares of shareholder whose whereabouts unknown

603. (1) Where 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 one month from the date of the advertisement intends to transfer the shares to the Minister charged with responsibility for finance.

(2) If after the expiration of one month from the date of the advertisement the whereabouts of the shareholder remain unknown, 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 responsibility for finance.

(3) The Minister charged with the responsibility of finance shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(4) The Minister charged with the responsibility of finance may transfer any shares so 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 according to the provision of subsection 601(3).

Furnishing of information and particulars of shareholding

604. (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 them verified by statutory declaration.

(2) Any company, person or individual served with such notice shall within seven days of the receipt of such notice furnish the Registrar all the necessary information and particulars of any share so acquired or held and duly verified by statutory declaration.

(3) If contravention is made to this section —

(a) the company 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 default penalty of ten thousand ringgit for each day during which the offence continues after conviction; and every officer of the company and any other person or individual who is in default 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 default penalty of ten thousand ringgit for each day during which the offence continues after conviction.

Court may compel compliance

605. 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 forthwith or within such time as is allowed by the order, and for the purpose of complying with any such order a 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

606. (1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the national language or in English the corporation shall lodge at the same time with the Registrar a certified translation thereof either in the national language or in English.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the national language or in English the corporation shall keep at its registered office in Malaysia a certified translation thereof either in the national language or in English.

(3) Where 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 English, 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 by this Act to be kept.

(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 thereof in the national language.

Protection to certain officers who make disclosures

607. (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 under paragraph 280(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 nor be subject to any tribunal process, including disciplinary action for any report submitted by him under subsection (1) in good faith and in the intended performance of his duties as an officer of the company.

General penalty provisions

608. (1) A person who –
(a) does that which by or under this Act he is forbidden 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,

shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction 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 so mentioned, to a penalty not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) The penalty or punishment, pecuniary or other, set out in, or at the foot of, any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

Proceedings how and when taken

609. (1) The Registrar or any person shall not institute any proceeding for any offence against 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 against this Act.

(3) Proceedings for any offence against 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.

Compounding of offences

610. (1) The Registrar may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or its subsidiary legislation by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the Registrar an amount of money not exceeding fifty per centum of the maximum fine for that offence within such time as may be specified in the written offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Registrar may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any equipment, instrument, material, book, record, account, document or thing seized under this Act or its subsidiary legislation in connection with the offence may be released by the Registrar, subject to such terms and conditions as it thinks fit to impose in accordance with the conditions of the compound.

(4) All sums of money received by the Registrar under this section shall be paid into the fund established under section 28 of the Companies Commission of Malaysia Act 2001 [*Act 614*].

SUBDIVISION 2

GENERAL OFFENCES

False and misleading statements

611. (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 thereby making 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 upon conviction shall—

- (a) in the case of a corporation, be liable to a penalty of 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 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 thereby making the document misleading in a material respect commits an offence and shall, upon 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) Where 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

612. (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 prescribed Stock Exchange whether within or without Malaysia or an officer thereof; or
- (d) the Securities Commission established under the Securities Commission Act 1993 [Act 498],

relating to the affairs of the corporation commits an offence and shall, upon 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” includes a person who at the time the offence was committed is an officer of the corporation.

False report or statement to the Registrar

613. 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, upon 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

614. (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 to 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, upon 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, upon 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 recognize 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

615. (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, upon 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” 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

616. (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 Market 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 manner as determined by the Registrar has been advertised in one widely circulated newspaper in the national language and one widely circulated newspaper 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 reason only that he is a holder of shares 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, any prescribed Stock Exchange and the offer so 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 their being offered for sale to the public and the offer is accompanied by a document that complies with this Act and any other written law relating to prospectuses;
- (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 (in accordance with the provisions of Division 3 of Part VI of the Securities Commission Act 1993);
- (d) where the offer relates to an interest to which the Interest Schemes Act 2013 applies and is accompanied by a statement in writing as required by that Act;
- (e) to deposits or loans to a corporation of the kind referred to in section 157; 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 2013 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 2013 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, upon conviction, be liable to imprisonment for a term not exceeding ten 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 the like 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 it 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 thereof 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 2013.

(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 be construed as including an offer by means of broadcasting, television or cinematograph; but where an offer is made by means of broadcasting, television or cinematograph the prospectus by which the offer is required to be accompanied by virtue of 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) where request for a copy of a prospectus is made at that address within one month after the offer was made the person making the

request is supplied with a copy within seven days after the request was made; and

- (d) the offer contains no more information or matter than the information or matter referred to in section 162(1)(a).

Restriction on the use of words “Limited”, “Berhad” and “Sendirian”

617. (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, upon 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) A company shall not use the word “Sendirian” or “Sdn.” as part of its name if it does not fulfil the requirements required by this Act to be fulfilled by private companies.

(4) Every company and every officer of a company who is in default commits an offence and upon conviction shall be to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(4) Subject to section 63 and 64 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.

DIVISION 3

GENERAL PROVISIONS

Evidentiary value of copies certified by Registrar

618. (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 in any proceedings be admissible in evidence as of equal validity with the original document.

(2) The reference in subsection (1) to a document includes, where 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

619. In any legal proceedings—

- (a) a certificate signed and sealed by Registrar that at a date or during a period specified in the certificate, no company was registered under this Act or a corresponding previous 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 any corresponding previous law; and
- (b) a certificate signed and sealed by 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

620. (1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such forms as he 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 622;
 - (b) require a certificate 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 pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given or given and certified by the Registrar.

(3) If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to paragraph 2(a) to require the production of the original of that document or certificate.

(4) The reference in paragraph 2(c) to a document or certificate includes, where 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 where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.

Rectification of registers

621. (1) A person may apply to the Registrar for the rectification of a register if an entry in the register—
- (a) contains matter contrary to law;
 - (b) contains 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.

(3) Upon receipt of the application under subsection (1), the Registrar may—

- (a) require the applicant to produce any document or to furnish the Registrar with 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, in order for the Registrar to decide whether to approve or refuse the application.

(4) 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.

(5) On appeal by any aggrieved person by the decision of the Registrar under subsection (2), the Court may—

- (a) refuse the application; or
- (b) order the register to be rectified by the making of an entry, variation or deletion therein.

(6) Any order made by the Court under this section shall direct that the notice of the order to be served on the Registrar in the manner as determined by the Court and the Registrar shall, on receipt of the notice, rectify the register accordingly.

(11) The Registrar may, without an application being made under subsection (1), rectify the register if, in his view, an entry—

- (a) contains matter contrary to law;
- (b) contains 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

622. The Registrar may, if in his opinion it is no longer necessary or desirable to retain them, 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 them, 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

623. (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 it 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 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

624. The Registrar may, by electronic means, issue a document which is to be issued by him under this Act.

Electronic information, etc certified by Registrar admissible in evidence

625. Any information, document, a copy of or extract from any document electronically lodged with the Registrar issued by the Registrar which is certified under his hand and seal to be a true extract from any documents lodged with or submitted to the Registrar under section 623 or issued by the Registrar under section 624 shall be admissible as *prima facie* evidence of matters specified in that information, document, copy or extract.

Enforcement of duty to make returns

626. (1) If a corporation or person, having made default in complying with—

- (a) any provision of this Act or of any other law which requires the lodging or filing in any manner with the Registrar or the Official Receiver of any return, account or other document or the giving of notice to him 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 after the service on the corporation or person of a notice requiring it 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 the Official Receiver, make an order directing the corporation and any officer thereof or that person to make good the default within such time as is specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the corporation or by any officers of the corporation responsible for the default or by that person.

(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 as aforesaid.

Relodging of lost or destroyed documents

627. (1) 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, he 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, within fourteen days after the service of the notice under subsection (1) or such longer period as the Registrar may allow, comply with the direction of the Registrar.

(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) If default is made in complying with the direction of the Registrar under subsection (1), the corporation and any officer of the corporation who is in default commit an offence and shall, upon 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 to make regulations

628. (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 deems fit;
 - (b) the manner in which the Registrar may deal with the property vested in him under section 564; and
 - (c) 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.

Exemption

629. (1) The Minister may, upon the recommendation of the Commission, by order exempt any 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 the corporation or class of corporations in order for him to be satisfied with the application; and
 - (c) impose any terms and conditions that he deems fit.

Rules

630. The Rules Committee constituted under the Courts of Judicature Act 1964 [Act 97], may, subject to and in accordance with the provisions of that Act relating to the making of rules, make rules—

- (a) with respect to 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

631. The Minister may, by order published in the *Gazette*, vary, delete, add to, substitute or otherwise amend all the Schedules to this Act.

SCHEDULES

FIRST SCHEDULE

(Section 152(2)(b))

Exempted Offers

Subdivision 9 shall not be applicable to an offer for shares or debentures, whether or not they have been previously issued, made to the following persons who or which, pursuant to the offer, acquires the shares or debentures as principal, trustee, agent for accounts fully managed by him or it who, for the purpose of this section, shall be deemed to be dealing as a principal—

1. A prescribed corporation;
2. An insured company registered under any written law relating to insurance companies;
3. A trustee corporation;
4. A statutory body established by an Act of Parliament or an Enactment of any State;
5. A pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967 [*Act 53*];
6. A unit trust scheme as defined under the Capital Markets Services Act 2007;
7. A person holding a Capital Markets Services Licence issued under the Capital Markets and Services Act 2007;
8. A corporation incorporated outside of Malaysia;
9. A public company which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profits and not for the purpose of exercising control; and
10. Such other persons as the Minister may, by order published in the Gazette, declare to be exempt purchasers.

SECOND SCHEDULE
(Section 158)
Form and Contents of Prospectus

Part I
General

1. A prospectus shall be printed in type of a size not less 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.

Part II
Matters to be Stated

3. To state that a copy of the prospectus has been lodged with and registered by the Registrar.
4. Immediately after the statement at paragraph 3, to 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 requires) 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 the prospectus contains any statement made by a person whose consent is required under section 159, to 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. The prospectus shall not contain the name of any person as a trustee for holders of debentures 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 as prescribed of the consent has been lodged with the Registrar, shall, where the prospectus offers shares in or debentures of a foreign company incorporated or to be incorporated, in addition contain particulars with respect to –

- (i) the instrument constituting or defining the constitution of the company;
- (ii) 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;
- (iii) an address in Malaysia where the instrument, enactments or provisions or certified copies thereof may be inspected;
- (iv) the date on which and the place where the company was or is to be incorporated; and
- (v) whether the company has established a place of business in Malaysia and, if so, the address of its principal office in Malaysia.

8. The information to be included in a prospectus must be within the knowledge of directors, promoters, principal advisers, auditors, advocates, valuers and other professional advisers/experts or any other persons names in the prospectus, the following should be considered:

- (a) The nature of the business of the issuer;
- (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 e for or purchase, securities is to be made, are the holders of securities in the issuer and, if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of the stock exchange, if applicable, or otherwise.

9. 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.

10. An issuer and its principal adviser must furnish any other documents or information, as requested by the Registrar.

THIRD SCHEDULE

(Section 188)

Statement In Lieu of Prospectus

PART I

*Statement in Lieu of Prospectus lodged for Registration
by [insert name of the 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 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 fully paid RM 2. shares upon which RM per share credited as paid
The consideration for the issue or intended issue of those shares and debentures	3. debentures RM 4. Consideration:
Number, description, and amount of any shares or debentures which any person of RM 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	1. shares of RM and debentures

offering them for sale

Period during which option is exercisable

2. Until

Price to be paid for shares or debentures

3. RM

subscribed for or acquired under option

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 payable (in cash or shares or debentures) for any such property, specifying amount, if any, paid or payable for goodwill

Total purchase RM
price

Cash	RM
Shares	RM
Debentures	RM
Goodwill	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

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 thereof or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, 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 thereof 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 of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the company or if he has a beneficial interest in shares or debentures in a corporation which is by virtue of section 6 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 up.

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 thereof or in connection therewith 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 requires, 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 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 up.

(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 deal as aforesaid 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) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by subparagraph (2), and, in addition, deal as aforesaid 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 as respects 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 therefor should be furnished.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing)

Date:

FOURTH SCHEDULE

(Section 228)

Proceedings of the Board of a Company

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) Where no chairperson is elected, or where at a 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 their number to be chairperson of the meeting.

Notice of meeting

- (1) 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 this paragraph.
- (2) 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.
- (3) An irregularity in the notice of a meeting is waived where all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or where all directors entitled to receive notice of the meeting agree to the waiver.

Methods of holding meetings

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

- (1) 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.
- (2) No business may be transacted at a meeting of directors if a quorum is not present.

Voting

- (1) Every director has one vote.
- (2) The chairperson shall have a casting vote.
- (3) 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.
- (4) 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 against the resolution at the meeting.

Minutes

The Board shall ensure that minutes are kept of all proceedings at meetings of the Board.

Resolution passed at adjourned meetings

Where a resolution is passed at an adjourned meeting of the Board, the resolution shall for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Resolution in writing

- (1) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (2) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- (3) A copy of any such resolution shall be entered in the minute book of Board proceedings.

Other proceedings

Except as provided in this Schedule, the Board may regulate its own proceedings.

FIFTH SCHEDULE

(Section 235)

Qualification of a secretary

The approved prescribed bodies by the Minister for the purposes of section 235(a) are as follows:

- (a) Malaysian Institute of Chartered Secretaries and Administrators; or
- (b) Malaysian Institute of Accountants; or
- (c) Malaysian Bar; or
- (d) Malaysian Association of Company Secretaries; or
- (e) Malaysian Institute of Certified Public Accountants; or
- (f) Sabah Law Association; or
- (g) Advocates Association of Sarawak,

**SIXTH SCHEDULE
(Section 249)**

Contents of Directors' Report

- (1) Each report to which section 248 relates, shall state with appropriate 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 — the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount of debentures of each class, and the terms of issue of the shares and debentures of each class;
 - (d) whether at the end of that financial year—
 - (i) there subsist arrangements to which the company is a party, being arrangements with the object or 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 in pursuance of the arrangements;
 - (e) in respect of each person who, at the end of the financial year, was a director of the company—
 - (ii) 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 such body corporate and, if he was so interested, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested;

- (iii) 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 (specifying it) 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
- (iv) 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 amounts 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 profit and loss account and balance sheet were made out) 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 profit and loss account and balance sheet were made out) have taken reasonable steps to ensure that any current assets which were unlikely to be realized in the ordinary course of business including their value as shown in the accounting records of the company have been written down to an amount which they might be expected so to realize;
- (j) whether at the date of the report the directors are aware of any circumstances—
 - (ii) which would render the values attributed to current assets in the accounts misleading; and
 - (iii) which have arisen which 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—
 - (ii) 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
 - (iii) any contingent liability which has arisen since the end of the financial year and, if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect thereof;
- (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 thereof, 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 prescribed in the Schedule from time to time.

(2) The report shall state, in respect of directors or past directors of the company, the amounts of:

- (a) fees and other emoluments (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 the aforesaid total but shall be shown separately whether by way of note or otherwise; and

- (b) by way of 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 the director or past director of the company.

(3) The directors of a company shall state in the report whether a director of the company 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 emoluments 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 in a note as a statement annexed to, the company's accounts laid before the company at its annual general meeting 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.

(5) 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.

(6) There shall be clearly stated 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 of, 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.

(7) 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.

(8) There 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.

(9) 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.

**SEVENTH SCHEDULE
(Section 380)**

Powers of receiver or receiver and manager

1. Subject to the provisions of this Schedule, a receiver of property of a company has power 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's powers in any way, a receiver of property of a 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 was appointed –
 - (a) to enter into possession and take control of property of the company in accordance with the terms of that order or instrument;
 - (b) to lease, let on hire or dispose of property of the company;
 - (c) to grant options over property of the company on such conditions as the receiver thinks fit;
 - (d) to borrow money on the security of property of the company;
 - (e) to insure property of the company;
 - (f) to repair, renew or enlarge property of the company;
 - (g) to convert 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 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, a 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;
 - (t) to appoint an agent to do any business that the receiver 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 therewith, 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 of powers in relation to property of a 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, to property of a company is, unless the contrary intention appears, a reference to the property of the company in relation to which the receiver was appointed.

**EIGHTH SCHEDULE
(Section 401(4))**

Powers of judicial manager

The judicial manager may exercise all or any of the following powers:

- (a) power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient;
- (b) power to sell or otherwise dispose of the property of the company by public auction or private contract;
- (c) power to borrow money and grant security therefor over the property of the company;
- (d) power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;
- (e) power to bring or defend any action or other legal proceedings in the name and on behalf of the company;
- (f) power to refer to arbitration any question affecting the company;
- (g) power to effect and maintain insurances in respect of the business and property of the company;
- (h) power to use the company's seal;
- (i) power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;
- (j) power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company;
- (k) power 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) power 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) power to make any payment which is necessary or incidental to the performance of his functions;
- (n) power to carry on the business of the company;
- (o) power to establish subsidiaries of the company;
- (p) power to transfer to subsidiaries of the company the whole or any part of the business and property of the company;
- (q) power 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) power to make any arrangement or compromise on behalf of the company;
- (s) power to call up any uncalled capital of the company;
- (t) power 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) power to make or defend an application for the winding up of a company;
- (v) power to do all other things incidental to the exercise of the foregoing powers.

**NINTH SCHEDULE
(Section 420(3))**

Moratorium for Corporate Voluntary Arrangement

Duration of moratorium and its extension

- (1) A moratorium in a voluntary arrangement commences automatically from the time of filing of documents in Court as required under section 421.
- (2) A moratorium shall, remain in force for a period of 28 days from the time it commences in pursuance to paragraph (1) but a meeting summoned under paragraph (3) may, subject to consent given by the nominee and members of the company; and obtaining 75% majority in value of creditors, present and voting either in person or by proxy at the meeting, extend this period for not more than 60 days.
- (3) At any meeting where it is proposed to extends the moratorium, before a decision is taken with respect of that proposal, the nominee shall inform the meeting of actions he has taken in order to comply with his duty under Ninth Schedule and the costs 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.
- (4) A moratorium shall end at the end of the day of the meeting on which the meeting summoned, unless it is extended under paragraph (2).
- (5) If a moratorium is extended under paragraph (2), it shall end at the end of the day to which it is extended.
- (6) If the nominee fails to summon any meeting within the period of 28 days as required under paragraph (2), the moratorium ends at the last day of that period.
- (7) A moratorium shall come to an end if a nominee withdraws his consent to act in pursuance to Ninth Schedule of this Act.

Notification of commencement of moratorium

- (1) The directors of a company shall, within seven days, after the commencement of moratorium, notify the nominee of that fact.
- (2) After being notified in pursuance to subsection (1), the nominee shall, within seven days of the commencement of moratorium period advertise the fact in the website of the Commission and in a Bahasa Melayu or an English local daily newspaper; and notify the Registrar, the company and any petitioning creditor of the company of whose claim he is aware of the fact.
- (3) For the purpose 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

- (1) A nominee shall, within 7 days after a moratorium comes to an end, advertise the fact in the website of the Commission and in a Bahasa Melayu or an English local daily newspaper; and notify the Court, the Registrar, the company and any creditor of the company of whose claim he is aware of the fact.

Moratorium committee

- (1) A moratorium committee may, with the consent of the nominee, be established in pursuance to a meeting to extend the period of moratorium under section 408, to exercise the functions conferred on it by the meeting.
- (2) The meeting under paragraph (1) shall approve an estimate expenses to be incurred by the committee in the exercise of the proposed functions

- (3) Any expenses, not exceeding the amount of the estimate under subsection (2), incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.
- (4) The committee shall cease to exist when the moratorium comes to an end.

Effects of moratorium

- (1) During the period for which a moratorium is in force for a company of moratorium —
- (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 (where the court gives leave) to 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 1 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.

(2) Notwithstanding paragraph (1) a secured creditor may appoint receiver to deal with the charged property of a company.

Company invoices, etc.

(1) Every invoice, order for goods or business letter or order form, whether in hard copy, electronic or any other form, which, at a time when a moratorium is in force in relation to a company, is issued by or on behalf of the company, and the company's website, shall contain the nominee's name and a statement that a moratorium is in force for the company

**TENTH SCHEDULE
(Section 418)**

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 to it during the remainder of the moratorium to enable it to continue to carry on its business.
- (2) The nominee may request from the directors and the directors shall submit to the nominee, any information necessary to enable him 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 paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of 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 to it during the remainder of the moratorium to enable it to continue on its business,
 - (b) he becomes aware that, on the date of filing of documents under section 421, the company was not eligible for a moratorium; or
 - (c) the directors fail to comply with their duty under paragraph (2),
- (6) The Court may on an application by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died; or on application by the directors or the nominee in a case where it is impracticable or

inappropriate for the nominee to continue to act, direct that the nominee be replaced by another person qualified to act as a nominee in relation to the voluntary arrangement.

(7) A person may only be appointed as a replacement nominee under this Schedule if he submits to the Court a statement indicating his consent to act.

ELEVENTH SCHEDULE

(Section 468)

Powers of Liquidator in Winding Up by Court

PART I

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 thereof, 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 section 534 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 whereby 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 thereof; 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 it exceeds ten thousand ringgit.

- (2) The liquidator may apply to Court or the committee of inspection for the authority given for the purpose of paragraph (1)(e) without additional approval provided that the debts referred to in that paragraph does not exceed fifty thousand ringgit.

PART II

POWERS EXERCISABLE WITHOUT AUTHORITY

The liquidator may—

- (a) bring or defend any action or other legal proceeding 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 it 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 thereof 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 himself;

- (i) appoint an agent to do any business which the liquidator is unable to do himself;
- (j) appoint an advocate to assist him in his duties; and
- (k) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

**TWELVETH SCHEDULE
(Section 580(2))**

Schedule of activities not regarded as carrying on business

A foreign company shall not be regarded as carrying on business within Malaysia for the reason only that within Malaysia it—

- (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) import goods only temporarily pursuant to 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.

APPENDIX 1:

MEMBERS OF THE CORPORATE LAW REFORM COMMITTEE (CLRC)

The members of the Corporate Law Reform Committee comprised of representatives from the public sector, legal and accounting fraternity, regulatory authorities as well as secretarial practitioners and academicians.

The Members of the CLRC (2004 – 2008):

- *Y. Bhg. Dato' K.C. Vohrah (Chairman)
(Consultant/Former Court of Appeal Judge)*
- *Y. Bhg. Datuk Dr. Abdul Samad bin Hj. Alias
(Chartered Accountant)*
- *Y. Bhg. Dato' Loh Siew Cheang
(Advocate & Solicitor)*
- *Y. Bhg. Datuk Simon Shim Kong Yip (w.e.f. 1 October 2005)
(Advocate & Solicitor)*
- *Y. A. Tuan Abdul Alim Abdullah (5 January 2004 - 31 August 2005)
(Former Chief Executive Officer, Companies Commission of Malaysia)*
- *Y. Bhg. Datuk Abdul Karim Abdul Jalil (w.e.f. 1 November 2005)
(Chief Executive Officer, Companies Commission of Malaysia)*
- *En. Khoo Beng Chit (ex-officio)
(Deputy Chief Executive Officer (Operations), Companies Commission of Malaysia)*

EXPOSURE DRAFT AS AT 2 JULY 2013

- Y. Bhg. Datuk Dr. Nik Ramlah Nik Mahmood
(Representative of the Securities Commission)
- En. Peter Lee Siew Choong
(Advocate & Solicitor)
- En. Cheong Kee Fong
(Advocate & Solicitor)
- Y. Bhg. Dato' Charon Wardini Mokhzani
(Deputy Chief Executive, CIMB Investment Bank Berhad)
- En. Eric Kang Shew Meng
(Company Secretary Practitioner)
- En. Philip Koh Tong Ngee
(Advocate & Solicitor)
- En. Lim Tian Huat
(Chartered Accountant)
- Puan Selvarany Rasiah
(Representative of Bursa Malaysia Securities Berhad)
- Prof. Dr. Khaw Lake Tee
(University Malaya)
- Prof. Dr. Aishah Bidin
(University Kebangsaan Malaysia)
- Puan See Mee Chun (w.e.f. 17 October 2005)
(Representative from the Attorney General's Office)
- Puan Rozielawaty Ab Ghani (w.e.f. 21 March 2008)
(Representative of the Prime Minister's Department)
- Y. A. Dato' Hue Siew Kheng (5 January 2004 - 30 September 2005)
(Representative from the Attorney General's Office)
- En. Ahmad Azhari Abd. Hamid (15 August 2006 - 21 March 2008)

EXPOSURE DRAFT AS AT 2 JULY 2013

(Representative from the Prime Minister's Department)

- En. Mat Ghani bin Abdullah (26 November 2004 - 15 August 2006)
(Representative from the Prime Minister's Department)
- Tuan Aslam Zainuddin (13 July 2004 - 29 November 2007)
(Representative of the Prime Minister's Department)
- Puan Fajrul Shihar Abu Samah (w.e.f. 29 November 2007)
(Representative of the Insolvency Department)
- Puan Rohatul Akmar Abdullah (5 January 2004 - 13 July 2004)
(Representative from the Prime Minister's Department)
- En. Jeswant Singh (5 January 2004 - 13 July 2004)
(Representative from the Prime Minister's Department)

(a) MEMBERS OF WORKING GROUP A

Y. Bhg. Dato' Charon Wardini Mokhzani (Chairman)
Y. Bhg. Datuk Dr. Abdul Samad bin Hj. Alias
Y. A. Tuan Abdul Alim Abdullah
En. Cheong Kee Fong
En. Eric Kang Shew Meng
Prof. Dr. Khaw Lake Tee
Dr. Nordin Mohd Zain

(b) MEMBERS OF WORKING GROUP B

En. Peter Lee Siew Choong (Chairman)
En. Eric Kang Shew Meng
Puan Selvarany Rasiah
Y. Bhg. Dato' Loh Siew Cheang
Y. Bhg. Datuk Dr. Nik Ramlah Nik Mahmood
Dr. Nordin Mohd Zain
Puan Pushpa Rajadurai @ Rania Moothathamby
Puan Yew Yee Tee
Puan Shanti Geoffrey
En. Lim Tiang Siew
Puan Geetha Sivapathasundram
En. Andy Tan Chee Kiong
En. Anil Joshi

(c) MEMBERS OF WORKING GROUP C

Y. Bhg. Datuk Dr. Nik Ramlah Nik Mahmood
(Chairperson)
Y. Bhg. Dato' Loh Siew Cheang
Y. Bhg. Datuk Simon Shim Kong Yip

Y.Bhg. Prof. Dato' Dr. Aishah Bidin
Y. A. Dato' Hue Siew Kheng
Y. Bhg. Dato' Ahmad Johan Mohammad Raslan
En. Peter Lee Siew Choong
En. Philip Koh Tong Ngee
Puan Selvarany Rasiah
Puan See Mee Chun
En. Peter Ling Sie Wuong
Puan Shanti Geoffrey
En. Anil Joshi
Puan Yew Yee Tee

(d) MEMBERS OF WORKING GROUP D

En. Lim Tian Huat (Chairman)
Y.Bhg. Prof. Dato' Dr. Aishah Bidin
Puan Yap Wai Fun
En. Jimmy Ng
En. Ng Chih Kaye
En. Ng Pyak Yeow
En. Lim San Peen
Puan Wong Chee Lin
Tuan Aslam Zainuddin
En. Mat Ghani bin Abdullah
En. Jeswant Singh

(e) MEMBERS OF WORKING GROUP E

Y. Bhg. Datuk Dr Abdul Samad Hj. Alias (Chairman)

Y. Bhg. Datuk Dr Nik Ramlah Nik Mahmood

Y. Bhg. Dato' Charon Wardini Mokhzani

En. Peter Lee Siew Choong

En. Lim Tian Huat

En. Cheong Kee Fong

En. Eric Kang Shew Meng

Prof. Dr. Aishah Bidin

En. Philip Koh Tong Ngee

Puan Shanti Geoffrey

En. Anil Joshi

(f) MEMBERS OF THE SECRETARIAT

Assoc. Prof. Dr. Aiman Nariman Mohd Sulaiman
(Consultant)

Puan Nor Azimah Abdul Aziz

Puan Norhaslinda Salleh

En. Anil Joshi (August 2004-July 2005)

Puan Norhaiza Jemon

Puan Sapiah Ambo

Cik Marina Nathan

Puan Sarazin Sheikh Mustafa (February 2005 - June
2006)

APPENDIX 2:

MEMBERS OF THE ACCOUNTING ISSUES CONSULTATIVE COMMITTEE (AICC)

The Accounting Issues Consultative Committee members comprised of representatives from the accounting fraternity, regulatory authorities as well as practitioners and academicians.

The Members of the AICC:

- Pn Zahrah Abd Wahab Fenner
(SSM) (Chairperson)
- Mr Liew Kim Yuen
(Securities Commission (SC))
- En Mohammad Faiz Azmi
(Malaysian Accounting Standards Board (MASB))
- Mr Ch'ng Boon Huat
(Bursa Malaysia Securities Berhad (Bursa))
- Assoc. Prof. Dr S. Susela Devi
(University of Malaya (UM))
- Dr Junaid M Shaikh
(Curtin University of Technology, Sarawak)
- Ms Rachel Chee Yoke Kuan
(Malaysian Institute of Accountants (MIA))
- Ms Ng Mi Li
(Malaysian Institute of Certified Public Accountants (MICPA))
- En Jamil Busrah
(Perbadanan Nasional Berhad (PNB))
- Ms Katina Tan Yee Shan

(Khazanah Nasional Berhad (Khazanah))

- Mr Lai Kor Foong
(SSM)
- Ms Toh Kay Hong
(SSM)
- Mr Sivam Rajagopal
(SSM)
- En Iskandar Zulkarnain Khalid
(SSM)
- Pn Norhaiza Jemon
(SSM)

As the areas of review of the AICC were wide ranging, 4 Sub-Committees were set up to undertake the review exercise on:

(g) Sub-Committee on Ninth Schedule

Ms Ng Mi Li (MICPA) (Chairman)
Ms Rachel Chee Yoke Kuan (MIA)
En Mohammad Faiz Azmi (MASB)
En Jamil Busrah (PNB)
Mr Sivam Rajagopal (SSM)
Ms Toh Kay Hong (SSM)

(h) Sub Committee on Directors' Report

Ms Katina Tan Yee Shan (Khazanah) (Chairman)
Ms Ng Mi Li (MICPA)
Ms Rachel Chee Yoke Kuan (MIA)
En Mohammad Faiz Azmi (MASB)
En Jamil Busrah (PNB)
Mr Sivam Rajagopal (SSM)
Ms Toh Kay Hong (SSM)

(i) Sub Committee on Dividend Payment

Assoc. Prof. Dr S. Susela Devi (UM) (Chairman)

Ms Ng Mi Li (MICPA)

Ms Rachel Chee Yoke Kuan (MIA)

En Mohammad Faiz Azmi (MASB)

Mr Liew Kim Yuen (SC)

Mr Ch'ng Boon Huat (Bursa)

Pn Norhaiza Jemon (SSM)

(j) Sub Committee on Other Accounting Provisions

Dr Junaid M Shaikh (Curtin) (Chairman)

Ms Ng Mi Li (MICPA)

Ms Rachel Chee Yoke Kuan (MIA)

Mr Liew Kim Yuen (SC)

En Iskandar Zulkarnain Khalid (SSM)

