



# **LAWS OF MALAYSIA**

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**REPRINT**

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**Act 125**

## **COMPANIES ACT 1965**

*Incorporating all amendments up to 1 January 2006*

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**COMPANIES ACT 1965**

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# LAWS OF MALAYSIA

## Act 125

### COMPANIES ACT 1965

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**LAWS OF MALAYSIA****Act 125****COMPANIES ACT 1965**

An Act relating to companies.

[*Throughout Malaysia—  
15 April 1966, P.U. 168/1966*]

**PART I****PRELIMINARY****Short title**

1. (1) This Act may be cited as the Companies Act 1965.  
(2) (*Omitted*).
2. (*Omitted*).

**Repeals**

3. (1) The written laws mentioned in the First Schedule to the extent to which they are therein expressed to be repealed or amended are hereby repealed or amended accordingly.

**Transitory provisions**

- (2) Unless the contrary intention appears in this Act—
  - (a) all persons, things and circumstances appointed or created by or under any of the repealed or amended written laws or existing or continuing under any of such written laws immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if those written laws had not been so repealed or amended; and

(b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status, operation or effect of any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired by or under any of such written laws before the commencement of this Act.

(3) Nothing in this Act shall affect the Table in any repealed written law corresponding to Table A of the Fourth Schedule or any part thereof (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding Table in any former written law relating to companies (either as originally enacted or as so altered) so far as the same applies to any company existing at the commencement of this Act.

(4) The provisions of this Act with respect to winding up other than Subdivision (5) of Division 4 of Part X shall not apply to any company or society of which the winding up has commenced before the commencement of this Act, but every such company or society shall be wound up in the same manner and with the same incidents as if this Act had not been passed and for the purposes of the winding up the written laws under which the winding up commenced shall be deemed to remain in full force.

(5) Paragraphs 9(1)(c) and (d) shall not apply to any person in relation to a private company until the conclusion of the next annual general meeting held after the commencement of this Act if he was appointed as auditor of that company before the commencement of this Act.

## **Interpretation**

**4.** (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;

“accounts” means profit and loss accounts and balance sheets and includes notes or statements required by this Act (other than auditors’ reports or directors’ reports) and attached or intended to be read with profit and loss accounts or balance sheets;

“annual general meeting” in relation to a company means a meeting of the company required to be held by section 143;

“annual return” means—

- (a) in relation to a company having a share capital, the return required to be made by subsection 165(1); and
- (b) in relation to a company not having a share capital, the return required to be made by subsection 165(5),

and includes any document accompanying the return;

“appointed date” has the same meaning as is assigned to that expression in the Companies Commission of Malaysia Act 2001 [Act 614];

“approved company auditor” means a person approved as such by the Minister under section 8 whose approval has not been revoked;

“approved liquidator” means an approved company auditor who has been approved by the Minister under section 8 as a liquidator and whose approval has not been revoked;

“articles” means articles of association;

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

“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 Division 4 of Part IV;

“branch register” means—

(a) in relation to a company—

- (i) a branch register of members of the company kept in pursuance of section 164; or
- (ii) a branch register of holders of debentures kept in pursuance of section 70,

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 342;

“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;

“company” means a company incorporated pursuant to this Act or pursuant to any corresponding previous enactment;

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

“company limited by guarantee” means a company formed on the principle of having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

“company limited by shares” means a company formed on the principle of having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

“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 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;

“creditors’ voluntary winding up” means a winding up under Division 3 of Part X, other than a members’ voluntary 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;

“default penalty” means a default penalty within the meaning of section 370;

“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 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” includes summons, order and other legal process, and notice and register;

“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 none of whom is a corporation;

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

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

“financial year”, in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting 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;

“limited company” means a company limited by shares or by guarantee or both by shares and guarantee;

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

“lodged” means lodged 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;

“marketable securities” means debentures, funds, stocks, shares or bonds of any Government or of any local authority or of any corporation or society and includes any right or option in respect of shares in any corporation and any interest as defined in section 84;

“members’ voluntary winding up” means a winding up under Division 3 of Part X, where a declaration has been made and lodged in pursuance of section 257;

“memorandum” means memorandum of association;

“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 in pursuance of paragraph 4(a) of the Fifth 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;

“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;

“officer” in relation to a corporation includes—

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

but does not include—

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

“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 at a general meeting 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 158;

“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 by virtue of section 15; or
- (c) any company converted into a private company pursuant to section 26(1),

being a company which has not ceased to be a private company under section 26 or 27;

“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 Securities Commission Act 1993, 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 designated under subsection 7(1);

“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 254;

“rules” means rules of court;

“securities” has the same meaning as is assigned to that word in the Securities Commission Act 1993;

“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 meeting” means the meeting referred to in section 142;

“statutory report” means the report referred to in section 142;

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

“Table A” means Table A in the Fourth Schedule;

“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;

“unlimited company” means a company formed on the principle of having no limit placed on the liability of its members;

“unlisted recreational club” has the same meaning as is assigned to that expression in the Securities Commission Act 1993;

“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.

(1A) In this Act—

- (a) “licensed bank”, “licensed business”, “licensed discount house”, “licensed finance company”, “licensed institution”, “licensed merchant bank”, “licensed money broker”, “non-scheduled institution”, “scheduled business” and “scheduled institution” shall have the meanings assigned thereto in subsection 2(1) of the Banking and Financial Institutions Act 1989 [*Act 372*]; and
- (b) “Islamic bank” or “Islamic banking business” shall have the meaning assigned thereto in the Islamic Banking Act 1983 [*Act 276*].

(2) For the purposes of this Act 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) For the purposes of this Act 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) For the purposes of this Act 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) For the purposes of this Act 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 acknowledgement of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture, but an invitation to the public

by a prescribed corporation as defined in subsection 38(7) 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 Division 4 of Part IV.

(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 46 of the Securities Commission Act 1993 applies; or
- (d) made to existing members of a company within the meaning of section 270 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.

(8) (*Deleted by Act A21*).

**Definition of subsidiary and holding company**

5. (1) For the purposes of this Act, 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, 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 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**

**5A.** For the purposes of this Act, 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**

**5B.** For the purposes of this Act, 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**

**6A.** (1) The following subsections have effect for the purposes of Division 3A of Part IV, sections 134 and 135.

(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 (being a right or an interest described in the definition of “interest” in section 84) was issued or offered to the public for subscription or purchase;
- (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 within the meaning of section 84; or
- (d) such a right is a right which has been prescribed by the Minister, after consultation with the Minister of 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

### ADMINISTRATION OF ACT

#### **Registrar of Companies, etc.**

7. (1) The Chief Executive Officer of the Commission shall be the Registrar of Companies.

(1A) The Commission may appoint, on such terms and conditions as it may determine, from amongst persons in the employment of the Commission such number of Regional Registrars, Deputy Registrars, Assistant Registrars, clerks and servants for the proper administration of this Act, and may revoke the appointment of any person so appointed or deemed to have been so appointed under subsection (1B).

(1B) The persons holding office as Regional Registrars, Deputy Registrars, Assistant Registrars, clerks and servants under this Act before the appointed date who were given an option by the Government of Malaysia and have opted to serve as employees of the Commission shall, on the appointed date, be deemed to have been appointed Regional Registrars, Deputy Registrars, Assistant Registrars, clerks and servants by the Commission.

(2) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorized or required to be done or signed by the Registrar may be done or signed by any Regional, Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(3) No person dealing with any Regional, Deputy or Assistant Registrar shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Regional Deputy or Assistant Registrar so far as it affects any such person shall be as valid and effectual as if done or omitted by the Registrar.

### **Certain signatures to be judicially noticed**

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar and of any Regional, Deputy or Assistant Registrar.

(5)-(10) (*Deleted by Act A836*).

### **Power to call for information**

(11) (a) The Registrar may require any corporation or person to give orally or may by notice under his hand require any corporation or person to give in writing within a time specified in the notice all such information in his possession or within his knowledge as may be required of it or him by the Registrar for the purposes of this Act.

(b) Any corporation or person who fails to supply any information, or who in supplying any information makes any statement which he knows to be false in material particular, or recklessly makes such statement, shall be guilty of an offence.

Penalty: Two thousand ringgit. Default penalty.

(12) For the purposes of this Act, any notice, letter or document sent by ordinary or registered post shall be deemed to have been served on the person, corporation or firm to whom it is addressed, on the day succeeding the day on which the notice, letter or document would have been received in the ordinary course of post if—

(a) in the case of a corporation or firm it is addressed to its last known registered office;

(b) in the case of a person, it is addressed to his last known address.

(13) Neither the Registrar nor any person appointed by the Commission under subsection (1A) or deemed to have been appointed under subsection (1B) shall be liable to be sued in any court for any act or matter done or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power or performance of any duty, conferred or imposed on him by or under this Act.

### **Fees**

(14) Subject to section 7A, there shall be paid to the Registrar—

- (a) the fees specified in the Second Schedule; and
- (b) such other fees as are prescribed,

and such fees shall be collected by the Registrar in such manner as the Minister may, from time to time, direct.

### **Power of Minister to exempt from payment of fees**

**7A.** The Minister may, by order published in the *Gazette*, exempt any statutory body or government agency from paying any or all of the fees specified in the Second Schedule or prescribed under this Act.

### **Power to conduct inspection**

**7B.** (1) For the purpose of ascertaining whether a corporation or any officer of a corporation is complying with this Act, the Registrar may have access to any place or building and may inspect and make copies of or take extracts from any book, minute book, register or document required by or under this Act to be kept by the corporation.

(2) For the purposes of this section, the Registrar may by notice in writing require any officer of a corporation or any person to produce to him such books, registers or documents as are in the custody or under the control of that officer or person.

(3) A corporation which, any officer of the corporation or any person who—

- (a) fails to produce any such books, registers or documents as required by the Registrar under this section; or

- (b) obstructs or hinders the Registrar while exercising any of the powers under this section,

shall be guilty of an offence against this Act.

Penalty: Imprisonment for three years or ten thousand ringgit or both.

(4) The Registrar, except for the purposes of this Act, or in the course of any criminal proceedings, shall not make a record of, or divulge or communicate to any other person, any information which he has acquired by reason of such inspection.

(5) Subsection (1) shall not be construed as limiting or affecting any power to make any such inspection conferred on any person by any other law.

### **Power to conduct investigation**

7c. (1) Where the Registrar has reason to suspect that a person has committed an offence against this Act, he may make such investigation as he thinks expedient for the due administration of this Act.

(2) Whenever it appears to any Magistrate upon written information and after such enquiry as he thinks necessary, that there is reasonable cause to believe that in any place or building there is any object, article, material, thing, accounts, book or other document including any travel or other personal document, which may be used as evidence of the commission of an offence against this Act, he may by warrant empower the Registrar to enter the place or building, by force if necessary, and there to search for, seize, take possession of and detain any such object, article, material, thing, accounts, book or other document.

(3) Whenever it appears to the Registrar that there is reasonable cause to believe that in any place or building there is concealed or deposited any object, article, material, thing, accounts, book or other document including any travel or other personal document which may be used as evidence of the commission of an offence against this Act, and the Registrar has reasonable grounds for believing that by reason of the delay in obtaining a search warrant, such object, article, material, thing, accounts, book or other document may be interfered with or destroyed or the object of the search is

likely to be frustrated, he may in respect of the place or building exercise all the powers mentioned in subsection (2) in as full and ample measure as if he were empowered to do so by warrant issued under that subsection.

(4) The Registrar may grant permission to any person to inspect any accounts, book or other document seized and taken possession of by the Registrar during the course of an investigation under this Act if such person is entitled to inspect such accounts, book or document under this Act.

### **Power to call for examination**

**7D.** (1) For the purpose of any investigation under section 7C, the Registrar may by notice in writing require any person supposed to be acquainted with the facts and circumstances of the case to appear before him and to be examined orally and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be legally bound to answer all questions relating to such case put to him by the Registrar and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

(3) A statement made by any person under this section shall be taken down in writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish:

Provided that where the person examined refuses to sign or affix his thumb print on the statement, the Registrar shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

(4) Any statement made and recorded under this section shall be admissible as evidence in any proceedings under this Act in any court, either against the person who made it or any other person.

(5) Any person who—

(a) without reasonable excuse fails to appear before the Registrar as required under subsection (1);

- (b) without reasonable excuse refuses to answer all questions put to him by the Registrar as required by subsection (2); or
- (c) knowingly furnishes to the Registrar information or statement that is false or misleading in a material particular,

shall be guilty of an offence against this Act.

Penalty: Imprisonment for five years or thirty thousand ringgit or both.

### **Company auditors and liquidators to be approved by Minister charged with responsibility for finance**

8. (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 approved company auditor may apply to the Minister charged with 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) 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.

(5) Every approval under this section including a renewal of approval of a company auditor or liquidator 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.

(6) A person who immediately before the commencement of this Act was authorized pursuant to any corresponding previous written law to be an auditor of companies shall be deemed to have

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\*NOTE—Provided that any approval or renewal of approval in force immediately before the coming into operation of Act A616 shall continue in force until it expires or is sooner revoked by the Minister.

been approved as a company auditor under this section on the date of the commencement of this Act but if such person's approval was limited or conditional those limitations and conditions shall continue to apply.

(7) 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.

(8) 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 Yang di-Pertuan Agong who may in his discretion confirm, reverse or vary the decision.

### **Company auditors**

**9.** (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.

Penalty: \*Thirty thousand ringgit.

(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 of 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 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 paragraph (1)(b), (c) or (d) from acting as the auditor of the company.

(5) If a firm contravenes subsection (4) each partner of the firm shall be guilty of an offence.

Penalty: \*Thirty thousand ringgit.

(6) 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.

(7) 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.

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\*NOTE—Previously “two thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836].



**Disqualification of liquidators**

**10.** (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 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; 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 three months or more.

Penalty: \*Thirty thousand ringgit.

(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 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.

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\*NOTE—Previously “two thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836].

(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 twenty-four 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 affect any appointment of a liquidator made before the commencement of this Act.

## **Registers**

**11.** (1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such forms as he thinks fit.

## **Inspection of register**

(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 subsection (11);
- (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