

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.

Evidentiary value of copies certified by Registrar

(5) A copy of or extract from any document filed or lodged at the office of the Registrar certified to be a true copy or extract under the hand and seal of the Registrar shall in any proceedings be admissible in evidence as of equal validity with the original document.

(6) The reference in subsection (5) 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

(7) In any legal proceedings—

- (a) a certificate under the hand and seal of the 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 received 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 under the hand and seal of the Registrar that a requirement of this Act specified in the certificate—
 - (i) had or had not been complied with at a date or within a period specified in the certificate; or
 - (ii) had been complied with at a date specified in the certificate but not before that date,

shall be received as *prima facie* evidence of matters specified in the certificate.

(8) If the Registrar is of the opinion that a document lodged or registered with him—

- (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;
- (d) does not comply with the requirements of this Act; or
- (e) contains an error, alteration or erasure,

the Registrar may request—

- (f) that the document be appropriately amended or completed and resubmitted;
- (g) that a fresh document be submitted in its place; or
- (h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.

(9) The Registrar may require a person who submits a document for lodgment with the Registrar to produce to the Registrar such other document, or to furnish to the Registrar such information, as the Registrar thinks necessary in order to form an opinion whether he may refuse to receive or register the document.

Appeal

(10) Any person aggrieved by the refusal of the Registrar to register any corporation or to register or receive any document or by any act or decision of the Registrar may appeal within thirty days of the decision of the Registrar to the Court which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection shall not apply to any act decision of the Registrar—

- (a) in respect of which any provision in the nature of the appeal or review is expressly provided in this Act; or
- (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

Destruction, etc., of old records

(11) 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 six years;
- (ii) any annual return or balance-sheet 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 memorandum and articles or any other document affecting them) which has been lodged, filed or registered for not less than fifteen years;

(b) in the case of a corporation that has been dissolved or has ceased to be registered for not less than fifteen years, any document lodged, filed or registered; or

(c) any document a transparency of which has been incorporated with a register kept by the Registrar.

Electronic filing of documents

11A. (1) The Registrar may provide a service for the electronic filing or lodging of documents required by this Act to be filed or lodged with the Registrar.

(2) A person who intends to use the service provided under subsection (1) shall become a subscriber to the service by paying the prescribed fee and by complying with such terms and conditions as may be determined by the Registrar.

(3) Only a subscriber to the service provided under subsection (1) may electronically file or lodge documents with the Registrar.

(4) A document electronically filed or lodged under this section shall be deemed to have satisfied the requirement for filing or lodgment if the document is communicated or transmitted to the Registrar in such manner as may be prescribed by regulations or approved by the Registrar.

(5) The Registrar may, by order published in the *Gazette*, prescribe the documents that may be electronically filed or lodged.

(6) A document that is required to be stamped, signed or sealed shall, if it is to be electronically filed or lodged be certified or authenticated in such manner as may be prescribed by regulations or approved by the Registrar.

Evidentiary value of copies of electronically filed documents certified by Registrar

(7) A copy of or an extract from any document electronically filed or lodged with the Registrar under subsection (1) supplied or issued by the Registrar and certified to be a true copy thereof or extract therefrom under the hand and seal of the Registrar shall be admissible in evidence in any proceedings as of equal validity as the original document.

(8) Where a document is electronically filed or lodged with the Registrar, the Registrar or his authorized agents 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 was made in good faith and in the ordinary course of the discharge of the duties of the Registrar or of his authorized agents or 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.

Enforcement of duty to make returns

12. (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 resubmit any document or to submit a fresh document,

fails to make good the default within fourteen days after the service on the corporations 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 shall imposing penalties on a corporation or its officers or that person in respect of any such default as aforesaid.

Relodging of lost registered documents

13. (1) If in the case of any corporation incorporated or registered under this or any corresponding previous written law the memorandum or articles or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

(2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as he thinks fit.

(2A) Where the Registrar has reasonable cause to believe that a document in relation to a corporation filed or lodged with him has been lost or destroyed, he may by notice in writing direct the corporation to lodge a copy of the document and the corporation or any officer of the corporation shall, within fourteen days after the service of the notice or such longer period as the Registrar may allow, comply with the direction of the Registrar.

(3) Where the Registrar is satisfied of or has reasonable cause to believe—

- (a) the loss or destruction of the original document;
- (b) the correctness of the date of filing or lodgment thereof with him; and

(c) the correctness of the copy of the document produced to him,

the Registrar may certify the same upon the copy and direct that the copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment the copy for all purposes shall, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, have the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and shall be registered by him, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of the order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by the variation or rescission.

(6) No fee shall be payable upon the lodging of a document under this section.

(7) If default is made in complying with the direction of the Registrar under subsection (2A), the corporation and any officer of the corporation who is in default shall be guilty of an offence against this Act.

Penalty: Five thousand ringgit. Default penalty.

PART III

CONSTITUTION OF COMPANIES

DIVISION 1

INCORPORATION

Formation of companies

14. (1) Subject to this Act any two or more persons associated for any lawful purpose may by subscribing their names to a memorandum and complying with the requirements as to registration form an incorporated company.

- (2) A company may be—
- (a) a company limited by shares;
 - (b) a company limited by guarantee;
 - (c) a company limited both by shares and guarantee; or
 - (d) an unlimited company.

Prohibition of unincorporated associations of more than twenty members for gain

(3) An association or partnership shall not be formed for the purpose of carrying on any business which has for its object the acquisition of gain by the association or partnership or the individual members thereof unless—

- (a) it is an association or partnership formed for the purpose of carrying on any profession or calling which is declared by the Minister to be a profession or calling which is not customarily carried on by an association or partnership incorporated under this Act;
- (b) in the case of any other association or partnership, it consists of not more than twenty members;
- (c) it is incorporated under this Act; or
- (d) it is formed in pursuance of some other written law or letters patent.

Prohibition of registration of company limited by guarantee with a share capital

14A. On or after the coming into operation of this Act, no company may be formed as, or become, a company limited by guarantee with a share capital.

Private company

15. (1) A company having a share capital may be incorporated as a private company if its memorandum or articles—

- (a) restricts the right to transfer its shares;
- (b) limits to not more than fifty the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of its subsidiary or any person who while previously

in the employment of the company or of its subsidiary was and thereafter has continued to be a member of the company);

- (c) prohibits any invitation to the public to subscribe for any shares in or debentures of the company; and
- (d) prohibits any invitation to the public to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest.

(2) Where, upon the commencement of this Act, neither the memorandum nor articles of a company that is a private company by virtue of paragraph (a) of the definition of “private company” in subsection 4(1) contain the restrictions, limitations and prohibitions required by subsection (1) to be included in the memorandum or articles of a company that may be incorporated as a private company, the articles of the company shall be deemed to include each such restriction, limitation or prohibition that is not so included and a restriction on the right to transfer its shares that is so deemed to be included in its articles shall be deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

(3) Where a restriction, limitation or prohibition deemed to be included in the articles of a company under subsection (2) is inconsistent with any provision already included in the memorandum or articles of the company, that restriction, limitation or prohibition shall, to the extent of the inconsistency, prevail.

(4) A private company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its memorandum or articles or any limitation on the number of its members included, or deemed to be included, in its memorandum or articles, but not so that the memorandum and articles of the company cease to include the limitation required by paragraph (1)(b) to be included in the memorandum or articles of a company that may be incorporated as a private company.

Registration and incorporation

16. (1) Persons desiring the incorporation of a company shall lodge the memorandum and the articles, if any, of the proposed company with the Registrar together with the other documents required to be lodged by or under this Act, and the Registrar on

payment of the appropriate fees shall subject to this Act register the company by registering the memorandum and articles, if any.

Statutory declarations

(2) The person named in the articles as the first secretary of the company shall lodge with the Registrar a declaration in the prescribed form stating that all or any of the requirements of this Act have been complied with and containing such information as may be prescribed, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3) *(Deleted by Act A836).*

Subscriber to lodge statutory declaration

(3A) Every promoter of a proposed company who is a natural person shall before the incorporation of the company make and lodge with the Registrar and the Official Receiver a statutory declaration in the form prescribed by regulations that he will not be acting in contravention of sections 125 and 130.

Certificate of incorporation

(4) On the registration of the memorandum the Registrar shall certify under his hand and seal that the company is on and from the date specified in the certificate incorporated, and that the company is—

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

as the case may be, and where applicable, that it is a private company.

Effect of incorporation

(5) On and from the date of incorporation specified in the certificate of incorporation but subject to this Act the subscribers to the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and of

suing and being sued and having perpetual succession and a common seal with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

Members of company

(6) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members, and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

(7) The Registrar shall not register a memorandum and articles, if any, of a proposed company unless the memorandum or articles contain the names of at least two persons who are to be the first directors of the proposed company.

(8) Notwithstanding anything to the contrary in this Act or any rule of law, the Registrar shall refuse to register the memorandum of a proposed company if he is satisfied that—

- (a) the proposed company is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; or
- (b) it would be prejudicial to national security or public interest for the proposed company to be registered.

Membership of holding company

17. (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 shall be void.

(2) Subsection (1) shall not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) This section shall not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but—

(a) subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and

(b) the subsidiary shall, within the period of twelve months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(5) Subject to subsection (2), subsections (1), (3) and (4) thereof shall apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

(6) 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.

(7) 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.

(8) 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.

Requirements as to memorandum

18. (1) The memorandum of every company shall be printed and divided into numbered paragraphs and dated and shall state, in addition to other requirements—

- (a) the name of the company;
- (b) the objects of the company;
- (c) unless the company is an unlimited company, the amount of share capital, if any, with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (d) if the company is a company limited by shares, that the liability of the members is limited;
- (e) if the company is a company limited by guarantee, that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount in addition to the amount, if any, unpaid on any shares held by him;
- (f) if the company is an unlimited company, that the liability of the members is unlimited;
- (g) the full names, addresses and occupations of the subscribers thereto; and
- (h) that the subscribers are desirous of being formed into a company in pursuance of the memorandum and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2) Each subscriber to the memorandum shall, if the company is to have a share capital, in his own handwriting state the number of shares (not less than one) that he agrees to take and, whether or not the company is to have a share capital, shall sign the memorandum in the presence of at least one witness (not being another subscriber) who shall attest the signature and add his address.

(3) A statement in the memorandum of a company limited by shares that the liability of members is limited shall mean that the liability of the members is limited to the amount, if any, unpaid on the shares respectively held by them.

DIVISION 2

POWERS

Powers of a company

19. (1) Subject to subsection (2) the powers of a company, whether incorporated before or after the commencement of this Act, shall include—

- (a) power to make donations for patriotic or for charitable purposes;
- (b) power to transact any lawful business in aid of Malaysia in the prosecution of any war or hostilities in which Malaysia is engaged; and
- (c) unless expressly excluded or modified by the memorandum or articles, the powers set forth in the Third Schedule but the powers of a company which has by the licence of the Minister pursuant to section 24 been registered without the word “*Berhad*” or pursuant to any corresponding previous written law been registered without the addition of the word “Limited” to its name shall not include any of the powers set forth in the Third Schedule unless expressly included in the memorandum or articles with the approval in writing of the Minister.

Restriction as to power of certain companies to hold lands

(2) A company formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, or any other like object not involving the acquisition of gain by the company or by its individual members shall not acquire any land without the licence of the Minister but the Minister may by licence empower any such company to hold lands in such quantity and subject to such conditions as he thinks fit.

(3) A licence given by the Minister under subsection (2) shall be in the prescribed form or as near thereto as circumstances admit.

(4) Any company which is dissatisfied with any decision of the Minister under subsection (2) may within one month of such decision appeal to the Yang di-Pertuan Agong who shall have power to confirm, reverse or vary the decision.

(5) Every decision by the Yang di-Pertuan Agong and every decision by the Minister under this section, unless such decision is reversed or varied by the Yang di-Pertuan Agong under this section, shall be final and shall not be called into question by any court.

Ultra vires transactions

20. (1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do the act or to execute or take the conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in—

- (a) proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;
- (b) any proceedings by the company or by any member of the company against the present or former officers of the company; or
- (c) any petition by the Minister to wind up the company.

(3) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under paragraph (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the

contract (as the case requires) compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

General provisions as to alteration of memorandum

21. (1) The memorandum of a company may be altered to the extent and in the manner provided by this Act but not otherwise.

(1A) Notwithstanding subsection (1) and subject to section 33 and section 181, if a provision of the memorandum of a company could lawfully have been contained in the articles of the company, the company may, by special resolution, alter the memorandum—

- (a) by altering; or
- (b) by deleting,

the provision, unless the memorandum itself prohibits the alteration or deletion of that provision.

(1B) Nothing in subsection (1A) permits the alteration or deletion of a provision of the memorandum that relates to rights to which only members included in a particular class of members are entitled.

(2) In addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court or other document affecting the memorandum of a company, the company shall within fourteen days after the passing of any such resolution or the making of any such order lodge with the Registrar a copy of the resolution or other document or an office copy of the order together with (unless the Registrar dispenses therewith) a printed copy of the memorandum as altered, and if default is made in complying with this subsection the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

(3) The Registrar shall register every resolution, order or other document lodged with him under this Act that affects the memorandum of a company and, where an order is so registered shall certify the registration of that order.

*NOTE—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1986 [Act A657].

(4) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to the alteration and any confirmation thereof have been complied with.

(5) Notice of the registration shall be published in such manner, if any, as the Court or the Registrar directs.

(6) The Registrar shall, where appropriate, issue a certificate of incorporation in accordance with the alteration made to the memorandum.

Names of companies

22. (1) Except with the consent of the Minister, a company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) The Minister shall cause a direction given by him under subsection (1) to be published in the *Gazette*.

(3) A limited company shall have “*Berhad*” or the abbreviation “*Bhd.*” as part of and at the end of its name.

(4) A private company shall have the word “*Sendirian*” or the abbreviation “*Sdn.*” as part of its name, inserted immediately before the word “*Berhad*” or before the abbreviation “*Bhd.*” or in the case of an unlimited company, at the end of its name.

(5) It shall be lawful to use and no description of a company shall be deemed inadequate or incorrect by reason of the use of—

(a) the abbreviation “*Sdn.*” in lieu of the word “*Sendirian*” contained in the name of a company;

(b) the abbreviation “*Bhd.*” in lieu of the word “*Berhad*” contained in the name of a company; or

(c) any of such words in lieu of the corresponding abbreviation contained in the name of a company.

(6) Prior to the registration of—

(a) an intended company or foreign company; or

(b) the change of name of a company or foreign company,

the applicant for registration shall apply in the prescribed form to the Registrar for a search as to the availability of the proposed name of the intended company, company or foreign company and for reservation of that name, if available.

(7) If the Registrar is satisfied as to the *bona fides* of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of three months from the date of the lodging of the application.

(8) (*Deleted by Act A836*).

(9) During a period for which a name is reserved, no company or foreign company (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(10) The reservation of a name under this section in respect of an intended company, company or foreign company 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.

Change of name

23. (1) A company may by special resolution resolve that its name should be changed to a name by which the company could have been registered without contravention of subsection 22(1).

(2) If the Registrar approves the name which the company has resolved should be its new name he shall on payment of the prescribed fee issue a certificate of incorporation of the company under the new name and upon the issue of such certificate of incorporation the change of name shall become effective.

(3) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of subsection 22(1) the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within six weeks after the date of the direction or such longer period as the Registrar allows unless the Minister by written notice annuls the direction, and if the company fails to comply with the direction it shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

(4) Where the name of a company incorporated pursuant to any corresponding previous written law has not been changed since the commencement of this Act, the Registrar shall not, except with the approval of the Minister, exercise his power under subsection (3) to direct the company to change its name.

(5) Upon the commencement of this Act a company which has the word “Limited” as the last word of its name shall be deemed to have changed its name by substituting for the word “Limited” the word “Berhad” and a company which has the abbreviation “Ltd.” at the end of its name shall be deemed to have altered its name by substituting for the abbreviation “Ltd.” the abbreviation “Bhd.” and where upon the date after the commencement of this Act a company which is a private company does not have the word “Sendirian” or the abbreviation “Sdn.” as part of its name immediately before the word “Berhad” or before the abbreviation “Bhd.” or in the case of an unlimited company at the end of its name, the company shall be deemed to have altered its name to include the abbreviation “Sdn.” immediately before the word “Berhad” or before the abbreviation “Bhd.” or in the case of an unlimited company at the end of its name and the Registrar shall as soon as practicable after the commencement of this Act alter the name of the company set forth in the memorandum accordingly and issue a new certificate of incorporation in the name of the company as so altered:

Provided that this section shall not operate to prevent a company which immediately before the commencement of this Act and which had the word “Limited” or the abbreviation “Ltd.” as part of its name or which was a private company and which did not

*NOTE—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1986 [Act A657].

have the word “*Sendirian*” or the abbreviation “*Sdn.*” as part of its name from continuing to use the name set forth in its memorandum immediately before the commencement of this Act until the expiration of two years after the commencement of this Act.

(6) A change of name pursuant to this Act 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 might have been continued or commenced by or against it 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.

Omission of “*Berhad*” in name of charitable and other companies

24. (1) Where it is proved to the satisfaction of the Minister that a proposed limited company is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, and will apply its profits, if any, or other income in promoting its objects and will prohibit the payment of any dividend to its members, the Minister may (after requiring, if he thinks fit, the proposal to be advertised in such manner as he directs either generally or in a particular case) by licence direct that it be registered as a company with limited liability without the addition of the word “*Berhad*” to its name, and the company may be registered accordingly.

(2) Where it is proved to the satisfaction of the Minister—

(a) that the objects of a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may by licence authorize the company to change its name to a name which does not contain the word “*Berhad*”, being a name approved by the Registrar.

(3) A licence under this section may be issued on such conditions as the Minister thinks fit, and those conditions shall be binding on the company and shall if the Minister so directs be inserted in the memorandum or articles of the company and the memorandum or articles may by special resolution be altered to give effect to any such direction.

(4) Where the memorandum or articles of a company include as a result of a direction of the Minister given pursuant to subsection (3) or pursuant to any corresponding previous written law a provision that the memorandum or articles shall not be altered except with the consent of the Minister the company may with the consent of the Minister by special resolution alter any provision of the memorandum or articles.

(5) A company shall, while a licence granted by the Minister under this or under any corresponding previous written law is in force, be exempted from complying with this Act relating to the use of the word "*Berhad*" as any part of its name.

(6) A licence under this section or under any corresponding previous written law may at any time be revoked by the Minister and upon revocation the Registrar shall enter the word "*Berhad*" at the end of the name of the company upon the register, and the company shall thereupon cease to enjoy the exemption granted by reason of the licence under this section but before a licence is so revoked the Minister shall give to the company notice in writing of his intention and shall afford it an opportunity to be heard.

(7) Where a licence under this section or under any corresponding previous written law is revoked the memorandum or articles of the Company may be altered by special resolution so as to remove any provision in or to the effect that the memorandum or articles may be altered only with the consent of the Minister and paragraph 19(1)(c) shall apply to the company as if it had never had a licence under this section.

Registration of unlimited company as limited, etc.

25. (1) Subject to this section, an unlimited company may convert to a limited company by passing a special resolution determining so to convert and lodging with the Registrar for registration a copy of the resolution.

(2) On the lodging of the copy of the resolution the Registrar shall, subject to this Act—

- (a) register the copy;
- (b) make such endorsements in or alterations to his registers as are necessary to record the effect of the resolution with respect to the conversion; and
- (c) issue to the company a certificate of incorporation of the company altered to meet the circumstances of the case and cancel the previous certificate of incorporation of the company.

(3) On issuing the certificate of incorporation the Registrar may, by notice in writing served on the company, dispense with the lodging by the company of any document which had been lodged with him on the occasion of or subsequent to the incorporation of the company.

(4) The conversion shall take effect on the issue of the certificate of incorporation under subsection (2) and the memorandum 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.

Change from public to private and from private to public company

26. (1) A public company having a share capital may convert to a private company by lodging with the Registrar a copy of a special resolution—

- (a) determining to convert to a private company and specifying an appropriate alteration to its name; and
- (b) altering the provisions or its memorandum or articles so far as is necessary to impose the restrictions, limitations and prohibitions referred to in subsection 15(1).

(2) A private company may, subject to anything contained in its memorandum or articles, convert to a public company by lodging with the Registrar—

- (a) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name;
- (b) a statement in lieu of prospectus; and
- (c) a statutory declaration in the prescribed form verifying that paragraph 52(2)(b) has been complied with,

and thereupon the restrictions, limitations and prohibitions referred to in subsection 15(1) as included in or deemed to be included in the memorandum or articles of the company shall cease to form part of the memorandum or articles.

(3) On compliance by a company with subsection (1) or (2) and on the issue of a certificate of incorporation of the company altered accordingly the company shall be a private company or a public company (as the case requires).

(4) A conversion of a company pursuant to subsection (1) or (2) 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 consequent of the conversion, be continued or commenced by or against it after the conversion.

Default in complying with requirements as to private companies

27. (1) Where, on the application of the Minister with respect to a private company or of any member or creditor of a private company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph 15(1)(c) or (d) that is included, or is deemed to be included, in the memorandum or articles of the company the Court may by order determine that, on such date as the Court specifies in its order, the company ceased to be a private company.

(2) Where—

- (a) default has been made in relation to a private company in complying with a limitation of a kind specified in paragraph 15(1)(b) that is included, or is deemed to be included in the memorandum or articles of the company,
- (b) a private company has been convicted of an offence under subsection (7);
- (c) the memorandum or articles of a private company have been so altered that they no longer include restrictions, limitations or prohibitions of the kinds specified in subsection 15(1); or
- (d) a private company has ceased to have a share capital,

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

(3) Where, under this section, the Court or 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 order or 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 order or the notice, lodge with the Registrar—
 - (i) a statement in lieu of prospectus;
 - (ii) a statutory declaration in the prescribed form verifying that paragraph 52(2)(b) has been complied with; and
 - (iii) where an order has been made under subsection (1) an office copy of the order.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (1) or (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a private company.

(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 default is made in complying with paragraph (3)(c) the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

(7) Where any subscription for shares in or debentures of, or any deposit of money with, a private company is arranged by or through an advocate, broker, agent or any other person (whether an officer of the company or not) who invites the public to make use of his services in arranging investments or who holds himself out to the public as being in a position to arrange investments, the company and every person, including an officer of the company, who is a party to the arrangement shall be guilty of an offence against this Act.

Penalty: Imprisonment for †ten years or two hundred and fifty thousand ringgit or both.

(8) Where default is made in relation to a private company in complying with any restriction, limitation or prohibition of a kind specified in subsection 15(1) that is included, or deemed to be included, in the memorandum or articles of the company, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for †ten years or two hundred and fifty thousand ringgit or both.

Alterations of objects in memorandum

28. (1) Subject to this section a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company.

(2) Where a company proposes to alter its memorandum, with respect to the objects of the company it shall give by post twenty-one days' written notice specifying the intention to propose the resolution as a special resolution and to submit it for passing to a meeting of the company to be held on a day specified in the notice.

*NOTE—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1986 [Act A657]

†NOTE—Previously “five years or thirty thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836].

(3) The notice shall be given to all members, and to all trustees for debenture holders and if there are no trustees for any class of debenture holders to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4) The Court may, in the case of any person or class of persons for such reasons as to it seem sufficient, dispense with the notice required by subsection (2).

(5) If an application for the cancellation of an alteration is made to the Court in accordance with this section by—

- (a) the holders of not less in the aggregate than ten per centum in nominal value of the company's issued share capital or any class of that capital or, if the company is not limited by shares, not less than ten per centum of the company's members; or
- (b) the holders of not less than ten per centum in nominal value of the company's debentures,

the alteration shall not have effect except so far as it is confirmed by the Court.

(6) The application shall be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(7) On the application the Court—

- (a) shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;
- (b) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members;
- (c) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and

(d) may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit.

(8) Notwithstanding any other provision of this Act a copy of a resolution altering the objects of a company shall not be lodged with the Registrar before the expiration of twenty-one days after the passing of the resolution or if any application to the Court has been made before the application has been determined by the Court (whichever is the later).

(9) A copy of the resolution shall be lodged with the Registrar by the company within fourteen days after the expiration of the twenty-one days referred to in subsection (8), but if an application has been made to the Court in accordance with this section the copy shall be lodged with the Registrar together with an office copy of the order of the Court within fourteen days after the application has been determined by the Court.

(10) On compliance by a company with subsection (9) the alteration, if any, of the objects shall take effect.

Articles of association

29. (1) There may in the case of a company limited by shares and there shall in the case of a company limited by guarantee or limited both by shares and guarantee or an unlimited company be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

(2) Articles shall be—

(a) printed;

(b) divided into numbered paragraphs; and

(c) signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber) who must attest the signature and add his address.

(3) In the case of an unlimited company the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount.

(4) In the case of an unlimited company or a company limited by guarantee or a company limited both by shares and guarantee the articles shall state the number of members with which the company proposes to be registered.

(5) Where a company to which subsection (4) applies increases the number of its members beyond the registered number it shall, within one month after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

(6) Every company which makes default in complying with subsection (5) and every officer of the company who is in default in complying with that subsection shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty .

Adoption of Table A of Fourth Schedule

30. (1) Articles may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares incorporated after the commencement of this Act, if articles are not registered, or if articles are registered then so far as the articles do not exclude or modify the regulations contained in Table A those regulations shall so far as applicable be the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

Alteration of articles

31. (1) Subject to this Act and to any conditions in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall subject to this Act, on and from the date of the special resolution or such later date as is specified in the resolution, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

*NOTE—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1986 [Act A657].

(3) Subject to this section, any company shall have the power and shall be deemed always to have had the power to amend its articles by the adoption of all or any of the regulations contained in Table A, by reference only to the regulations in the Table or to the numbers of particular regulations contained therein, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

As to memorandum and articles of companies limited by guarantee

32. (1) In the case of a company limited by guarantee and not having a share capital every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purposes of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles or in any resolution of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Effect of memorandum and articles

33. (1) Subject to this Act the memorandum and articles shall when registered bind the company and the members thereof 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 memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

As to effect of alterations on members who do not consent

(3) Notwithstanding anything in the memorandum or articles of a company no member of the company, unless either before or after the alteration is made he agrees in writing to be bound thereby, shall be bound by an alteration made in the memorandum

or articles after the date on which he became a member so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

Copies of memorandum and articles

34. (1) A company shall on being so required by any member send to him a copy of the memorandum and of the articles, if any, subject to payment of five ringgit or such lesser sum as is fixed by the directors.

(2) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the date of alteration unless—

- (a) the copy is in accordance with the alteration; or
- (b) a printed copy of the order or resolution marking the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(3) Where an agreement required to be lodged with the Registrar under section 154 affects the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the agreement is entered into unless a copy of the agreement is annexed to the copy of the memorandum or articles.

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

Form of contracts

35. (1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company shall in the absence of express agreement to the contrary be personally bound by the contract or other transaction and entitled to the benefit thereof.

(3) *(Deleted by Act A616).*

(4) Contracts on behalf of a company may be made as follows—

- (a) a contract which if made between private persons would be by law required to be in writing under seal may be made on behalf of the company in writing under the common seal of the company;
- (b) a contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under its authority express or implied; and
- (c) a contract which if made between private persons would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the company by any person acting under its authority express or implied,

and any contract so made shall be effectual in law and shall bind the company and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorized to be made.

Authentication of documents

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

(6) A company may, by writing under its common seal empower any person either generally or in respect of any specified matters as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the company and

under his seal, or, subject to subsection (8), under the appropriate official seal of the company shall bind the company and have the same effect as if it were under its common seal.

(7) The authority of any such agent or attorney shall as between the company and any person dealing with him continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned then until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seal for use abroad

(8) A company whose objects require or comprise the transaction of business outside Malaysia may, if authorized by its articles, have for use in any place outside Malaysia an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal shall in writing under his hand certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

Prohibition of carrying on business with fewer than statutory minimum of members

36. If at any time the number of members of a company (other than a company the whole of the issued shares of which are held by a holding company) is reduced below two and it carries on business for more than six months while the number is so reduced, a person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members shall be liable for the payment of all the debts of the company contracted during the time that it so carries on business after those six months and may be sued therefor, and the company and that member shall be guilty of an offence against this Act if the company so carries on business after those six months.

Penalty: *Two thousand ringgit. Default penalty.

**NOTE*—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1986 [Act A616].

PART IV

SHARES, DEBENTURES AND CHARGES

DIVISION 1

PROSPECTUSES

Non-application of Divisions 1 and 4 to offers under the Securities Commission Act 1993

36A. (1) In this section, unless the contrary intention appears—

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

“excluded offer or invitation” means the offer or invitation referred to in section 38 of the Securities Commission Act 1993;

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

(2) Except as provided in subsection (3) , on the coming into operation of this section, Divisions 1 and 4 of this Part shall not apply to an offer or invitation to subscribe for or purchase any securities of a corporation, including any excluded offer or excluded invitation as defined under the Securities Commission Act 1993, and any offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to which Division 4 of Part IV of the Securities Commission Act 1993 do not apply.

(3) The provisions of this Part shall apply to an offer or invitation in respect of shares or debentures made to the public by an unlisted recreational club.

(4) A corporation in respect of whose securities a prospectus or supplementary prospectus has been registered under the Securities Commission Act 1993 shall lodge a copy of the prospectus and any supplementary prospectus and a copy of the form of application accompanying or attached to the prospectus with the Registrar on or before the date of its issue.

(5) Every corporation or other person who contravenes or fails to comply with the requirements of subsection (4) and every officer of the corporation who is in default shall be guilty of an offence against this Act.

Penalty: One hundred thousand ringgit. Default penalty.

(6) Notwithstanding subsection (2), the provisions of section 70 relating to the keeping of a register of holders of debentures shall apply to every company which issues debentures and every company which fails to comply with this subsection shall be guilty of an offence against this Act.

Penalty: One hundred thousand ringgit. Default penalty.

(7) The directors of a borrower that is required to lodge a copy of the quarterly report or the profit and loss account and balance sheet of the borrower, and the directors of a guarantor that is required to lodge a copy of the profit and loss account and balance sheet of the guarantor with the Registrar under Division 4 of Part IV of the Securities Commission Act 1993 shall lodge such report or profit and loss account and balance sheet, as the case may be, within such time and in accordance with the provisions of that Division, and if the directors of the borrower or guarantor fail to comply with the requirements of this subsection each director who is in default shall be guilty of an offence against this Act.

Penalty: One hundred thousand ringgit. Default penalty.

Requirement to issue form of application for shares or debentures with a prospectus

37. (1) A person shall not issue, circulate or distribute any form of application for shares in or debentures of a corporation unless the form is issued, circulated or distributed together with a prospectus, a copy of which has been registered by the Registrar.

Penalty: Imprisonment for *five years or †one hundred thousand ringgit or both.

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

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

*NOTE—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1986 [Act A657]

†NOTE—Previously “five years or thirty thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836].

- (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,

but otherwise that subsection shall apply to any such form of application whether issued, circulated or distributed on or with reference to the formation of a corporation or subsequently.

(2A) Nothing in this Division and Division 4 of this Part shall apply to 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.

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

38. (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) a prospectus in relation to the invitation has been registered by the Registrar;
- (b) the prospectus contains an undertaking by the corporation that it will within two months after the acceptance of any money as a deposit or loan from any person in response to the invitation issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and
- (c) the document is described or referred to in the prospectus and in any other document whether constituting or relating to the invitation as—
 - (i) an unsecured note or an unsecured deposit note;

- (ii) a mortgage debenture or certificate of mortgage debenture stock; or
- (iii) a debenture or certificate of debenture stock,

in accordance with this section.

(1A) For the purposes of this Division any corporation which accepts or agrees to accept from any person any money on deposit or loan shall be deemed to make an invitation to the public to deposit money with or lend money to the corporation or proposed corporation.

(1B) Notwithstanding subsection (1A) 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.
- (c) *(Deleted by Act A949).*

(2) 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 anacknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and
- (b) complies with the other requirements of this section.

(3) 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 (4) or (5) it is and may be otherwise described.

(4) 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 if, and only if, there is included in the prospectus the statements and the valuation referred to in paragraph 32 of the Fifth Schedule.

(5) 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 if, and only if—

- (a) pursuant to subsection (4) 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 paragraph 33 of the Fifth Schedule.

(6) 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.

(7) 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.

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

- (a) specify terms and conditions subject to which subsection (6) shall have effect in relation to a corporation specified in paragraph (7)(b); or
- (b) vary or revoke any declaration or specification made under this section.

(9) Every corporation or other person that contravenes or fails to comply with this section and every officer of a corporation who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for *five years or †one hundred thousand ringgit or both.

(10) 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

*NOTE—Previously “two years”—see Companies (Amendment) Act 1985 [Act A616].

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

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.

(11) 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.

Contents of prospectuses

39. (1) To comply with the requirements of this Act a prospectus—

- (a) 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;
- (b) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;
- (c) shall as to one copy be lodged with the Registrar and shall state that a copy of the prospectus has been so lodged with and registered by the Registrar and shall also state immediately after that statement that the Registrar takes no responsibility as to its contents;
- (d) shall subject to Part III of the Fifth Schedule state the matters specified in Part I of that Schedule and set out the reports specified in Part II of the Schedule;

- (e) 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 31 of that Schedule, have endorsed thereon or attached thereto, a statement by those persons setting out the adjustments and giving the reasons therefor;
- (f) shall contain a statement 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;
- (g) shall, if it contains any statement made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, 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;
- (h) 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 or a stock broker or share broker 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;
- (i) 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; and
- (j) shall, where the prospectus offers shares, notes or other marketable securities which have been specified by a stock exchange as prescribed securities under section 14 of the Securities Industry (Central Depositories) Act 1991 [Act 453], state that such shares, notes or marketable securities have been so prescribed and that applicants are required to have securities accounts when making their applications.

(2) Subparagraph (1)(i)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than two years after the day on which the company is entitled to commence business and in the application to a foreign company of Part I of the Fifth Schedule for the purposes of subsection (1), paragraph 2 of that Part of that Schedule shall have effect as if a reference to the constitution of the company were substituted for the reference to the articles.

(3) 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 him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

(4) Where a prospectus relating to any shares in or debentures of a corporation is issued and the prospectus does not comply with this Act, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence against this Act.

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

(5) In the event of non-compliance with or contravention of any of the requirements set out in 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

*NOTE—Previously “two years or five thousand ringgit”—see Companies (Amendment) Act 1986 [Act A657].

(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.

(6) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 17 of the Fifth Schedule no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(7) 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 (4).

39A. (*Deleted by Act A1081*).

Relief from requirements as to form and content of a prospectus

39B. (1) Without prejudice to subsection 37(2), the Registrar may, on the application in writing by any person referred to under subsection 37(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).

Certain advertisements deemed to be prospectuses

40. (1) Every 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 shall be deemed to be a prospectus (and all written laws and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) if it contains any information or matter other than the following:

- (a) the number and description of the shares or debentures concerned;
- (b) the name and date of registration of the corporation and its paid up share capital;
- (c) a concise statement of the general nature of the main business or proposed main business of the corporation;
- (d) the names, addresses and occupations of—
 - (i) the directors or proposed directors;
 - (ii) the brokers or underwriters to the issue; and
 - (iii) in the case of debentures, the trustee for the debenture holders;
- (e) the name of the Stock Exchange of which the brokers or underwriters to the issue are members; and
- (f) 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 unless it states that applications for shares or debentures will proceed only on one of the forms of application referred to in 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 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, shall be guilty of an offence against this Act.

Penalty: Imprisonment for *five years or one hundred thousand ringgit or both.

(5) 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.

(6) Any person who has obtained a certificate referred to in paragraph (5)(b) shall, when so requested by the Registrar forthwith deliver the certificate to the Registrar.

Penalty: Imprisonment for †three years or ten thousand ringgit. Default penalty.

(7) 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.

*NOTE—Previously “three years or ten thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836].

†NOTE—Previously “one year or two thousand five hundred ringgit”—see Companies (Amendment) Act 1986 [Act A616].

As to retention of over-subscriptions in debenture issues

41. (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.

As to statement of asset-backing

(2) Subject to the Fifth 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 corporations 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.

Penalty: Imprisonment for *five years or †one hundred thousand ringgit or both.

Registration of prospectus

42. (1) A prospectus shall not be issued, circulated or distributed by any person unless a copy thereof has first been registered by the Registrar.

*NOTE—Previously “two years”—see Companies (Amendment) Act 1986 [Act A657].

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

(2) The Registrar shall not register a copy of any prospectus if it contains any statement or matter which is in his opinion misleading in the form and context in which it is included and unless—

- (a) the copy 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) the prospectus appears to comply with the requirements of this Act; and
- (c) there are also lodged with the Registrar copies verified as prescribed of any consents required by section 45 to the issue of the prospectus.

(3) If a prospectus is issued without a copy thereof having been so registered the corporation and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence against this Act.

Penalty: Imprisonment for *five years or one hundred thousand ringgit or both.

Copy of contracts, etc., to be kept for inspection at registered office

(4) A corporation to which the prospectus relates shall—

- (a) cause a copy of—
 - (i) every document referred to in paragraph (2)(c); and
 - (ii) all material contracts referred to in the prospectus and, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof, verified as prescribed, to be deposited within three days after the registration of the prospectus at the registered office of the corporation and if it has no registered office in Malaysia, at the address in Malaysia specified in the prospectus; and
- (b) keep each such copy for a period of at least six months after the registration of the prospectus for inspection by any person without charge.

*NOTE—Previously “three years or ten thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836].

Supplemental prospectus

42A. (1) If, after the registration of a prospectus, but before its issue, the person who 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 or by any requirements or guidelines of any authority, 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,

the person shall lodge with the Registrar a supplemental prospectus that contains information relating to the new matter or change or correct the false or misleading statement or omission as the case requires.

(2) A supplemental prospectus shall clearly identify the prospectus to which it relates and shall contain a statement in bold or coloured print that it is a supplemental prospectus to be read in conjunction with the prospectus.

(3) A supplemental prospectus shall be deemed to be part of the prospectus to which it relates and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses or otherwise relating to prospectuses, shall apply and have effect accordingly.

(4) Where a supplemental prospectus has been lodged with the Registrar pursuant to subsection (1), every copy of the prospectus shall be issued, accompanied by a copy of the supplemental prospectus.

(5) A supplemental prospectus may be lodged for the purpose of subsection (1), notwithstanding that the prospectus to which it relates has been issued, if—

- (a) the 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 supplemental prospectus is sent to each of those persons in compliance with subsection (6); or

- (b) the prospectus relates to an invitation or offer to the general public and a copy of the supplemental 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 (6).

(6) For the purpose of subsection (5), a notice shall—

- (a) in the case of paragraph (5)(a), be sent together with a copy of the supplemental prospectus to every person referred to in that subsection;
- (b) in the case of paragraph (5)(b), be advertised together with the supplemental prospectus,

stating—

- (aa) that a copy of the supplemental prospectus has been lodged with the Registrar; and
- (bb) that every person who has submitted his application prior to the date of the notice is entitled to withdraw his application within seven days of the date of the notice and all application money received in respect thereof will be repaid in full without penalty.

(7) If default is made in complying with this section, every person who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for five years or one hundred thousand ringgit or both.

Document containing offer of shares for sale to be deemed prospectus

43. (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, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in

prospectuses, or otherwise relating to prospectuses, shall apply 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 therefor but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(2) 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.

(3) The requirements of this Division 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.

(4) In addition to complying with the other requirements of this Division 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.

(5) 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.

44. (*Deleted by Act A1081*).

Expert's consent to issue of prospectus containing statement by him

45. (1) A prospectus inviting subscription for or purchase of shares in or debentures of a corporation and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless—

- (a) he has given, and has not before delivery of a copy of the prospectus for registration withdrawn, his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that he 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 shall be guilty of an offence against this Act.

Penalty: Imprisonment for *five years or one hundred thousand ringgit or both.

Civil liability for misstatements in prospectus

46. (1) Subject to this section, each of the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any shares or debentures on the faith of a prospectus for any loss or damage sustained by reason of any untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be material, that is to say every person who—

- (a) is a director of the corporation at the time of the issue of the prospectus;
- (b) authorized or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) is a promoter of the corporation; or
- (d) authorized or caused the issue of the prospectus.

*NOTE—Previously “three years or ten thousand ringgit”—see Companies (Amendment) (No. 2) Act 1992 [Act A836]

(2) Notwithstanding anything in subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not by reason only thereof be liable as a person who has authorized or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, advocate or stock or share broker shall not for that reason alone be construed as an authorization by such person of the issue of the prospectus.

(3) No person shall be so liable if he proves—

(a) that, 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) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;

(c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor;
or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, 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) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert 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 45 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) as regards every untrue statement 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.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 45, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) 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 45, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves.

- (a) that, having given his consent under section 45 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons therefor; or
- (c) that 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.

(6) 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