

- (b) the consent of a person is required under section 45 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the corporation except any without whose knowledge or consent the prospectus was issued, and any other person who authorized or caused the issue thereof shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceeding brought against him in respect thereof.

Criminal liability for statement in prospectus

47. (1) Where in a prospectus there is any untrue statement or wilful non-disclosure, any person who authorized or caused the issue of the prospectus shall be guilty of an offence against this Act unless he proves either that the statement or non-disclosure was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe the statement was true or the non-disclosure immaterial.

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

(2) A person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion therein of a statement purporting to be made by him as an expert.

Power of Minister to exempt

47A. (1) Subject to subsection (2) the Minister may, on the application in writing by any person interested and subject to the recommendation of the Registrar, by order declare that Division 1 and Division 4 of this Part shall not apply to any person making an offer of shares or debentures to the public, either unconditionally or subject to such terms and conditions as the Minister thinks fit to impose.

*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].

(2) Recommendation shall not be made by the Registrar to the Minister unless he is of the opinion that circumstances exist whereby—

- (a) the cost of providing a prospectus outweighs the resulting protection to investors; or
- (b) it would not be prejudicial to the public interest if a prospectus were dispensed with.

Exempted offers

47B. (1) Nothing in Division 1 and Division 4 of this Part shall apply to an offer of shares or debentures, whether or not they have been previously issued, made to—

- (a) a prescribed corporation;
- (b) an insurance company registered under any written law relating to insurance companies;
- (c) a trustee corporation;
- (d) a statutory body established by an Act of Parliament or an Enactment of any State;
- (e) a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967 [Act 53];
- (f) a unit trust scheme as defined under the Securities Industry Act 1983 [Act 280];
- (g) a person licensed as a dealer or investment adviser under the Securities Industry Act 1983;
- (h) a corporation incorporated outside Malaysia;
- (i) a public company which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control; and
- (j) such other person as the Minister may, by order published in the *Gazette*, declare to be exempt purchasers,

who or which pursuant to the offer, acquires the shares or debentures as principal, trustee or agent for accounts fully managed by him or it who, for the purposes of this section, shall be deemed to be dealing as principal.

(2) In this section, the term “prescribed corporation” has the same meaning as assigned to it in subsection 38(7).

(3) Any information memorandum purporting to describe the business and affairs of the person making the offer issued by the said person or his agent shall be deemed to be a prospectus, in so far as regarding the liability of the person or his agent, for any untrue statement or non-disclosure of material information and a copy of the memorandum shall be lodged with the Registrar within seven days after it is first issued.

DIVISION 2

RESTRICTIONS ON ALLOTMENT AND COMMENCEMENT OF BUSINESS

Prohibition of allotment unless minimum subscription received

48. (1) No allotment shall be made of any shares of a company offered to the public or offered for subscription or purchase or where an invitation to subscribe for or purchase shares is made pursuant to a prospectus that is registered under the Securities Commission Act 1993 unless—

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall be—

- (a) calculated on the nominal value of each share, and where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and
- (b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share offered to the public or offered pursuant to a prospectus that is registered under the Securities Commission Act 1993 shall not be less than five per centum of the nominal amount of the share.

(4) If the conditions referred to in paragraphs (1)(a) and (b) have not been satisfied on the expiration of four months after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within five months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of ten per centum per annum from the expiration of the period of five months but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section or of subsection 50 (1) shall be voidable at the option of the applicant which option may be exercised by written notice served on the company within one month after the holding of the statutory meeting of the company, and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and the allotment shall be so voidable notwithstanding that the company is in course of being wound up.

(6) Every director of a company who knowingly contravenes or permits or authorizes the contravention of this section or of subsection 50(1) shall be guilty of an offence against this Act and shall be liable in addition to the penalty or punishment for the offence to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby but no proceedings for the recovery of any such compensation shall be commenced after the expiration of two years from the date of the allotment.

Penalty: Imprisonment for three years or one million ringgit or both.

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

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

- (a) any shares or debentures to the public on the basis of a prospectus after the expiration of six months or such longer period as the Registrar may allow from the date of issue of the prospectus; or
- (b) any securities as defined under the Securities Commission Act 1993 on the basis of a prospectus that is registered under that Act later than such period after the date of issue of the prospectus as the Securities Commission may specify.

Penalty: Imprisonment for *three years or one million ringgit.

(9) Where an allotment of—

- (a) shares or debentures is made on the basis of a prospectus after the expiration of six months or such longer period as the Registrar may allow from the date of issue of the prospectus; or
- (b) securities is made on the basis of a prospectus that is registered under the Securities Commission Act 1993 later than such period after the date of issue of the prospectus as the Securities Commission may specify,

the allotment shall not by reason only of that fact be voidable or void.

Application moneys to be held in trust until allotment

49. (1) All applications and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public or of any securities for which a prospectus is required under the Securities Commission Act 1993 shall until the allotment be held by the company, or in the case of an intended company by the persons named in the prospectus as proposed directors and by the promoters, upon trust for the applicant, but there shall be no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of the moneys so long as the bank or person acts in good faith.

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

(2) If default is made in complying with this section every officer of the company in default or, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorizes or permits the default shall be guilty of an offence against this Act.

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

Restriction on allotment in certain cases

50. (1) A public company having a share capital which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been lodged with the Registrar a statement in lieu of prospectus which complies with the requirements of this Act.

(2) 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.

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

Requirements as to statements in lieu of prospectus

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

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

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

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

(3) Where in any statement in lieu of prospectus, there is any untrue statement or wilful non-disclosure any director, who signed the statement in lieu of prospectus shall be guilty of an offence against this Act unless he proves either that the untrue statement or non-disclosure was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true or the non-disclosure immaterial.

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

Restrictions on commencement of business in certain circumstances

52. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares or has issued a prospectus pursuant to the Securities Commission Act 1993 in relation to its shares the company shall not commence any business or exercise any borrowing powers—

- (a) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any Stock Exchange; or
- (b) unless—
 - (i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
 - (ii) every director has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

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

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

(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares or has not issued a prospectus pursuant to the Securities Commission Act 1993 the company shall not commence any business or exercise any borrowing power unless—

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

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

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

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

(6) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall be guilty of an offence against this Act.

Penalty: *Ten thousand ringgit. Default penalty: Two hundred and fifty ringgit.

Restriction on varying contracts referred to in prospectus, etc.

53. A company shall not before the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, unless the variation is made subject to the approval of the statutory meeting.

DIVISION 3

SHARES

Return as to allotments

54. (1) Where a company makes any allotment of its shares or any of its shares are deemed to have been allotted under subsection (6) the company shall within one month thereafter lodge with the Registrar a return of the allotments stating—

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

(2) The particulars mentioned in paragraph (1)(d) need not be included in the return where a company to which subsection 166(1) applies has allotted shares—

- (a) for cash; or
- (b) for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds five hundred.

*NOTE—Previously “one thousand ringgit”—see Companies (Amendment) Act 1986 [Act A657].

(3) Where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a copy of any such contract certified as prescribed.

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

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

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

the company shall lodge with the return a statement containing such particulars as are prescribed but where the shares are allotted pursuant to a scheme of arrangement approved by the Court under section 176 the company may lodge an office copy of the order of the Court in lieu of the statement in the prescribed form.

(6) For the purposes of this section any shares issued without formal allotment to subscribers to the memorandum shall be deemed to have been allotted to the subscribers on the date of the incorporation of the company.

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

Penalty: One thousand ringgit. Default penalty: Two hundred and fifty ringgit.

As to voting rights of equity shares in certain companies

55. (1) Notwithstanding any provisions in this Act or in the memorandum or articles of a company to which this section applies, each equity share issued by such a company after the commencement of this Act shall confer the right at a poll at any general meeting of the company (subject as provided in subsection 148(1)) to one vote, and, to one vote only for each ringgit or part of a ringgit that has been paid up on that share.

(2) Where any company to which this section applies has, prior to the commencement of this Act, or, while it was a company to which this section did not apply, issued any equity share which does not comply with subsection (1), the company shall not issue any invitation to subscribe for or to purchase any shares or debentures of the company until the voting rights attached to each share of that company have been duly varied so as to comply with subsection (1).

(3) For the purposes of this section any alteration of the rights of issued preference shares so that they become equity shares shall be deemed to be an issue of equity shares.

(4) The Yang di-Pertuan Agong may by proclamation published in the *Gazette* declare that subsection (1) shall apply to all or any equity shares or any class of equity shares which have been issued before the commencement of this Act by a company to which this section applies and which is specified in the declaration and thereupon that subsection shall apply to such equity shares so issued by the company from such date as is specified in the declaration being a date not less than one year after the making of the proclamation.

(5) This section applies to—

- (a) a public company having a share capital; and
- (b) a subsidiary of such a public company.

(6) A person shall not make any invitation to the public in breach of subsection (2).

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

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

Differences in calls and payments, etc.

- 56.** (1) A company if so authorized by its articles may—
- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
 - (b) accept from any member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and
 - (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability

(2) A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up, but no such resolution shall prejudice the rights of any person acquired before the passing of the resolution.

Share warrants

57. (1) A company shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant.

(2) The bearer of a share warrant issued before the commencement of this Act shall be entitled, on surrendering it for cancellation to have his name entered in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant issued before the commencement of this Act in respect of the shares therein specified without the warrant being surrendered and cancelled.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.

58. (1) A company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if —

- (a) the payment is authorized by the articles;
- (b) the commission does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less;
- (c) the amount or rate of the commission is—
 - (i) in the case of shares of an unlisted recreational club which are offered to the public for subscription or in the case of shares other than of an unlisted recreational club which are offered for subscription or purchase pursuant to a prospectus that is registered under the Securities Commission Act 1993, disclosed in the prospectus; and
 - (ii) in the case of shares not so offered, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and lodged before the payment of the commission with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the like manner.

(2) Except as provided in subsection (1) no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company, whether the shares or money are so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage (in addition to or in lieu of the commission referred to in subsection (1)) as it has heretofore been lawful for company to pay but the amount or rate per centum of the brokerage paid or agreed to be paid by the company shall (in the case of shares of an unlisted recreational club which are offered to the public for subscription or in the case of shares other than of an unlisted recreational club which are offered for subscription or purchase pursuant to a prospectus that is registered under the Securities Commission Act 1993) be disclosed in the prospectus or in the statement in lieu of prospectus (if applicable) or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and lodged before the payment of the brokerage with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have power to apply any part of the money or shares so received in payment of any commission the payment of which if made directly by the company would have been lawful under this section.

(5) If default is made in complying with the provisions of this section relating to the lodging with the Registrar of the statement in the prescribed form, 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.

Power to issue shares at a discount

59. (1) Subject to this section a company may issue shares at a discount of a class already issued if—

- (a) the issue of the shares at a discount is authorized by resolution passed in general meeting of the company, and is confirmed by order of the Court;
- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c) at the date of the issue not less than one year has elapsed since the date on which the company was entitled to commence business; and

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

(d) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows.

(2) The Court, if having regard to all the circumstances of the case it thinks proper to do so, may make an order confirming the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) Notwithstanding any provision of its articles, a company shall not issue at a discount shares of any class unless it first offers the shares to every holder of shares of that class in the company proportionately to the number of those shares held by him.

(5) Every such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time not being less than twenty-one days within which the offer may be accepted.

(6) If any such offer is not accepted within the time limited by the notice the shares may be issued on terms not more favourable than those offered to the shareholders.

(7) 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.

Penalty: *One thousand ringgit. Default penalty.

Issue of shares at a premium

60. (1) In this section—

“arrangement” means any agreement, scheme or arrangement (including an arrangement sanctioned in accordance with section 176 or 270);

“company” except in references to the issuing company, includes any body corporate;

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

“equity share capital” means, in relation to a company, its issued share capital excluding any part thereof which neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

“equity shares” means shares comprised in a company’s equity share capital;

“issuing company” means the company issuing the shares in the circumstances referred to in this section;

“minimum premium value” means the amount, if any, by which the base value of the shares transferred exceeds the aggregate nominal value of the shares allotted in consideration for the transfer;

“non-equity shares” means shares of any class not comprised in a company’s equity share capital.

Share premium account

(2) Where a company issues shares for which a premium is received by the company whether in cash or in the form of other valuable consideration a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called the “share premium account” and the provisions of this Act relating to the reduction of the share capital of a company shall subject to this section apply as if the share premium account were paid-up share capital of the company.

(3) The share premium account may be applied—

- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;
- (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;
- (c) in the payment of dividends if such dividends are satisfied by the issue of shares to members of the company;
- (d) in the case of a company which carries on insurance business in Malaysia, by appropriation or transfer to any statutory fund established and maintained pursuant to any law of Malaysia relating to insurance;

- (e) in writing off—
- (i) the preliminary expenses of the company; or
 - (ii) the expenses of, or the commission or brokerage paid or discount allowed on, any duty, fee or tax payable on or in connection with, and issue of shares of the company; or
- (f) in providing for the premium payable on redemption of redeemable preference shares.

Merger relief

- (4) (a) Subsection (2) shall not apply—
- (i) where an issuing company has secured at least ninety per centum equity holding in another company in pursuance of any arrangement providing for the allotment of equity shares issued at a premium in the issuing company on terms that the consideration for the shares allotted is to be provided by the issue or transfer to the issuing company of equity shares in that other company or by the cancellation of any such shares not held by the issuing company; and
 - (ii) where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any such shares in that company not held by the issuing company.
- (b) Subject to paragraph (c), the issuing company shall be regarded for the purposes of this subsection as having secured at least ninety per centum equity holding in another company in pursuance of any such arrangement as is mentioned in paragraph (a), if, in consequence of any acquisition or cancellation of equity shares in that company in pursuance of that arrangement it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement or not) of an aggregate nominal value equal to ninety per centum or more of the nominal value of the company's equity share capital.

- (c) Where the equity share capital of the other company in question is divided into different classes of shares this subsection shall not apply unless the requirements of paragraph (a) above are satisfied in relation to each of those classes taken separately.
- (d) Shares held by a company which is the issuing company's holding company or subsidiary of the issuing company's holding company, or by its or their trustees, shall be regarded for the purposes of this subsection as held by the issuing company.
- (5) (a) Where the issuing company—
- (i) is a wholly-owned subsidiary of another company (the holding company); and
 - (ii) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration for the transfer to the issuing company of assets, other than cash, being assets of any company (the transferor company) which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries,

the issuing company shall not be required by subsection (2) to transfer any amount in excess of the minimum premium value to the share premium account where the shares in the issuing company allotted in consideration for the transfer are issued at a premium.

(b) In paragraph (a), “the minimum premium value” means the amount, if any, by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

(c) For the purposes of paragraph (b), the base value of the consideration for the shares allotted shall be the amount by which the base value of assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

- (d) For the purposes of paragraph (c)—
- (i) the base value of the assets transferred shall be taken as the cost of those assets to the transferor company or the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer, whichever is the less; and
 - (ii) the base value of the liabilities assumed shall be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.
- (e) Subsection (4) shall not apply in any case to which this subsection applies.

Restrospective relief in certain circumstances

- (6) (a) Subject to paragraph (b), where—
- (i) the issuing company has issued at a premium shares which were allotted in pursuance of any arrangement providing for the allotment of shares in the issuing company on terms that the consideration for the shares allotted was to be provided by the issue or transfer to the issuing company of shares in another company or by the cancellation of any shares in that other company not held by the issuing company; and
 - (ii) that other company must either have been, at the time of the arrangement, a subsidiary of the issuing company or of any company which was then the issuing company's holding company or have become such a subsidiary on the acquisition or cancellation of its shares in pursuance of the arrangement,

any part of the premiums on the shares so issued which was not transferred to the company's share premium account in accordance with subsection (2) shall be treated as if subsection (2) had never applied to those premiums (and may accordingly be disregarded in determining the sum to be included in the company's share premium account).

(b) This subsection applies only where a company has issued shares in circumstances to which the subsection applies before the coming into operation of the subsection.

(7) (a) An amount corresponding to any amount representing the premiums or part of the premiums on shares issued by a company which by virtue of subsection (4), (5) or (6) is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance-sheet.

(b) References in subsections (4) to (6) and in this subsection (however expressed) to—

- (i) the acquisition by any company of shares in another company; and
- (ii) the issue or allotment of shares to or the transfer of shares to or by any company,

include references respectively to the acquisition of any of those shares by and to the issue or allotment or (as the case may require) the transfer of any of those shares to or by trustees of that company; and the reference in subparagraph (5)(b)(i) to the company transferring the shares there-mentioned shall be construed accordingly.

(c) References in subsections (4) to (6) and in this subsection to the transfer of shares in a company include references to the transfer of right to be included in the company's register of members in respect of those shares.

(8) Regulations may be made making provision for and in relation to—

- (i) relief from the requirement of subsection (2) in relation to premium other than cash premium; or
- (ii) restrictions or modification of any relief from those requirements provided by subsections (4) to (7).

Redeemable preference shares

61. (1) Subject to this section a company having a share capital may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed and the redemption shall be effected only on such terms and in such manner as is provided by the articles.

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

(3) The shares shall not be redeemed—

(a) except out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) unless they are fully paid up.

(4) The premium, if any, payable on redemption shall be provided for out of profits or the share premium account before the shares are redeemed.

(5) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve called the “capital redemption reserve” a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve were paid-up share capital of the company.

(6) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any fee under this Act be deemed to be increased by such issue but where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to any fee under this Act, be deemed to have been issued in pursuance of this subsection unless the old shares have been redeemed within one month after the issue of the new shares.

(7) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(8) If a company redeems any redeemable preference shares it shall within fourteen days after so doing give notice thereof to the Registrar specifying the shares redeemed.

Power of company to alter its share capital

62. (1) A company if so authorized by its articles may in general meeting alter the conditions of its memorandum in any one or more of the following ways:

- (a) increase its share capital by the creation of new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination;
- (d) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or
- (e) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

Cancellations

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

As to share capital of unlimited company on re-registration

(3) An unlimited company having a share capital may by any resolution passed for the purposes of subsection 25(1)—

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

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

Notice of increase of share capital

(4) Where a company has increased its share capital beyond the registered capital, it shall within fourteen days after the passing of the resolution authorizing the increase lodge with the Registrar notice of the increase.

(5) If any company fails to comply with subsection (4) 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.

Validation of shares improperly issued

63. Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other written law or of the memorandum or articles of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorized by any such provision the Court may, upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable so to do, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both and upon an office copy of the order being lodged with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

Special resolution for reduction of share capital

64. (1) Subject to confirmation by the Court a company may, if so authorized by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

*NOTE—Previously “two hundred and fifty ringgit”—see Companies (Amendment) Act 1985 [Act A657].

- (b) cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) pay off any paid-up share capital which is in excess of the needs of the company,

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

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs—

- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company shall be entitled to object to the reduction;
- (b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs—
 - (i) if the company admits the full amount of the debt or claim or though not admitting it is willing to provide for it, the full amount of the debt or claim; or
 - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

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

(4) The Court, if satisfied with respect to every creditor who under subsection (2) is entitled to object, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured may make an order confirming the reduction on such terms and conditions as it thinks fit.

(5) An order made under subsection (4) shall show the amount of the share capital of the company as altered by the order, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the order deemed to be paid up on each share.

(6) On the lodging of an office copy of the order with the Registrar the resolution for reducing share capital as confirmed by the order so lodged shall take effect.

(7) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the order.

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

(9) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the order and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share (as the case may be) but where any creditor entitled to object to the reduction is,

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

- (a) every person who was a member of the company at the date of the lodging of the copy of the order for reduction shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company has commenced to be wound up on the day before the said date; and
- (b) if the company is wound up the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim may, if it thinks fit settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up,

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

(10) Every officer of the company who—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
- (b) wilfully misrepresents the nature of amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence against this Act.

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

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

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

Rights of holders of classes of shares

65. (1) If in the case of a company the share capital of which is divided into different classes of shares provision is made by the memorandum or articles for authorizing the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied or abrogated the holders of not less in the aggregate than ten per centum of the issued shares of that class, may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.

(2) An application shall not be invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.

(3) The application shall be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing.

(4) On the application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation as the case may be and shall, if not so satisfied, confirm it, and the decision of the Court shall be final.

(5) The company shall within fourteen days after the making of an order by the Court on any such application lodge an office copy of the order with the Registrar and if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: *Two thousand ringgit. Default penalty.

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

(6) The issue by a company of preference shares ranking *pari passu* with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first-mentioned shares was authorized by the terms of issue of the existing preference shares or by the articles of the company in force at the time the existing preference shares were issued.

(7) For the purposes of this section the alteration of any provision in the memorandum or articles of a company which affects or relates to the manner in which the rights attaching to the shares of any class may be varied or abrogated shall be deemed to be a variation or abrogation of the rights attached to the shares of that class.

(8) This section shall not operate so as to limit or derogate from the rights of any person to obtain relief under section 181.

Rights of holders of preference shares to be set out in memorandum or articles

66. (1) No company shall allot any preference shares or convert any issued shares into preference shares unless there is set out in its memorandum or articles the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(2) 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.

Penalty: *Two thousand ringgit.

Dealing by a company in its own shares, etc.

67. (1) Except as is otherwise expressly provided by this Act no company shall give, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise,

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

any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company or in any way purchase, deal in or lend money on its own shares.

(2) Nothing in subsection (1) shall prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company or a subsidiary of the company, including any director holding a salaried employment or office in the company or a subsidiary of the company; or
- (c) the giving of financial assistance by a company to persons, other than directors, *bona fide* in the employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) If there is any contravention of this section, the company is, notwithstanding section 369, not guilty of an offence but each officer 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.

(4) Where a person is convicted of an offence under subsection (3) and the Court, by which he is convicted is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence, the Court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or the person, as the case may be, of such amount as the Court specifies, and any such order may be enforced as if it were a judgment of the Court.

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

(5) The power of a Court under section 354 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability referred to in that section, extends to relieving a person against whom an order may be made under subsection (4) from the liability to have such an order made against him.

(6) Nothing in this section shall operate to prevent the company or any person from recovering the amount of any loan made in contravention of this section or any amount for which it becomes liable, either on account of any financial assistance given, or under any guarantee entered into or in respect of any security provided, in contravention of this section.

Purchase by a company of its own shares, etc.

67A. (1) Notwithstanding section 67, a public company with a share capital may, if so authorized by its articles, purchase its own shares.

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

- (a) it is solvent at the date of the purchase and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased;
- (b) the purchase is made through the Stock Exchange on which the shares of the company are quoted and in accordance with the relevant rules of the Stock Exchange; and
- (c) the purchase is made in good faith and in the interests of the company.

(3) Notwithstanding section 60, the company may apply its share premium account to provide the consideration for the purchase of its own shares.

(3A) Where a company has purchased its own shares, the directors of the company may resolve—

- (a) to cancel the shares so purchased;
- (b) to retain the shares so purchased in treasury (in this Act referred to as "treasury shares"); or
- (c) to retain part of the shares so purchased as treasury shares and cancel the remainder.

(3B) The directors of the company may—

- (a) distribute the treasury shares as dividends to shareholders, such dividends to be known as “share dividends”; or
- (b) resell the treasury shares on the market of the Stock Exchange on which the shares are quoted, in accordance with the relevant rules of the Stock Exchange.

(3C) While the shares are held as treasury shares, the rights attached to them as to voting, dividends and participation in other distribution and otherwise are suspended and the treasury shares shall not be taken into account in calculating the number or percentage of shares or of a class of shares in the company for any purposes including, without limiting the generality of this provision, the provisions of any law or requirements of the articles of association of the company or the listing rules of a Stock Exchange on substantial shareholding, takeovers, notices, the requisitioning of meetings, the quorum for a meeting and the result of a vote on a resolution at a meeting.

(3D) Where the directors decide to distribute the treasury shares as share dividends, the costs of the shares on the original purchase shall be applied in the reduction of either the share premium account or the funds otherwise available for distribution as dividends or both.

(3E) Where the directors resolve to cancel the shares so purchased, or cancel any treasury shares, the issued capital of the company shall be diminished by the shares so cancelled and the amount by which the company’s issued capital is diminished shall be transferred to the capital redemption reserve.

(4) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(5) A cancellation of shares made pursuant to subsection (3E) shall not be deemed to be a reduction of share capital within the meaning of this Act.

(6) A company shall, within fourteen days after the shares are purchased, lodge with the Registrar and the Stock Exchange a notice in the prescribed form.

(7) If default is made in complying with this section, the company, every officer of the company and any other person or individual who is in default shall be guilty of an offence against this Act.

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

Options over unissued shares

68. (1) An option granted after the commencement of this Act by a public company which enables any person to take up unissued shares of the company after a period of ten years has elapsed from the date on which the option was granted shall be void.

(2) Subsection (1) shall not apply in any case where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures.

Register of options to take up unissued shares

68A. (1) A company shall keep a register of options granted to persons to take up unissued shares in the company.

(2) The company shall, within fourteen days after the grant of an option to take up unissued shares in the company, enter in the register the following particulars—

- (a) the name, address and the number of the identity card issued under the National Registration Act 1959 [*Act 78*], or the passport number or other identification number, and the nationality of the holder of the option;
- (b) the date on which the option was granted;
- (c) the number and description of the shares in respect of which the option was granted;
- (d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;
- (e) the consideration, if any, for the grant of the option;
- (f) the consideration, if any, for the exercise of the option or the manner in which that consideration is to be ascertained or determined; and
- (g) such other particulars as may be prescribed.

(3) Division 4 of Part V shall apply to a register kept under this section as if the register was the register of members.

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

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

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

Penalty: One hundred thousand ringgit. Default penalty: Ten thousand ringgit.

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

69. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of such share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but—

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

Furnishing of information and particulars of shareholding

69A. (1) The Registrar may at any time by notice in writing require any company, person or individual to furnish all the necessary information and particulars of any share acquired or held directly or indirectly either for his own benefit or for any other company, person or individual and have them verified by statutory declaration.

(2) Any company, person or individual served with such notice shall within seven days of the receipt of such notice furnish the Registrar all the necessary information and particulars of any share so acquired or held and duly verified by statutory declaration.

(3) If default is made in complying with this section the company, every officer of the company and any other person or individual who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for *three years or †one million ringgit.
Default penalty.

DIVISION 3A

SUBSTANTIAL SHAREHOLDINGS

Application and interpretation of Division

69B. (1) This section has effect for the purpose of this Division but shall not prejudice the operation of any other provision of this Act.

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

- (a) to a company all or any of the shares in which are listed for quotation on the official list of a Stock Exchange as defined in the Securities Industry Act 1983;
- (b) to a public company whose shares are not listed for quotation on the official list of a Stock Exchange as defined in the Securities Industry Act 1983;
- (c) to a body corporate incorporated in Malaysia, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division; or

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

†NOTE—Previously “fifty thousand ringgit”—see Companies (Amendment) (No. 2) Act 1998 [Act A1043].

(d) to a body, not being a body corporate, formed in Malaysia that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division.

(3) The Minister may, by notification in the *Gazette*, vary or revoke a notification published under subsection (2).

(4) In relation to a company the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the company having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

(5) A reference in the definition of “voting share” in subsection 4(1) to a body corporate includes a reference to a body referred to in paragraph (2)(d).

Persons obliged to comply with Division

69c. (1) The obligation to comply with this Division extends to all natural persons, whether resident in Malaysia or not and whether Malaysian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in Malaysia or not.

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

Substantial shareholdings and substantial shareholders

69d. (1) For the purposes of this Division, a person has a substantial shareholding in a company if he has an interest in one or more voting shares in the company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than five per centum of the aggregate of the nominal amounts of all the voting shares in the company.

(2) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into two or more classes of the shares, if he has an interest in one or more voting shares included in one of those classes and the nominal amount of that share, or the aggregate of

the nominal amounts of those shares, is not less than five per centum of the aggregate of the nominal amounts of all the voting shares included in that class.

(3) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

Substantial shareholder to notify company of his interests

69E. (1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name, nationality and address and full particulars of the voting shares in the company in which he has an interest (including, unless the interest cannot be related to a particular share, the name of the person who is registered as the holder) and full particulars of each such interest and of the circumstances by reason of which he has that interest.

(2) The notice shall be given—

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

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

Substantial shareholder to notify company of change in his interests

69F. (1) Where there is a change in the interest of a substantial shareholder in a company in voting shares in the company, he shall give notice in writing to the company stating his name and full particulars of the change, including the date of the change, and the circumstances by reason of which that change has occurred.

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

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

Person who ceases to be substantial shareholder to notify company

69G. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

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

References to operation of section 6A

69H. The circumstances required to be stated in a notice under section 69E, 69F or 69G include circumstances by reason of which having regard to section 6A—

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company,

respectively.

Copy of notice to be served on Stock Exchange

69I. A person who gives a notice under section 69E, 69F or 69G to a company referred to in paragraph 69B(2)(a), shall, on the day on which he gives that notice, serve a copy of the notice on the Stock Exchange as defined in the Securities Industry Act 1983 and the Securities Commission as defined in the Securities Commission Act 1993.

Notice to non-residents

69j. (1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, shall—

- (a) give to the non-resident a notice in the prescribed form as to the requirements of this Division; or
- (b) where the first-mentioned person knows or has reasonable grounds for believing that an interest of the non-resident in the shares is an interest that the non-resident holds for another person, give to the non-resident a notice in the prescribed form as to the requirements of this Division and direct the non-resident to give the notice or a copy of the notice to that other person.

(2) The notice shall be given—

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

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

(4) Nothing in this section affects the operation of section 69c.

Registrar may extend time for giving notice under this Division

69k. (1) The Registrar may, on the application of a person who is required to give a notice under this Division, in his discretion, extend or further extend the time for giving the notice.

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

Company to keep register of substantial shareholders

69L. (1) A company shall keep a register in which it shall forthwith enter—

- (a) in alphabetical order the names of persons from whom it has received a notice under section 69E; and
- (b) against each name so entered the information given in the notice and, where it receives a notice under section 69F or 69G, the information given in that notice.

(2) The register shall be kept at the registered office of the company, and shall be open for inspection by any member of the company without charge and by any other person on payment for each inspection of a sum of five ringgit or such lesser sum as the company requires.

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

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

Penalty: Five thousand ringgit. Default penalty: Five hundred ringgit.

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

- (a) to be deemed for any purpose to have notice of; or
- (b) to be put upon inquiry as to,

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

Offences against certain sections

69M. A person who fails to comply with section 69E, 69F, 69G or 69J shall be guilty of an offence.

Penalty: *One million ringgit. Default penalty: †Fifty thousand ringgit.

Powers of Court with respect to defaulting substantial shareholders

69N. (1) Where a person (in this section referred to as “the substantial shareholder”) is, or at any time after the date on which this Division came into operation has been, a substantial shareholder in a company and has failed to comply with section 69E, 69F or 69G, the Court may, whether or not that failure still continues, on the application of the Registrar, make one or more of the following orders—

- (a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (a) from disposing of any interest in those shares;
- (c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;
- (d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;
- (e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

*NOTE—Previously “five hundred ringgit”—*see* Companies (Amendment) (No. 2) Act 1998 [Act A1043].

†NOTE—Previously “five hundred ringgit”—*see* Companies (Amendment) (No. 2) Act 1998 [Act A1043].

(2) Any order under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become, a substantial shareholder in the company.

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

(5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person and the Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied—

- (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and
- (b) that, in all the circumstances, the failure ought to be excused.

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

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

(8) Section 311 applies in relation to a share that vests in the Registrar under this section as the first-mentioned section applies in relation to an estate or interest in property referred to in the first-mentioned section.

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

Penalty: Three thousand ringgit. Default penalty: Five hundred ringgit.

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

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

69o. (1) Any company all or part of the shares in which are listed for quotation on the official list of a Stock Exchange as defined in the Securities Industry Act 1983 may by notice in writing require any member of the company within such reasonable time as is specified in the notice—

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

(2) Where a company is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in a company, the company may by notice in writing require that other person within such reasonable time as is specified in the notice—

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

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

(4) Whenever a company receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the company, it shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 69L—

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

(b) the information received in pursuance of the requirement.

(5) Section 69L shall apply in relation to the part of the register referred to in subsection (4) as they apply in relation to the remainder of the register and as if references to subsection 69L(1) included references to subsection (4).

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

(a) fails to comply with a notice under this section; or

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

shall be guilty of an offence against this Act.

Penalty: Imprisonment for two years or *one million ringgit.

(7) A person shall not be guilty of an offence under paragraph (6)(a) if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason frivolous or vexatious.

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

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

Penalty: One million ringgit.

69P. (*Deleted by Act A1108*)

*NOTE—Previously “five thousand ringgit”—see Companies (Amendment) (No. 2) Act 1998 [Act A1043].

DIVISION 4

DEBENTURES

Register of debenture holders and copies of trust deed

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

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

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

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

(5) Every registered holder of debentures and every holder of shares in a company shall at his request be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof on payment of one dollar for every hundred words or part thereof required to be copied but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(6) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the company to a holder of those debentures at his request on payment of the sum of three ringgit or such less sum as is fixed by the company, or where the copy has to be specially made to meet the request on payment of one ringgit for every hundred words or part thereof required to be copied.

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

(8) A company which issues debentures may cause to be kept in any place outside Malaysia a branch register of debenture holders which shall be deemed to be part of the company's register of debenture holders and Division 4 of Part V shall with such adaptations as are necessary apply to and in relation to the keeping of a branch register of debenture holders.

Penalty: *One thousand ringgit. Default penalty.

Specific performance of contracts

71. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Perpetual debentures

72. A condition contained in any debenture or in any deed for securing any debentures whether the debenture or deed is issued or made before or after the commencement of this Act shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, any rule of law or equity to the contrary notwithstanding.

Reissue of redeemed debentures

73. (1) Where a company has redeemed any debentures whether before or after the commencement of this Act—

- (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

the company shall have and shall be deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place but the reissue of a debenture or the issue of one debenture in place of another under this subsection, whether the reissue or issue was made before or after the commencement of this Act, shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

(2) After the reissue the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remain so deposited.

Qualifications of trustee for debenture holders

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

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

(3) Without leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that trustee corporation is—

- (a) a shareholder who beneficially holds shares in the borrowing corporation;
- (b) beneficially entitled to moneys owed by the borrowing corporation to it;
- (c) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or

(d) a corporation that is by virtue of section 6 deemed to be related to—

- (i) any corporation of a kind referred to in paragraphs (a) to (c); or
- (ii) the borrowing corporation.

(4) Notwithstanding anything contained in subsection (3), that subsection shall not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only that—

(a) the borrowing corporation owes to the trustee corporation or to a corporation that is deemed by virtue of section 6 to be related to the trustee corporation any moneys so long as such moneys are—

- (i) moneys that (not taking into account any moneys referred to in subparagraphs (ii) and (iii)) do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered to the public, exceed one-tenth of the amount of the debentures proposed to be offered to the public within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount owed by the borrowing corporation to the holders of the debentures;
- (ii) moneys that are secured by, and only by, a first mortgage over land of the borrowing corporation, or by any debentures issued by the borrowing corporation to the public or by any debentures not issued to the public which are issued pursuant to the same trust deed as that creating other debentures issued at any time by the borrowing corporation to the public or by any debentures to which the trustee corporation, or a corporation that is by virtue of section 6 deemed to be related to the trustee corporation, is not beneficially entitled; or
- (iii) moneys to which the trustee corporation, or a corporation that is by virtue of section 6 deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or

(b) the trustee corporation, or a corporation that is deemed by virtue of section 6 to be related to the trustee corporation,

is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are deemed by virtue of section 6 to be related to it, do not carry the right to exercise more than one-twentieth of the voting power at any general meeting of the borrowing corporation.

(5) Nothing in subsection (3) shall—

- (a) affect the operation of any debentures or trust deed issued or executed before the commencement of this Act; or
- (b) apply to or in relation to the trustee for the holders of any such debentures,

unless pursuant to any such debentures or trust deed a further offer of debentures is made to the public after the commencement of this Act.

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

Penalty: *Ten thousand ringgit. Default penalty.

Retirement of trustees

75. (1) Notwithstanding anything contained in any Act or in the relevant debentures or trust deed a trustee for the holders of debentures shall not cease to be the trustee until a corporation qualified pursuant to section 74 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.

(2) Where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may subject to section 74, be appointed in accordance with that provision.

(3) Where no provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a

*NOTE—Previously “one thousand ringgit”—see Companies (Amendment) Act 1986 [Act A657].

retiring trustee the borrowing corporation may appoint a successor which is qualified for appointment pursuant to section 74.

(4) Notwithstanding anything in this Act or in any debentures or trust deed a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any corporation which is qualified for appointment pursuant to section 74 and which is deemed by virtue of section 6 to be related to the existing trustee.

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section 74 or fails or refuses to act or is disqualified under that section the Court may on the application of the borrowing corporation or the trustee for the holders of the debentures or the holder of any of the debentures or the Minister appoint any corporation qualified pursuant to section 74 to be the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be qualified or which has failed or refused to act as trustee or is disqualified as aforesaid.

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

Penalty: *One thousand ringgit. Default penalty.

Contents of trust deed

76. (1) Where a corporation offers debentures to the public for subscription in Malaysia the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing corporation may, pursuant to those debentures or that deed, borrow and shall contain covenants by the borrowing corporation, or if the debentures do not or the trust deed does not expressly contain those covenants they or it shall be deemed to contain covenants by the borrowing corporation, to the following effect—

(a) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(b) that, to the same extent as if the trustee for the holders of the debentures or any approved company auditor

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

appointed by the trustee were a director of the corporation the borrowing corporation will—

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

summon a meeting of the holders of those debentures to consider the accounts and balance sheet which were last lodged with the trustee for the holders of the debentures by the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of those debentures present at the meeting.

(2) Where after the date of the commencement of this Act any debenture (other than a debenture lawfully issued pursuant to a trust deed executed before that date) is issued and neither the debenture nor the trust deed relating to the issue of the debenture expressly contains the limitation on the amount that the borrowing corporation may borrow and the covenants referred to in subsection (1) the corporation that issued the debenture and every officer of the corporation who is in default shall be guilty of an offence against this Act.

Penalty: *Two thousand ringgit.

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