

Power of Court in relation to certain irredeemable debentures

77. (1) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, forthwith or at such other time as the Court directs if on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures the Court is satisfied that—

- (a) at the time of the issue of the debentures the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realized under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu*, if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

Duties of trustees

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

- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and of each of its guarantor corporations which are or may be available whether by way of security or otherwise are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;

- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;
- (c) shall ensure that the borrowing corporation complies with Division 7 so far as it relates to the debentures and is applicable;
- (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
- (e) except where it is satisfied that the breach will not materially prejudice the security, if any, for the debentures or the interests of the holders of the debentures, shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of those covenants, terms and provisions;
- (f) where the borrowing corporation or any of its guarantor corporations fails when so required by the trustee to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation thereto; and
- (g) where the borrowing corporation submits to those holders a compromise or arrangement, shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due inquiry, the trustee for the holders of the debentures at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Minister for an order under this subsection and the Minister may, on such application, after giving the borrowing corporation an opportunity of making representations in relation to that application, by order in writing served on the corporation

at its registered office in Malaysia, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Minister thinks necessary for the protection of the interests of the holders of the debentures or the Minister may, and if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under subsection (4) and the trustee shall apply accordingly.

(3) Where—

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the corporation has contravened or failed to comply with an order made by the Minister under subsection (2),

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

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

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the Court thinks fit;
- (b) stay all or any actions or proceedings before any court by or against the borrowing corporation;
- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the corporation or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures; and

- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor corporations or the public,

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

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

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

(7) A trustee may rely upon any certificate or report given or statement made by any advocate, auditor or officer of the borrowing corporation or guarantor corporation if it has reasonable grounds for believing that such advocate, auditor or officer was competent to give or make the certificate, report or statement.

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

79. (1) The trustee for the holder of debentures may apply to the Court—

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or
- (b) to determine any question in relation to the interests of the holders of debentures,

and the Court may—

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

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

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

Obligations of borrowing corporation

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

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

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

Penalty: *Ten thousand ringgit.

Default penalty: Two hundred and fifty ringgit.

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

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded;

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

- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations or any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and if so, particulars of those circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public which has not previously been reported upon as required by this section and if so, particulars of that change; and
- (f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which pursuant to section 6 is deemed to be related to the borrowing corporation, particulars of—
 - (i) the total amounts so deposited or loaned and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total amounts owing to the borrowing corporation in respect of money so deposited or loaned and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing corporation.

(3) Where there is a trustee for the holders of any debentures issued by a borrowing corporation, the borrowing corporation and each of its guarantor corporations which has guaranteed the repayment of the moneys raised by the issue of those debentures shall (within twenty-one days after the creation of the charge) in writing furnish the trustee for the holders of the debentures, whether or not any demand therefor has been made, with particulars of any charge created by the corporation or the guarantor corporation, as the case requires, and when the amount to be advanced on the security of the charge is indeterminate (within seven days after the advance) with particulars of the amount in fact advanced but where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

(4) The directors of every borrowing corporation and of every guarantor corporation shall at some date not later than nine months after the expiration of each financial year of the corporation cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures, if any, a profit and loss account for the period from the end of that financial year until the expiration of six months after the end of that financial year and a balance sheet as at the end of the period to which the profit and loss account relates.

Penalty: *One thousand ringgit. Default penalty.

(5) Subsection 169(4) to (13) and subsection 174(1), (2) and (4) shall with such adaptations as are necessary be applicable to every profit and loss account and balance sheet made out and lodged pursuant to subsection (4) as if that profit and loss account and balance sheet were a profit and loss account and balance sheet referred to in those subsections.

(6) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1) or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance sheet, profit and loss accounts and reports as required by subsection (4) within the time prescribed the trustee shall forthwith lodge notice of that fact with the Registrar.

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

Obligation of guarantor corporation to furnish information

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

(2) A corporation which fails to comply with a requirement contained in a notice given pursuant to subsection (1) and every officer of that corporation who is in default shall be guilty of an offence against this Act.

Penalty: *Ten thousand ringgit. Default penalty.

Loans and deposits to be immediately repayable on certain events

82. (1) Where in any prospectus issued in connection with an invitation to the public to subscribe for or to purchase debentures of a corporation, there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied, the corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving that purpose or completing that project.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection 80(1).

(3) When it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the corporation requiring it to repay the moneys so received by the corporation and within one month after the notice is given, lodge with the Registrar a copy thereof.

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

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

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

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

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

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

Liability of trustees for debenture holders

83. (1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void so far as it would have the effect of exempting a trustee thereof from or indemnifying it against liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act.

(3) Subsection (1) shall not operate—

- (a) to invalidate any provision in force at the commencement of this Act so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or
- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

DIVISION 5**INTERESTS OTHER THAN SHARES, DEBENTURES, ETC.****Interpretation**

84. (1) In this Division and in the Seventh Schedule, unless inconsistent with the context or subject matter—

“company” means a public company, and includes a corporation that is a public company under the law of a proclaimed country and is registered as a foreign company in Malaysia;

“financial year”, in relation to a deed, means the period of twelve months ending on the thirty-first day of December or on such other date as is specified in lieu thereof in the deed;

“interest” means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent—

- (a) in any profits, assets or realization of any financial or business undertaking or scheme, whether in Malaysia or elsewhere;
- (b) in any common enterprise whether in Malaysia or elsewhere, in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;
- (c) in any time-sharing scheme; or
- (d) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

- (e) any share in or debenture of a corporation;
- (f) any interest in or arising out of a policy of life insurance;
- (g) any interest in a partnership agreement unless the agreement—
 - (i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is a party to the agreement; or
 - (ii) is an agreement, or is within a class of agreements, prescribed by regulations for the purposes of this paragraph; or
- (h) any participatory interest in a unit trust scheme as defined in section 2 of the Securities Industry Act 1983;

“investment contract” means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances and includes any contract, scheme or arrangement which in substance and irrespective of the form thereof entitles the investor to a right to use or enjoy any sport, recreational, holiday or other related facilities for a consideration and for a duration of not less than twelve months whether or not on a recurring basis;

“management company”, in relation to any interests issued or proposed to be issued or any deed that relates to any interests issued or proposed to be issued means a company by or on behalf of which the interests have been or are proposed to be issued and includes any person for the time being exercising the functions of the management company;

“proclaimed country” means a country which the Minister has, by notice published in the *Gazette*, declared to be a proclaimed country for the purposes of the Division;

“time-sharing scheme” means a scheme, undertaking or enterprise—

(a) participants in which are, or may become, entitled to use, occupy or possess, for two or more periods during the period for which the scheme, undertaking or enterprise, whether in Malaysia or elsewhere is to operate, property to which the scheme, undertaking or enterprise relates; and

(b) that is to operate for a period of not less than three years.

(2) A reference in this Division to a deed shall be read as including a reference to any instrument amending or affecting the deed.

Approved deeds

85. For the purposes of this Division, a deed shall be an approved deed if—

- (a) the Registrar has granted his approval to the deed under this Division; and
- (b) the Minister has granted his approval under this Division to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office.

Approval of deeds

86. (1) Where a deed makes provision for the appointment of a company as trustee for or representative of the holders of interests issued or proposed to be issued by a company the Registrar may, subject to this section, grant his approval to the deed.

(2) The Registrar shall not grant his approval to a deed unless the deed—

- (a) complies with the requirements of this Division; and
- (b) makes provision for such other matters and things as are required by or under the regulations to be included in the deed and if regulations have been made prescribing the charges that may be made by a management company, unless the deed provides—
 - (i) that the charges to be made by the management company do not exceed such percentages or amounts as are prescribed; and
 - (ii) that the price at which the interests to which the deed relates are to be sold or purchased by the management company are consistent with the regulations relating to those prices.

(3) Within seven days after a deed has been approved under this section, the management company shall lodge in the office of the Registrar the deed, or a copy of the deed verified by statutory declaration, and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original.

Approval of trustees

87. (1) The Minister on the recommendation of Bank Negara Malaysia may, subject to such terms and conditions as he thinks fit, grant his approval to a company acting as trustee or representative for the purposes of a deed.

(2) Notwithstanding subsection (1) the Minister on the recommendation of Bank Negara Malaysia may, having regard to the nature of the undertaking, scheme or enterprise, contract or arrangement to which a deed relates, grant his approval subject to such terms and conditions as he thinks fit to such other person acting as trustee or representative for the purpose of the deed.

(3) The Minister may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted by him under this section.

Covenants to be included in deeds

88. (1) A deed shall, for the purposes of paragraph 86(2)(a), contain covenants to the following effect, namely:

- (a) a covenant binding the management company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner;
- (b) covenants binding the management company—
 - (i) that the management company will pay to the trustee or representative, within thirty days after their receipt by the company, any moneys that, under the deed, are payable by the company to the trustee or representative;
 - (ii) that the management company will not sell any interest to which the deed relates otherwise than at a price calculated in accordance with the deed;

- (iii) that the management company will, at the request of the holder of an interest, purchase that interest from the holder and that the purchase price will be a price calculated in accordance with the deed; and
 - (iv) that the management company will not, without the approval of the trustee or representative, publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of interests to which the deed relates or the yield therefrom or containing any invitation to buy interests;
- (c) covenants binding the trustee or representative that it will—
- (i) exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates;
 - (ii) keep or cause to be kept proper books of account in relation to those interests;
 - (iii) cause those accounts to be audited at the end of each financial year by an approved company auditor; and
 - (iv) send or cause to be sent by post a statement of the accounts with the report of the auditor thereon within two months of the end of the financial year, to each of the holders of those interests;
- (d) a covenant binding the management company and the trustee or representative, respectively, that no moneys available for investment under the deed will be invested in or lent to the management company, or to the trustee or representative, or to any company (other than a prescribed corporation within the meaning of subsection 38(6)) which is by virtue of section 6 deemed to be related to the management company or to the trustee or representative;
- (e) a covenant binding the management company that, to the same extent as if the trustee or representative were a director of the company, the company will—

- (i) make available to the trustee or representative, or to any approved company auditor appointed by it, for inspection the whole of the books of the company whether kept at the registered office or elsewhere; and
 - (ii) give to the trustee or representative or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;
- (f) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;
- (g) as from a day to be fixed by the Minister by notice published in the *Gazette*, covenants binding the management company and the trustee or representative respectively, that the management company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the interests to which the deed relates held by the management company, trustee or representative at any election for directors of a corporation whose shares are so held, without the consent of the majority of the holders of the interests to which the deed relates present in person and voting given at a meeting of those holders summoned in the manner provided for in paragraph (h)(i) and (ii) for the purpose of authorizing the exercise of the right at the next election; and
- (h) a covenant binding the management company that the management company will within twenty-one days after an application is delivered to the company at its registered office, being an application by not less than fifty or one-tenth in number, whichever is the less, of the holders of the interests to which the deeds relates—
 - (i) by sending notice by post of the proposed meeting at least seven days before the proposed meeting

to each of those holders at his last known address or in the case of joint holders to the joint holder whose name stands first in the company's records; and

- (ii) by publishing at least fourteen days before the proposed meeting an advertisement giving notice of the meeting in a newspaper circulating generally throughout Malaysia,

summon a meeting of the holders for the purpose of laying before the meeting the accounts and balance sheet which were laid before the last preceding annual general meeting of the management company or the last audited statement of accounts of the trustee or representative, and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2) A meeting summoned for the purposes of a covenant contained in a deed in pursuance of paragraph (1)(g) or (h) shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice, under the chairmanship of—

- (a) such person as is appointed in that behalf by the holders of the interests to which the deed relates present at the meeting; or
- (b) where no such appointment is made, a nominee of the trustee or representative approved by the Registrar,

and shall be conducted in accordance with the deed or, so far as the deed makes no provision, as directed by the chairman of the meeting.

(3) Notwithstanding anything to the contrary contained in an approved deed, the undertaking, scheme, enterprise, contract or arrangement to which the deed relates may be continued in operation or existence if it appears to be in the interests of the holders of the interests to which the deed relates during such period as is or such periods as are agreed upon by the trustee or representative and the management company.

(4) Where a direction is given to the trustee or representative at a meeting summoned pursuant to a covenant complying with paragraph (1)(h), the trustee or representative—

- (a) shall comply with the direction unless it is inconsistent with the deed or this Act; and
- (b) shall not be liable for anything done or omitted to be done by it by reason only of its following that direction.

(5) Where the trustee or representative is of the opinion that any direction so given is inconsistent with the deed or this Act or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction and the Court may make such order as it thinks fit.

Interests to be issued by companies only

89. No person except a company or an agent of a company authorized in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

Statement to be issued

90. (1) Before a company or an agent of a company issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest, the company shall issue or cause to be issued a statement in writing in connection therewith, which statement shall for all purposes be deemed to be a prospectus issued by a company, and subject to subsection (2) all provisions of this Act relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall, with such adaptations as are necessary, apply and have effect accordingly as if the interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares.

(2) Subject to subsection (3) the statement shall set out—

- (a) the matters and reports specified in the Seventh Schedule; and
- (b) such other matters as are required by or under the regulations to be set out in the statement,

with such adaptations as the circumstances of each case require and the Registrar approves.

(3) A matter or report referred to in subsection (2) may be omitted from a statement if having regard to the nature of the interest the Registrar is of the opinion that the matter or report is not appropriate for inclusion in the statement and has by writing under his hand approved the omission.

No issue without approved deed

91. (1) A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

(2) A person shall not in any deed, prospectus, statement, advertisement or other document relating to any interest make any reference to an approval of a deed or of a trustee or representative granted under this Division.

(3) Where—

- (a) an interest issued by a corporation before the date of commencement of this Act is in existence immediately before that date;
- (b) this Division would have applied in relation to the issue of the interest if the interest had been issued on or after that date;
- (c) there is not, at the expiration of three months after that date, a deed that is an approved deed in force in relation to the interest; and
- (d) the corporation did not, within a period of one month after that date, apply for approval under this Division of a deed in relation to the interest or, if it did so apply, approval was refused,

the corporation shall, within fourteen days after the expiration of the period referred to in paragraph (c), give to the holder of the interest and to the Registrar notice in writing that there is not in force in relation to that interest a deed that is an approved deed and, if this subsection is not complied with, each director of the corporation shall, in addition to the corporation, be deemed to have failed to comply with this subsection.

(4) The Minister may modify the application to a corporation of subsection (3) by extending any period referred to in that subsection or may exempt any corporation from compliance with that subsection.

(5) Nothing in subsection (3) shall be construed as authorizing the Registrar to grant his approval to a deed that relates to an interest issued by a corporation that is not a company for the purposes of this Division.

Register of interest holders

92. (1) The management company shall, in respect of each deed with which the company is concerned, keep a register of the holders of interests under the deed and enter therein—

- (a) the names and addresses of the holders;
- (b) the extent of the holding of each holder and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;
- (c) the date at which the name of each person was entered in the register as a holder; and
- (d) the date at which any person ceased to be a holder.

(2) Division 4 of Part V shall so far as is applicable and with such adaptations as are necessary apply to and in relation to the register.

(3) A management company which—

- (a) keeps a register of holders of interests at a place within three miles of the office of the Registrar or, where the registered office of a management company is within a regional area, within three miles of the office of the Regional Registrar; and
- (b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of interest holders,

need not comply with the provision of paragraph 93(1)(a) in relation to the deed under which the interests are held unless the Minister by notice published in the *Gazette* otherwise directs.

Returns, information, etc., relating to interests

93. (1) Where a deed is or has at any time been an approved deed, the management company shall, so long as the deed or any deed in substitution in whole or in part for the deed, remains in force, lodge with the Registrar, within two months after the end of each financial year applicable to the deed—

- (a) a return containing a list of all persons who, at the end of the financial year, were holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his holding and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;
- (b) a summary of—
 - (i) all purchases and sales of land and marketable securities affecting the interests of the holders during the financial year; and
 - (ii) all other investments affecting the interests of the holders made during the financial year, showing the descriptions and quantities of those investments;
- (c) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the management company during the financial year and the proportion thereof paid to any stock or share broker, or any partner employee or nominee of any stock or share broker, who is an officer of the company and the proportion retained by the company;
- (d) a list of all parcels of land and marketable securities, and other investments, held by the trustee or representative in relation to the deed, as at the end of the financial year, showing the value of the land, securities or other investments and the basis of the valuations; and
- (e) such other statements and particulars, if any, as may be prescribed.

(2) Any document required to be lodged with the Registrar by the management company under subsection (1) shall be signed by at least one director of the management company.

(3) A company to which subsection (1) applies shall, if so requested by any holder of an interest to which the deed relates within a period of one month after the end of the financial year, send by post or cause to be sent by post to the holder, within two months after the end of the financial year, a copy of the documents which the company is required to lodge with the Registrar by virtue of subsection (1)(b) to (e).

Penalty for contravention of Division, etc.

94. (1) A person shall not—

- (a) contravene or fail to comply with this Division; or
- (b) fail to comply with a covenant contained or deemed to be contained in any deed that is or at any time has been an approved deed.

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

(2) A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of, or failure to comply with this Division.

Winding up of schemes, etc.

95. (1) Where the management company under a deed is in liquidation or where, in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of holders of interests to which the deed relates, failed to comply with the deed, the trustee or representative shall summon a meeting of the holders.

(2) A meeting under subsection (1) shall be summoned—

- (a) by sending by post notice of the proposed meeting at least twenty-one days before the proposed meeting, to each holder at his last known address, or, in the case of joint holders, to the joint holder whose name stands first in the company's records; and
- (b) by publishing, at least twenty-one days before the proposed meeting, an advertisement giving notice of the meeting in a newspaper circulating generally throughout Malaysia.

*NOTE—Previously “Imprisonment for twelve months or two thousand five hundred ringgit”—see Companies (Amendment) Act 1986 [Act A657].

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

(3) Subsection 88(2) shall apply to such a meeting as if the meeting were a meeting referred to in that section.

(4) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the holders of the interests present and voting either in person or by proxy at the meeting that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall apply to the Court for an order confirming the resolution.

(5) On an application by the trustee or representative the Court may, if it is satisfied that it is in the interest of the holders of the interests, confirm the resolution and may make such orders at it thinks necessary or expedient for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

Power to exempt from compliance with Division and non-application of Division in certain circumstances

96. (1) The Minister may, by notice published in the *Gazette* and subject to such terms and conditions as are specified in the notice,—

- (a) exempt any company or class of companies or person or class of persons from complying with all or any of the provisions of this Division in relation to any interest or class of interests specified in the notice; or
- (b) declare that all or any of the provisions of this Division shall not apply to any interest or class of interests specified in the notice, upon a request made by the Minister charged with the responsibility for finance on the grounds—
 - (i) that the interest or class of interests is more appropriately regulated as a securities or futures contract, as the case may be; and
 - (ii) that any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, such interest or class of interests would be more appropriately regulated under the Securities Commission Act 1993, the Securities Industry Act 1983 or the Futures Industry Act 1993, as the case may be,

and may, by notice published in the *Gazette*, revoke such notice or vary it in such manner as he thinks fit.

(1A) Where a company or person contravenes or fails to comply with any term or condition specified in a notice of exemption granted under paragraph (1)(a), every officer of the company or person who is in default shall be guilty of an offence against this Act.

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

(2) This Division shall not apply in the case of the sale of any interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realization of assets.

Liability of trustees

97. (1) Subject to this section, any provision contained in a deed that is or at any time has been an approved deed, or in any contract with the holders of interests to which such a deed relates, shall be void so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying a trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or representative.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release; or
- (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-fourths of the holders of interests as vote in person or by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee or representative ceasing to act.

DIVISION 6

TITLE AND TRANSFERS

Nature of shares

98. The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles, and shall not be of the nature of immovable property.

Numbering of shares

99. (1) Each share in a company shall be distinguished by an appropriate number.

(2) Notwithstanding subsection (1)—

- (a) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or
- (b) if all the issued shares in a company are evidenced by certificates in accordance with section 100 and each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

Certificate to be evidence of title

100. (1) A certificate under the common or official seal of a company specifying any shares held by any member of the company shall be *prima facie* evidence of the title of the member to the shares.

(2) Every share certificate shall be under the common seal of the company or (in the case of a share certificate relating to shares on a branch register) the common or official seal of the company and shall state as at the date of the issue of the certificate—

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company in Malaysia, or where the certificate is issued by a branch office, the address of that branch office; and
- (c) the nominal value and the class of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section shall not affect the rights of any holder of shares.

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

Company may have duplicate common seal

101. A company may if authorized by its articles have a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” and a certificate under the duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

Loss or destruction of certificates

102. (1) Subject to subsection (2) where a certificate or other document of title to shares or debentures is lost or destroyed, the company shall on payment of a fee not exceeding two ringgit issue a duplicate certificate or document in lieu thereof to the owner on his application accompanied by—

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

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

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

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

Instrument of transfer

103. (1) Notwithstanding anything in its articles, a company shall not register a transfer of shares or debentures unless a proper instrument of transfer in the prescribed form has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(1A) Nothing in this section shall be construed as affecting the validity of any instrument which would be effective to transfer shares or debentures apart from this section; and any instrument purporting to be made in any form which was common or usual in use, or in any other form authorized or required for that purpose apart from this section before the commencement of this Act, shall be sufficient, whether or not it is completed in accordance with the prescribed form, if it complies with the requirements as to execution and contents which apply to a transfer:

Provided that a company shall be precluded from registering a transfer of shares or debentures, the title of which is evidenced by a certificate that is issued on or after the date of coming into operation of this subsection unless a proper instrument of transfer in the prescribed form has been delivered to the company.

Transfer by personal representatives

(2) A transfer of the share, debenture or other interest of a deceased person made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(3) The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

(4) In this section “instrument of transfer” includes a written application for transmission of a share debenture or other interest to a personal representative.

Registration of transfer at request of transferor

104. (1) On the request in writing of the transferor of any share, debenture or other interest in a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the request in writing of the transferor of a share or debenture the company shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to bring the same into the office of the company within a stated period, being not less than seven and not more than twenty-eight days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If any person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) Upon appearance of a person so summoned, the Court may examine him upon oath and receive other evidence, or if he does not appear after being duly served with the summons, the Court may receive evidence in his absence and in either case the Court may order him to deliver up the documents to the company upon such terms or conditions as to the Court seem fit, and the costs of the summons and proceedings thereon shall be in the discretion of the Court.

(5) Lists of share certificates or debentures called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in such newspapers and at such times at the company thinks fit.

Notice of refusal to register transfer

105. (1) If a company refuses to register a transfer of any share, debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

(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: *One thousand ringgit. Default penalty.

Certification of transfers

106. (1) The certification by a company of any instrument of transfer of shares, debentures or other interests in the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares, debentures or other interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or other interests.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) Where any certification is expressed to be limited to forty-two days or any longer period from the date of certification the company and its officers shall not in the absence of fraud be liable in respect of the registration of any transfer of shares debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

(4) For the purposes of this section—

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company if—
 - (i) the person issuing the instrument is a person apparently authorized to issue certificated instruments of transfer on the company’s behalf; and
 - (ii) the certification is signed by a person apparently authorized to certificate transfers on the company’s behalf or by any officer either of the company or of a corporation so apparently authorized; and

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

- (c) a certification that purports to be authenticated by a person's signature or initials (whether hand-written or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person apparently authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Duties of company with respect to issue of certificates

107. (1) Every company shall within two months after the allotment of any of its shares or debentures, and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

(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: *One thousand ringgit. Default penalty.

Power of Court where default in issue of certificates

(3) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

*NOTE—Previously “Two hundred and fifty ringgit”—see Companies (Amendment) Act 1985 [Act A616].

DIVISION 6A

PROVISIONS APPLICABLE TO COMPANIES WHOSE SECURITIES
ARE DEPOSITED WITH THE CENTRAL DEPOSITORY**Interpretation**

107A. In this Division, unless the contrary intention appears—

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

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

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

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

“stock exchange” has the same meaning as is assigned to that expression under subsection 2(1) of the Securities Industry Act 1983.

Depositor deemed to be member

107B. (1) Notwithstanding section 100, a depositor whose name appears in the record of depositors maintained by the central depository pursuant to section 34 of the Securities Industry (Central Depositories) Act 1991 in respect of the securities of a company which have been deposited with the central depository shall be deemed to be a member, debenture holder, interest holder or option holder, as the case may be, of the company, and shall, subject to the provisions of the Securities Industry (Central Depositories) Act 1991 and any regulations made thereunder, be entitled to the number of securities stated in the record of depositors and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such securities (whether conferred or imposed by the Act or the memorandum or articles of association of the company).

(2) Nothing in this Division shall be construed as affecting the obligation of the company to keep a register of its members under section 158, a register of holders of debentures under section 70, a register of interest holders under section 92 and a register of option holders under section 68A and to open them for inspection in accordance

with the provisions of this Act except that the company shall not be obliged to enter in such registers the names and particulars of depositors who are deemed to be members, debenture holders, interest holders or option holders.

(3) Notwithstanding any other provision of this Act, a depositor shall not be regarded as a member of a company entitled to attend any general meeting and to speak and vote thereat unless his name appears on the record of depositors not less than three market days before the general meeting.

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

(5) For the purpose of this section, “market day” means any day between Mondays and Fridays which is not a market holiday of the stock exchange or public holiday.

Transfer of securities is by way of book entry

107c. (1) On or after the coming into operation of this section, the transfer of any securities or class of securities of a company whose securities or any class of whose securities have been deposited with a central depository shall be by way of book entry by the central depository in accordance with the rules of the central depository and, notwithstanding sections 103 and 104, such company shall be precluded from registering and effecting any transfer of securities or class of securities which have been deposited.

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

Rectification of record of depositors

107d. (1) Notwithstanding anything in this Act or any written law or rule of law, no order shall be made by the Court for the rectification of the record of depositors except in the circumstances and subject to the conditions specified in subsection (2).

(2) If the Court is satisfied that—

- (a) a depositor did not consent to a transfer of any securities; or
- (b) a depositor should not have been registered as having title to any securities,

it may award to the depositor mentioned in paragraph (a) or any person who would have been entitled to be registered as having the title to such securities, as the case may be, on such terms as the Court deems to be equitable or make such other order as the Court deems fit, including an order for the transfer of such securities to such depositor or person.

Non-application of section 223 to disposition made by way of book entry

107E. Section 223 shall not apply to a disposition of property made by way of book entry by a central depository, but where the Court is satisfied that a party to the disposition, other than the central depository, had notice that a petition had been presented for the winding up of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable or make such other orders as the Court thinks fit, including an order for the transfer of deposited securities by that party but not an order for the rectification of the record of depositors.

Exemption from Division 6A

107F. The Minister may, by notice published in the *Gazette*, exempt any company or class of companies, subject to such terms and conditions as he deems fit to impose, from complying with all or any provisions of this Division in relation to any securities of a company or any class of companies to which this Division applies and may, by notice published in the *Gazette*, revoke such a notice or vary it in such manner as he thinks fit.

DIVISION 7

REGISTRATION OF CHARGES

Registration of charges

108. (1) Subject to this Division where a charge to which this section applies is created by a company, there shall be lodged with the Registrar for registration within thirty days after the creation of the charge a statement of the prescribed particulars, and if this section is not complied with in relation to the charge, the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company.

(2) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section, the money secured thereby shall immediately become payable.

- (3) The charges to which this section applies are—
- (a) a charge to secure any issue of debentures;
 - (b) a charge on uncalled share capital of a company,
 - (c) a charge on shares of a subsidiary of the company which are owned by the company;
 - (d) a charge or an assignment created or evidenced by an instrument which if executed by an individual within Peninsular Malaysia and affecting property within Peninsular Malaysia would be invalid or of limited effect if not filed or registered under the Bills of Sale Act, 1950 [Act 268];
 - (e) a charge on land wherever situate or any interest therein;
 - (f) a charge on book debts of the company;
 - (g) a floating charge on the undertaking or property of a company;
 - (h) a charge on calls made but not paid;
 - (i) a charge on a ship or aircraft or any share in a ship or aircraft;
 - (j) charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and
 - (k) a charge on the credit balance of the company in any deposit account.

(4) Where a charge created in Malaysia affects property outside Malaysia, the statement of the prescribed particulars may be lodged for registration under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(5) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it shall be sufficient if there are lodged with the Registrar for registration within thirty days after the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;

- (c) a general description of the property charged; and
- (d) the names of the trustee, (if any), for the debenture holders.
- (e)—(g) (*Deleted by Act A836*)

(6) For the purposes of subsection (5) where more than one issue is made of debentures in the series there shall be lodged within thirty days after each issue particulars of the date and amount of each issue, but an omission so to do shall not affect the validity of the debentures issued.

(7) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his whether absolutely or conditionally subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any debentures, the particulars required to be lodged under this section shall include particulars as to the amount or rate per centum of the commission, allowance or discount so paid or made, but omission so to do shall not affect the validity of the debentures issued.

(8) The deposit of any debentures as security for any debt of the company shall not for the purposes of subsection (7) be treated as the issue of the debentures at a discount.

(9) No charge or assignment to which this section applies (except a charge or assignment relating to land) need be filed or registered under any other written law.

(10) Where a charge requiring registration under this section is created before the lapse of thirty days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

Duty to register charges

109. (1) Documents and particulars required to be lodged for registration in accordance with section 108 may be lodged for registration by the company concerned or by any person interested in the documents, but if default is made in complying with that 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.

(2) Where registration is effected by some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him on the registration.

Duty of company to register charges existing on property acquired

110. (1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division or, where a foreign company becomes registered in Malaysia and has prior to such registration created a charge which if it had been created by the company while it was registered in Malaysia would have been required to be registered under this Division or, where a foreign company becomes registered in Malaysia and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in Malaysia have been required to be registered under this Division, the company shall cause a statement of the prescribed particulars to be lodged with the Registrar for registration within thirty days after the date on which the acquisition is completed or the date of the registration of the company in Malaysia (as the case may be).

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

Penalty: *One thousand ringgit. Default penalty.

*NOTE—Previously “Two hundred and fifty ringgit”—see Companies (Amendment) Act 1985 [Act A616].

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

Register of charges to be kept by Registrar

111. (1) The Registrar shall keep a register of all the charges lodged for registration under this Division and shall enter in the register with respect to those charges the following particulars:

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under subsection 108(5); and
- (b) in the case of any other charge—
 - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;
 - (ii) the amount secured by the charge;
 - (iii) a description sufficient to identify the property charged; and
 - (iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a certificate of every registration and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

Endorsement of certificate of registration on debentures

112. (1) The company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge so registered—

- (a) a copy of the certificate of registration; or
- (b) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) Every person who knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence against this Act.

Penalty: *Two thousand ringgit.

Assignment and variation of charges

112A. (1) Where, after a charge on property of a company has been created and registered under this Division, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge shall, within thirty days after he becomes the holder of the charge—

- (a) lodge with the Registrar a notice in the prescribed form stating that he has become the holder of the charge; and
- (b) give the company a copy of the notice.

(2) Where, after a charge on property of a company has been created and registered under this Division, there is a variation in the terms of the charge having the effect of—

- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or
- (b) prohibiting or restricting the creation of subsequent charges on the property,

the company shall, within thirty days after the variation occurs, lodge with the Registrar a notice in the prescribed form setting out the particulars of the variation.

(3) Where the amount of debt or liability secured by a registrable charge created by the company is—

- (a) unspecified; or
- (b) specified with further advances,

any payment or advance made by the chargee to the company in accordance with the terms of the charge shall not be regarded, for the purpose of subsection (2), to be a variation in the terms of the charge.

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

(4) A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture or debentures and there is a trustee for the debenture holders, be construed as a reference to the trustee for debenture holders.

(5) 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.

Entries of satisfaction and release of property from charge

113. (1) Where, with respect to any registered charge—

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall enter particulars of that memorandum in the register.

(2) The memorandum must be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or ceasing referred to in subsection (1).

Extension of time and rectification of register of charges

114. The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient

(including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default), order that the time for registration be extended or that the omission or misstatement be rectified.

Company to keep copies of charging instruments and register of charges

115. (1) Every company shall cause the instrument creating any charge requiring registration under this Division or a copy thereof to be kept at the registered office of the company but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.

(2) Every company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and (except in the case of securities to bearer) the names of the persons entitled thereto.

(3) The instruments or copies thereof and the register of charges kept in pursuance of this section shall be open to the inspection of any creditor or member of the company without fee and the register of charges shall also be open to the inspection of any other person on payment of such fee not exceeding two ringgit for each inspection as is fixed by the company.

(3A) Any person shall, on application to a company and on payment of a fee not exceeding one ringgit for every page or part thereof, be furnished with a copy of any instrument of charge or debenture kept by the company in pursuance of this section within three days of his making the application.

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

Penalty: *Two thousand ringgit. Default penalty.

Documents made out of Malaysia

116. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall, by force of this section, in

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

relation to an instrument, deed, statement or other document executed or made in a place out of Malaysia, be extended by seven days or such further period as the Registrar may from time to time allow.

Charges, etc., created before commencement of Act

117. Except as is otherwise expressly provided this Division shall apply to any charge that at the date of the commencement of this Act was registrable under any of the repealed written laws but which at that date was not registered under any of those laws.

Application of Division

118. A reference in this Division to a company shall be read as including a reference to a foreign company to which Division 2 of Part XI applies, but nothing in this Division applies to a charge on property outside Malaysia of a foreign company.

PART V

MANAGEMENT AND ADMINISTRATION

DIVISION 1

OFFICE AND NAME

Registered office of company

119. (1) A company shall as from the day on which it begin to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office within Malaysia to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours during ordinary business hours on each day, Saturdays, weekly and public holidays excepted.

(2) If default is made in complying with subsection (1) 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.

*NOTE—Previously “Two hundred and fifty ringgit”—see Companies (Amendment) Act 1985 [Act A616].

Office hours

120. (1) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, and of any change therein shall be lodged with the Registrar within one month after the date of incorporation or of any such change, as the case may be, but no notice of the days and hours during which the office is open and accessible to the public shall be required if the office is open for at least five hours during ordinary business hours on each day, Saturdays, weekly and public holidays excepted.

Penalty

(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: *One thousand ringgit. Default penalty.

Publication of name

121. (1) The name of the company (whether or not it is carrying on business under a business name) in legible romanized letters and the company number of the company shall appear on—

- (a) its seal; and
- (b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of, the company,

and if default is made in complying with this subsection the company shall be guilty of an offence against this Act.

(1A) Where a company has changed its name pursuant to section 23, the former name of the company shall also appear beneath its present name on all documents, business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of, or purporting to be issued or signed by or on behalf of, the company for a period of not less than twelve months from the date of the change, and if default is made in complying with this subsection the company shall be guilty of an offence against this Act.

*NOTE—Previously “Two hundred and fifty ringgit”—see Companies (Amendment) Act 1985 [Act A616].

- (2) If an officer of a company or any person on its behalf—
- (a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name does not so appear;
 - (b) issues or authorizes the issue of any business letter, statement of account, invoice, official notice or publication of the company wherein its name and former name (if applicable) is not so mentioned; or
 - (c) signs issues or authorizes to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument or any endorsement, order, receipt or letter of credit wherein its name and former name (if applicable) is not so mentioned,

he shall be guilty of an offence against this Act, and where he has signed, issued or authorized to be signed or issued on behalf of the company any bill of exchange, promissory note or other negotiable instrument or any endorsement thereon or order wherein that name and former name (if applicable) is not so mentioned, he shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the company.

Name to be displayed on all offices

(3) Every company shall paint or affix and keep painted or affixed on the outside of every office or place in which its business is carried on, in a prominent position in romanized letters easily legible its name, and also, in the case of the registered office, the words “*Pejabat Yang Didaftarkan*” and if it fails so to do the company shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

(4) In this section, “company number” means the number allocated by the Registrar to a company on its incorporation.

DIVISION 2

DIRECTORS AND OFFICERS

Directors

122. (1) Every company shall have at least two directors, who each has his principal or only place of residence within Malaysia.

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

(1A) In subsection (1), "director" shall not include an alternate or substitute director.

(2) No person other than a natural person of full age shall be a director of a company.

(3) The first directors of a company shall be named in the memorandum or articles of the company.

(4) Any provision in the memorandum or articles of a company which was in force immediately before the commencement of this Act and which operated to constitute a corporation as a director of the company shall be read and construed as if it authorized that corporation to appoint a natural person to be a director of that company.

(5) On the commencement of this Act any corporation which holds office as a director of a company shall cease to hold office and the vacancy may be filled as a casual vacancy in accordance with the articles of the company.

(6) Notwithstanding anything contained in this Act or in the memorandum or articles of a company or in any agreement with a company, a director of a company shall not resign or vacate his office if, by his resignation or vacation from office, the number of directors of the company is reduced below the minimum number required by subsection (1) and any purported resignation or vacation of office in contravention of this section shall be deemed to be invalid.

(7) Subsection (6) shall not apply where a director of a company is required to resign or vacate his office if he has not within the period referred to in subsection 124(1) obtained his qualification or by virtue of his disqualification under this Act or any other written law.

Persons connected with a director

122A. (1) For the purposes of this Division a person shall be deemed to be connected with a director if he is—

- (a) a member of that director's family; or
- (b) a body corporate which is associated with that director;
- (c) a trustee of a trust (other than a trustee for an employee share scheme or pension scheme) under which that director or a member of his family is a beneficiary; or

(d) a partner of that director or a partner of a person connected with that director.

(2) In paragraph (1)(a), “a member of that directors’ family” shall include his spouse, parent, child (including adopted child and stepchild), brother, sister and the spouse of his child, brother or sister.

(3) For the purposes of paragraph (1)(b), a body corporate is associated with a director if—

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

Restrictions on appointment or advertisement of director

123. (1) A person shall not be named as a director or proposed director in the memorandum or articles of a company or in a prospectus or a statement in lieu of prospectus, unless before the registration of the memorandum or articles or the issue of the prospectus or the lodging of the statement in lieu of prospectus (as the case may be) he has by himself or by his agent authorized in writing for the purpose—

- (a) signed the memorandum for a number of shares not less than his qualification, if any;
- (b) signed and lodged with the Registrar an undertaking in writing to take from the company and pay for his qualification shares, if any;
- (c) made and lodged with the Registrar a statutory declaration to the effect that a number of shares, not less than his qualification, if any, is registered in his name; or
- (d) (in the case of a company formed or intended to be formed by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations), made and lodged with the Registrar a statutory declaration that he was a shareholder in that other

corporation or in one or more of the corporations of that group, and that as a shareholder he will be entitled to receive and have registered in his name a number of shares not less than his qualification, by virtue of the terms of an agreement relating to the reconstruction.

(2) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) The foregoing provisions of this section shall not apply to—

- (a) a company not having a share capital;
- (b) a private company; or
- (c) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company or to articles adopted by a company after the expiration of one year from the date on which the company was entitled to commence business.

(4) Every person shall before he is appointed a director of a company make and lodge with the Registrar and the Official Receiver a statutory declaration in the form prescribed by regulations that he will not be acting in contravention of sections 125 and 130 and that he consents to act as a director of the company.

Qualification of director

124. (1) Without affecting the operation of any of the preceding provisions of this Division, every director, who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles.

(2) Unless otherwise provided by the articles the qualification of any director of a company must be held by him solely and not as one of several joint holders.

(3) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.

Penalty: One thousand ringgit. Default penalty.

(4) A person vacating office under this section shall be incapable of being reappointed as director until he has obtained his qualification.

Undischarged bankrupts acting as directors

125. (1) Every person who being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation except with the leave of the Court shall be guilty of an offence against this Act.

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

(2) The Court shall not give leave under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Receiver and the Minister and the Official Receiver or either of them may be represented at the hearing of and may oppose the granting of the application.

Appointment of directors to be voted on individually

126. (1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) Nothing in this section shall apply to a resolution altering the company's articles.

(6) Nothing in this section prevents the election of two or more directors by ballot or poll.

Validity of acts of directors and officers

127. The acts of a director or manager or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Removal of directors

128. (1) A public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between it and him but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove him shall not take effect until his successor has been appointed.

(2) Notwithstanding anything to the contrary in the memorandum or articles of the company, special notice shall be required of any resolution to remove a director or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not so sent because they were received too late or because of the company's default the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) Notwithstanding subsections (1) to (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed director in place of a person removed shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

Age limit for directors

129. (1) Subject to this section but notwithstanding anything in the memorandum or articles of the company no person of or over the age of seventy years shall be appointed or act as a director of a public company or of a subsidiary of a public company.

(2) The office of a director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of seventy years or if he has attained the age of seventy years before the commencement of this Act at the conclusion of the annual general meeting commencing next after the commencement of this Act.

(3) Any act done by a person as director shall be valid notwithstanding that it is afterwards discovered that there was a defect in his appointment or that his appointment had terminated by virtue of subsection (2).

(4) Where the office of a director has become vacant by virtue of subsection (2) no provision for the automatic reappointment of retiring directors in default of another appointment shall apply in relation to that director.

(5) If any such vacancy has not been filled at the meeting at which the office became vacant the office may be filled as a casual vacancy.

(6) Notwithstanding anything in this section a person of or over the age of seventy years may by a resolution of which no shorter notice than that required to be given to the members of the company of an annual general meeting has been duly given, passed by a majority of not less than three-fourths of such members of the company as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of that company, be appointed or reappointed as a director of that company to hold office until the next annual general meeting of the company or be authorized to continue in office as a director until the next annual general meeting of the company.

(7) The provisions of section 147 relating to the demanding of a poll and the holding of a poll shall apply to a resolution under this section.

(8) Nothing in this section shall limit or affect the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age less than seventy years.

(9) The provisions of the articles of a company relating to the rotation and retirement of directors shall not apply to a director who is appointed or reappointed pursuant to this section but such provisions of the articles shall continue to apply to all other directors of the company.

Power to restrain certain persons from managing companies

130. (1) Where a person is convicted whether within or without Malaysia—

- (a) of any offence in connection with the promotion formation or management of a corporation;
- (b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or
- (c) of any offence under section 132, 132A or 303,