

and that person, within a period of five years after his conviction or, if he is sentenced to imprisonment, after his release from prison, without the leave of the Court is a director or promoter of or is in any way whether directly or indirectly concerned or takes part in the management in Malaysia of a corporation he shall be guilty of an offence against this Act.

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

(2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than ten days' notice of his intention so to apply and the Registrar shall be made a party to the proceedings.

(3) On the hearing of any application under this section the Registrar may oppose the granting of the application.

### **Disqualification of directors of insolvent companies**

**130A.** (1) Where on an application under this section it appears to the Court—

(a) that a person—

- (i) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or subsequently) and was insolvent at that time; and
- (ii) is or has been a director of such other company which has gone into liquidation within five years of the date on which the first-mentioned company went into liquidation; and

(b) that his conduct as director of any of those companies makes him unfit to be concerned in the management of a company,

the Court may make an order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period beginning on the date of the order and not exceeding five years as may be specified in the order.

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

(2) An application under this section shall be made by the Registrar or the Official Receiver.

(3) Where the Registrar or the Official Receiver intends to make an application under this section in respect of any person, he shall give not less than ten days' notice of his intention to that person, and on hearing of the application that person may appear and give evidence or call witnesses.

(4) A person intending to apply for the leave of the Court under subsection (1) shall give to the Registrar not less than ten days' notice of his intention so to apply and the Registrar shall be made a party to the proceedings.

(5) On the hearing of any application under subsection (4) the Registrar may oppose the granting of the application.

(6) If any person acts in contravention of an order made under subsection (1), he shall be guilty of an offence against this Act.

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

(7) The Registrar or the Official Receiver may require the liquidator or former liquidator of any company—

- (a) to furnish him with such information with respect to the company's affairs; and
- (b) to produce and permit inspection of such books or documents of or relevant to the company,

as the Registrar or the Official Receiver may reasonably require for the purpose of determining whether to make an application under this section in respect of any person who is or has been a director of that company; and if a person makes default in complying with any such requirement, the Court may, on the application of the Registrar or the Official Receiver make an order requiring that person to make good the default within such time as may be specified.

(8) Subsection (6) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

(9) Subsection (1) does not apply unless at least one of the companies therein mentioned has gone into liquidation after the date of coming into operation of this section and the conduct to which regard may be had

under paragraph (1)(b) does not include conduct as a director of a company that has gone into liquidation before that date.

(10) For the purposes of this section, a company goes into liquidation—

- (a) if it is wound up by the Court on the date of the winding up order; and
- (b) if it is wound up voluntarily on the date of passing of the resolution for voluntary winding up.

**Disclosure of interests in contracts, property, offices, etc.**

**131.** (1) Subject to this section every director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the company.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director consists only of being a member or creditor of a corporation which is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract by reason only—

- (a) in a case where the contract or proposed contract relates to any loan to the company—that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) in a case where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company—that he is a director of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the articles of the company.

(4) For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date

of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made if it specifies the nature and extent of his interest in the specified corporation or firm and his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any contract is so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(5) Every director of a company who holds any office or possesses any property whereby whether directly or indirectly duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(6) The declaration shall be made at the first meeting of the directors held—

(a) after he becomes a director; or

(b) (if already a director) after he commenced to hold the office or to possess the property,

as the case requires.

(7) The secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made.

(8) Except as provided in subsection (3) this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

Penalty: Imprisonment for \*seven years or one hundred and fifty thousand ringgit, or both.

### **As to the duty and liability of officers**

**132.** (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

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

(2) An officer or agent of a company or officer of the Stock Exchange shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company or officer of the Stock Exchange to gain directly or indirectly an advantage for himself or for any other person or to cause detriment to the company.

(3) An officer or agent or officer of the Stock Exchange who commits a breach of this section shall be—

- (a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach; and
- (b) guilty of an offence against this Act.

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

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

(5) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(6) In this section—

“agent” includes a banker, advocate and solicitor, auditor, accountant or stockbroker of the corporation and any person who is or at any time in the preceding six months has been knowingly connected with the corporation and has information which—

- (a) he holds by virtue of being connected with the corporation;
- (b) it would be reasonable to expect a person so connected and in the position by virtue he is so connected not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is unpublished price sensitive information in relation to the securities of the corporation;

“officer” includes a person who at any time has been an officer of the company.

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\*NOTE—Previously “one year or two thousand five hundred ringgit”—see Companies (Amendment) Act 1985 [Act A616].

**Dealings by officers in securities**

**132A.** (1) An officer, agent or employee of a corporation or officer of the Stock Exchange who in or in relation to a dealing in securities of the corporation by himself or any other person makes improper use to gain, directly or indirectly, an advantage for himself or any other person of specific confidential information acquired by virtue of his position as such officer, agent or employee or officer of the Stock Exchange which if generally known might reasonably be expected to affect materially the price of the subject matter of the dealing on a Stock Exchange shall, in addition to any penalty imposed under subsection (6), be liable to any person for loss suffered by that person by reason of the payment by him or to him of a consideration in respect of the securities greater or lesser, as the case may be, than the consideration that would have been reasonable if the information had been generally known at the time of the dealing.

(2) An officer, agent or employee of a corporation or officer of the Stock Exchange shall not be liable under subsection (1) to a person for any loss suffered by that person if that person knew or ought reasonably to have known of the information referred to in subsection (1) before entering into transaction relating to the dealing in securities of the corporation.

(3) Notwithstanding the provisions of the Limitation Act 1953 [Act 254], an action for the recovery of the amount of a loss referred to in subsection (1) shall not be commenced after the expiration of two years after the date of the completion of the dealing in securities in respect of which the loss was suffered.

(4) In this section—

“agent” includes a banker, advocate and solicitor, auditor, accountant or stockbroker of the corporation and any person who is or at any time in the preceding six months has been knowingly connected with the corporation and has information which—

- (a) he holds by virtue of being connected with the corporation;
- (b) it would be reasonable to expect a person so connected and in the position by virtue he is so connected not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is unpublished price sensitive information in relation to the securities of the corporation;

“corporation” includes a corporation that is related to a corporation under section 6;

“dealing in securities in relation to a corporation” means a transaction relating to—

- (a) shares in or debentures of the corporation or interests within the meaning of section 84 made available by the corporation or by a related corporation; or
- (b) rights or options in respect of the acquisition or disposal of such shares, debentures or interests;

“officer” includes a person who at any time within the preceding twelve months was an officer of the corporation.

(5) This section shall be extended to apply to an officer, agent or employee of a corporation or officer of the Stock Exchange who makes improper use to gain, directly or indirectly, an advantage for himself or any other person, by means of specific confidential information acquired by virtue of his position as such officer, agent or employee of the corporation or officer of the Stock Exchange, regarding—

- (a) the possibility of a take-over offer or bid being made to another corporation by the corporation to which he belongs; or
- (b) the possibility of his corporation entering into a substantial commercial transaction with another corporation,

to deal in the securities of that corporation in the expectation that, if this information becomes generally known, the price of the securities of that other corporation on a Stock Exchange might be materially affected.

(6) An officer, agent or employee of a corporation or officer of the Stock Exchange who commits a breach of the provisions of this section shall be guilty of an offence against this Act.

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

**Prohibition on abuse of information obtained in official capacity**

**132B.** Any person, who in or in relation to a dealing in securities of a corporation, has any information which if generally known might reasonably be expected to affect materially the price of the subject matter of the dealing on a Stock Exchange and which—

- (a) he holds by virtue of his official capacity or former official capacity;
- (b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attaching to that official capacity; and
- (c) he knows is unpublished price sensitive information in relation to securities of the corporation,

shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person and any person who contravenes the provision of this section shall be guilty of an offence against this Act.

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

**Approval of company required for disposal by directors of company's undertaking or property**

**132C.** (1) Notwithstanding anything in a company's memorandum or articles, the directors shall not carry into effect any proposal or execute any transaction for—

- (a) the acquisition of an undertaking or property of a substantial value; or
- (b) the disposal of a substantial portion of the company's undertaking or property,

which would materially and adversely affect the performance or financial position of the company, unless the proposal or transaction has been approved by the company in general meeting.

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) shall, in favour of any person dealing with the company for valuable consideration, and without actual notice of the contravention, be as valid as if that subsection has been complied with.

(4) This section shall not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or a liquidator of a company appointed in a voluntary winding up.

(5) Any director who contravenes the provision of this section shall be guilty of an offence against this Act.

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

### **Approval of company required for issue of shares by directors**

**132D.** (1) Notwithstanding anything in a company's memorandum or articles, the directors shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until—

- (a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or
- (b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorized by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 154 shall apply to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.

(6A) Notwithstanding subsection (1), the directors of a company shall not be required to obtain the prior approval of the company in a general meeting to issue shares where the said shares are to be issued as consideration or part consideration for the acquisition of shares or assets by the company and members of the company have been notified of the intention to issue the said shares at least fourteen days before the date of the issue of the said shares.

(6B) For the purpose of subsection (6A), members of the company are deemed to have been notified of the intention to issue shares of the company if—

- (a) a copy of the statement explaining the purpose of the intended issue of shares has been sent to every member at his last known address according to the register of members; and
- (b) the copy of the statement has been advertised in a national language and an English language newspaper circulating generally throughout Malaysia.

(7) Any director who knowingly contravenes, or permits or authorizes the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs shall be commenced, notwithstanding the provisions of the Limitation Act 1953, after the expiration of three years from the date of the issue.

(8) This section shall not apply to any issue of shares of a company before—

- (a) the beginning of the annual general meeting commencing next after the commencement of this section; or
- (b) the expiration of the period within which the next annual general meeting after the commencement of this section is required by law to be held,

whichever is the earlier.

### **Substantial property transactions involving directors**

**132E.** (1) Subject to section 132F, a company shall not enter into any arrangement or transaction with a director of the company or its holding company or with a person connected with such a director to acquire from or dispose to such a director or person any non-cash assets of the requisite value unless the arrangement or transaction is first approved by a resolution of the company in general meeting and also, if the director or connected person is a director of its holding company or person connected with such a director, by a resolution of the holding company in general meeting.

(2) An arrangement entered into in contravention of subsection (1) and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless the arrangement and transaction are, within a reasonable period, ratified by the company in general meeting and also, if the arrangement and transaction are for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, by a resolution of the holding company in general meeting.

(3) Where an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of subsection (1) and any transaction is entered into in pursuance of the arrangement, that director and the person so connected and any director who authorized the arrangement shall, in addition to any other liability, be liable—

- (a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and
- (b) jointly and severally with any person liable under this subsection, to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) The Court may, on the application of any member of the company, restrain the company from entering into an arrangement or transaction in contravention of subsection (1)

(5) For the purposes of subsection (1), a non-cash asset is of the requisite value if, at the time of the arrangement or transaction for the acquisition or disposal of the asset, its value is not less than ten thousand ringgit but (subject to that) exceeds two hundred and fifty thousand ringgit or ten per centum of the company's asset value, that is—

- (a) except in a case falling within paragraph (b), the value of the company's net assets determined by reference to the accounts prepared and laid under Part VI in respect of the last financial year prior to the arrangement or transaction; or
- (b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.

(6) A director of a company or of its holding company, or a person connected with such a director, who enters into an arrangement or transaction with the company in contravention of this section, or a director who authorized the arrangement or transaction, shall be guilty of an offence against this Act.

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

(7) For the purposes of this section and section 132F “non-cash asset” means any property or interest in property other than cash and for this purpose “cash” includes foreign currency.

(8) A reference to the acquisition or disposal of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person's liability, other than a liability for a liquidated sum.

### **Exception and definition**

**132F.** Section 132E shall not apply to an arrangement or transaction for the acquisition or disposal of a non-cash asset entered into—

- (a) by a company—
  - (i) and any of its wholly-owned subsidiaries;

- (ii) and its holding company which holds all the issued shares of the company; or
  - (iii) which is a wholly-owned subsidiary of a holding company and another wholly-owned subsidiary company of that same holding company;
- (b) by a company which is being wound up, unless the winding up is a members' voluntary winding up;
- (c) by a company which is an acquisition or disposal of an asset in the ordinary course of business of the company and is on terms not more favourable than those generally available to the public or employees of the company; or
- (d) by a company if such arrangement or transaction does not involve transfer of cash or property and which shall have no effect unless approved at a general meeting or by a relevant authority.

### **Prohibited transaction involving shareholders and directors**

**132G.** (1) Notwithstanding sections 132C and 132E, a company shall not enter into any arrangement or transaction to acquire the shares or assets of another company in which a shareholder or director of the acquiring company, or a person connected to such shareholder or director has a substantial shareholding as defined in section 69D whether or not for the benefit of such shareholder, director or connected person or for any other person unless the arrangement or transaction was entered into three years after such shareholder, director or connected person, as the case may be, first held the shares in that other company or after the assets were first acquired by the said company, as the case may be.

(2) An arrangement or transaction entered into in contravention of subsection (1) shall be void and any consideration given for the shares or assets shall be recoverable accordingly.

(3) Subsection (2) shall apply to any arrangement or transaction which is pending completion at the time of coming into force of this section.

(4) For the purposes of subsection (1)—

- (a) a “person connected with a shareholder or a director” shall have the same meaning as that assigned to a “person connected with a director” in section 122A, except that a reference to a member of that shareholder’s or director’s family shall be limited to that shareholder’s or director’s spouse and child (including adopted child and stepchild); and
- (b) a reference to a shareholder of an acquiring company is a reference to a shareholder who has a substantial shareholding, as defined in section 69D, in the acquiring company.

(5) If there is any contravention of this section, the acquiring company and every director of the said company shall be guilty of an offence against this Act save in respect of any arrangement or transaction which is pending completion at the time of coming into force of this section.

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

(6) This section shall not apply to—

- (a) subscription of new shares in a company for cash consideration;
- (b) an arrangement or transaction for the acquisition of shares or assets entered into by a company—
  - (i) and any of its wholly-owned subsidiaries;
  - (ii) and its holding company which holds all the issued shares of the company; or
  - (iii) which is a wholly-owned subsidiary of a holding company and another wholly-owned subsidiary company of that same holding company;
- (c) an acquisition of any asset, other than shares, by a company from another company where the sale of the relevant asset is part of the ordinary course of business of the second-mentioned company;

- (d) an acquisition of shares or assets by a company made in pursuance of a scheme of compromise or arrangement approved by the Court under section 176; or
- (e) an acquisition of shares made by a company in connection with a takeover offer made in accordance with the relevant law applicable to such offers.

### **Loans to directors**

**133.** (1) A company (other than an exempt private company) shall not make a loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person but nothing in this section shall apply—

- (a) subject to subsection (2), to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- (b) to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
- (c) to any loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

(2) Paragraph (1)(a) or (b) shall not authorize the making of any loan, or the entering into any guarantee, or the provision of any security except—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) Where a company contravenes this section any director who authorizes the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section shall be guilty of an offence against this Act.

Penalty: \*Ten thousand ringgit.

(5) Nothing in this section shall operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

### **Prohibition of loans to persons connected with directors**

**133A.** (1) Subject to the provisions of this section, a company (other than an exempt private company) shall not—

- (a) make a loan to any person connected with a director of the company or of its holding company; or
- (b) enter into any guarantee or provide any security in connection with a loan made to such person by any other person.

(2) This section shall not apply—

- (a) to anything done by a company where the loan is made, or the guarantee or security is provided in relation to a loan made, to a subsidiary or holding company or a subsidiary of its holding company;

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\*NOTE—Previously “one thousand ringgit”—see Companies (Amendment) Act 1985 [Act A616]

- (b) to a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, or to anything done by the company in the ordinary course of that business, if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by Bank Negara Malaysia; or
- (c) to any loan made to a person connected with a director who is engaged in the full-time employment of a company or its related corporation, as the case may be—
  - (i) for the purpose of meeting expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
  - (ii) in accordance with a scheme for the making of loans to employees approved by the company in general meeting.

(3) Nothing in this section shall operate to prevent the company from recovering the amount of any loan or the amount for which it becomes liable under any guarantee entered into or in respect of any security provided in contravention of this section.

(4) Where a company contravenes this section, any director who authorizes the making of any loan or the entering into of any guarantee contrary to this section shall be guilty of an offence against this Act.

Penalty: Ten thousand ringgit.

### **Register of directors' shareholdings, etc.**

**134.** (1) A company shall keep a register showing with respect to each director of the company particulars of—

- (a) shares in the company or in a related corporation being shares in which the director has an interest and the nature and extent of that interest;
- (b) debentures of or participatory interests made available by the company or a related corporation being debentures or participatory interests in which the director has an interest and the nature and extent of that interest;

- (c) rights or options of the director or of the director and other person in respect of the acquisition or disposal of shares in, debentures of or participatory interests made available by the company or a related corporation; and
- (d) contracts to which the director is a party or under which he is entitled to a benefit being contracts under which a person has a right to call for or to make delivery of shares in, debentures of or participatory interests made available by the company or a related corporation.

(2) A company need not show in its register with respect to any director particulars of shares in a related corporation, that is the wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) (*Deleted by Act A657*).

(5) A company shall within three days after receiving notice from a director under paragraph 135(1)(a) enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director—

- (a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and
- (b) the date of—
  - (i) the agreement for the transaction or if it is later, the completion of the transaction; or
  - (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(6) A company shall, within three days after receiving a notice from a director under paragraph 135(1)(b), enter in its register the particulars of the change referred to in the notice.

(7) A company is not, by reason of anything done under this section, to be deemed for any purpose to have notice of or to be put upon inquiry as to the right of a person to or in relation to, a share in, debenture of or participatory interest made available by the company.

(8) A company shall, subject to this section, keep its register at the registered office of the company and the register shall be open for inspection by a member of the company without charge and by any other person on payment of a prescribed fee.

(9) Any person may request a company to furnish him with a copy of its register or any part of its register on payment in advance of a prescribed fee and the company shall send the copy to that person within twenty-one days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

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

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

(12) In this section—

(a) a reference to a participatory interest is a reference to an interest within the meaning of section 84; and

(b) a reference to a person who holds or acquires share, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(13) In determining, for the purposes of this section, whether a person has an interest in a debenture or participatory interest the provisions of section 6A, except for subsections (1) and (3) of that section, have effect and in applying those provisions, a reference to share shall be read as a reference to a debenture or participatory interest.

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

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

### **General duty to make disclosure**

**135.** (1) A director of a company shall give notice in writing to the company—

- (a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the first-mentioned company with section 134;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change;
- (c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with the requirements of this Act; and
- (d) if he is a director of a public company or of a subsidiary of a public company of the date on which he attains or will attain the age of seventy.

Penalty: Imprisonment for three years or fifteen thousand ringgit.

(2) A person required to give notice under subsection (1) shall give the notice—

- (a) in the case of a notice under paragraph (1)(a), within fourteen days after—
  - (i) the coming into operation of this section;

- (ii) the date on which the director became a director;  
or
  - (iii) the date on which the director acquired an interest in the shares, debentures, participatory interests, rights, options or contracts;
- (b) in the case of a notice under paragraph (1)(b), within fourteen days after the occurrence of the event giving rise to the change referred to in that paragraph; and
- (c) in the case of a notice under paragraph (1)(d), within fourteen days after—
- (i) the coming into operation of this section; or
  - (ii) the date on which the director became a director.

(2A) A person required to give notice under subsection (1) of any matters relating to shares or debentures which are listed on the official list of a Stock Exchange as defined in the Securities Industry Act 1983 shall, on the day on which he gives that notice, serve a copy of the notice on the Stock Exchange and the Stock Exchange may publish, in any manner as it may determine, any information contained in that notice.

Penalty: Ten thousand ringgit.

Default penalty: Five hundred ringgit.

(3) A company shall within seven days of receiving a notice given under subsection (1) send a copy of the notice to each of the other directors of the company.

Penalty: Ten thousand ringgit.

Default penalty: Five hundred ringgit.

(4) In this section a reference to a participatory interest is a reference to an interest within the meaning of section 84.

(5) In determining, for the purposes of this section, whether a person has an interest in a debenture or participatory interest section 6A, save for subsections (1) and (3) of that section, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

**Prohibition of tax-free payments to directors**

**136.** (1) A company shall not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or the rate of income tax, except under a contract which was in force before the commencement of this Act, and which provides expressly, and not by reference to the articles, for payment of such remuneration.

(2) Any provision contained in a company's articles, or in any contract other than a contract referred to in subsection (1) or in any resolution of a company or of a company's directors for payment to a director of remuneration free of income tax or otherwise calculated by reference to or varying with the amount of his income tax or the rate of income tax shall have effect as if it provided for payment as a gross sum subject to income tax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before the commencement of this Act or in respect of a period before the commencement of this Act.

(4) Where a company contravenes this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

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

**Payments to director for loss of office, etc.**

**137.** (1) It shall not be lawful—

(a) for a company to make to any director any payment by way of compensation for loss of office as an officer of that company or of a subsidiary of that company or as consideration for or in connection with his retirement from any such office; or

(b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

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

(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders in accordance with the relevant law applicable to takeovers.

(3) A director who fails to comply with subsection (2) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails so to do, shall be guilty of an offence against this Act, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

(4) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

### **As to payments to directors**

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include—

- (a) any payment under an agreement entered into before the commencement of the relevant repealed written laws;
- (b) any payment under an agreement, particulars whereof have been disclosed to and approved by special resolution of the company;

- (c) any *bona fide* payment by way of damages for breach of contract;
- (d) any *bona fide* payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation, gratuity or similar payment, where the value or amount of the pension or payment (except so far as it is attributable to contributions made by the director) does not exceed the total emoluments of the director in the three years immediately preceding his retirement or death; or
- (e) any payment to a director pursuant to an agreement made between the company and him before he became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(6) This section shall be in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

(7) In this section “director” includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company.

### **Provisions as to assignment of office**

**138.** (1) If in the case of any public company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any such assignment of office shall, notwithstanding anything in the said provision, be of no effect until approved by a special resolution of the company.

(2) This section shall not be construed so as to prevent the appointment by a director (if authorized by the articles and subject thereto) of an alternate or substitute director to act for or on behalf of the director during his inability for any time to act as director.

### **Secretary**

**139.** (1) Every company shall have one or more secretaries each of whom shall be a natural person of full age who has his principal or only place of residence in Malaysia.

(1A) The first secretary of a company shall be named in the memorandum or articles of the company.

(1B) The office of secretary of a company shall not be left vacant for more than one month at any one time.

(1C) Notwithstanding subsection (1B), where none of the directors of the company can be communicated with at the last-known residential address, the secretary may, notwithstanding subsection 141(6), lodge with the Registrar a notice in the prescribed form notifying the Registrar of that fact and of his intention to vacate the office of secretary.

(1D) Where the secretary has lodged a notice in accordance with subsection (1C), the secretary shall cease to be the secretary of the company on the expiry of one month from the date of the notice.

(1E) Nothing in subsections (1C) and (1D) shall relieve the secretary from liability for any act or omission done before the secretary vacated that office.

(2) Subsection (1) shall not operate to prevent a corporation which was acting as the secretary of a company immediately before the commencement of this Act from continuing to act as secretary of that company for a period of twelve months after the commencement of this Act.

(3) The secretary shall be appointed by the directors and at least one of those secretaries shall be present at the registered office of the company by himself or his agent or clerk on the days and the hours during which the registered office is to be accessible to the public.

(4) Subject to subsection (1B), anything required or authorized to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorized generally or specially in that behalf by the directors.

(5) A provision requiring or authorizing a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

(6) Every person shall, before he is appointed a secretary of a company, make a declaration in the prescribed form that he is not in contravention of sections 139A and 139C and that he consents to act as a secretary of the company.

### **Qualification for company secretary**

**139A.** No person shall act as a secretary of a company unless —

- (a) he is a member of a professional body, or any other body, which has for the time being been prescribed by the Minister by notification published in the *Gazette*; or
- (b) he is licensed by the Registrar for that purpose:

Provided that a person who is a secretary of the company before the coming into operation of this section and who is not a member of a professional or other body as prescribed by the Minister may continue to act as the secretary for the company for a period of not more than twelve months after the coming into operation of this section unless he has obtained a licence pursuant to paragraph (b).

### **Licence to act as company secretary**

**139B.** (1) For the purpose of paragraph 139A(b), an application for a licence shall be made to the Registrar in the prescribed form and manner.

(2) The Registrar may require an applicant to supply him with such further information as he considers necessary in relation to the application.

(3) The Registrar shall only grant or renew the licence if—

- (a) after consideration of the character, qualification and experience of the applicant; and
- (b) after consideration of the interest of the public,

he is of the opinion that the applicant is a fit and proper person to hold a licence.

(4) Every licence granted under this section, including a renewal of the licence, shall be in force for a period of three years after the date of the issue thereof, unless sooner revoked by the Registrar.

(5) An application for renewal of a licence shall be made not later than thirty days before the expiry of the licence.

(6) Notwithstanding subsection (5), where an application for the renewal of a licence is made less than thirty days but before the expiry date of the licence, the Registrar may for any special reasons he deems fit accept such application for consideration.

### **Disqualification**

**139c.** (1) A person shall be disqualified to act as a secretary if—

- (a) he is an undischarged bankrupt;
- (b) he is convicted whether within or without Malaysia of any offence mentioned in subsection 130(1);
- (c) he ceases to be a member of the body prescribed by the Minister under section 139A; or
- (d) he ceases to be a holder of a valid licence issued under section 139B.

(2) Notwithstanding subsection (1), the Registrar may require a person to show cause why his licence issued under section 139B should not be revoked or why he should not be disqualified from acting as a secretary of a company, if he is of the opinion that that person has failed to act honestly or has failed to use reasonable diligence in the discharge of his duties as a secretary.

(3) If a person continues to act as a secretary for a company after he is so disqualified under this section without leave of the Court, he and every director who knowingly permits him to act in that capacity shall be guilty of an offence.

### **Appeal**

**139d.** (1) A person who is aggrieved by any decision of the Registrar under sections 139B and 139c may appeal to the Minister within thirty days of the decision of the Registrar.

(2) In any appeal under this section, the decision of the Minister shall be final and shall be given effect to by the Registrar.

**Provisions indemnifying directors or officers**

**140.** (1) Any provision, whether contained in the articles or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust, of which he may be guilty in relation to the company, shall be void.

(2) Notwithstanding anything in this section a company may pursuant to its articles or otherwise indemnify any officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is under this Act granted to him by the Court.

**Register of directors, managers and secretaries**

**141.** (1) Every company shall keep at its registered office a register of its directors, managers and secretaries.

(2) The register shall contain with respect to each director his consent in writing to appointment as such and shall specify—

- (a) his present full name, any former name, his usual residential address, his date of birth, and his business occupation, if any, and identification, if any; and
- (b) particulars of any other directorships of public companies or companies which are subsidiaries of public companies held by the director, but it shall not be necessary for the register to contain particulars of directorships held by a director in a company that by virtue of section 6 is deemed to be related to that company.

(3) Where a person is a director in one or more subsidiaries of the same holding company it shall be sufficient compliance with subsection (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word “Group”.

(4) The register shall specify with respect to each manager and secretary his full name, identification and residential address and other occupation, if any.

(5) The register shall be open to the inspection of any member of the company without charge and of any other person on payment of two ringgit, or such less sum as the company requires, for each inspection.

(6) The company shall lodge with the Registrar—

- (a) within one month after incorporation, a return in the prescribed form containing the particulars required to be specified in the register;
- (b) within one month after a person ceases to be, or becomes, a director of the company, a return in the prescribed form notifying the Registrar of the change and containing, with respect to each then director of the company, the particulars required to be specified in the register;
- (c) within one month after a person becomes a manager or secretary of the company, a return in the prescribed form notifying the Registrar of that fact and specifying the full name, address and other occupation, if any, of that person;
- (d) within one month after a person ceases to be a manager or secretary of the company, a return in the prescribed form notifying the Registrar of that fact; and
- (e) within one month of any change in the name, residential address and other prescribed particulars of any director, manager or secretary a notice in the prescribed form notifying the Registrar of the new name, residential address and other prescribed particulars of that person.

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

Penalty: \*One thousand ringgit. Default penalty.

(8) A certificate of the Registrar stating that from any return lodged with the Registrar pursuant to this section it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified company shall, in all courts

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

and by all persons having power to take evidence for the purposes of this Act, be received as *prima facie* evidence of the facts stated therein and for the purposes of this subsection a person who appears from any return so lodged to be a director, manager or secretary of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he has ceased to be such a director, manager or secretary.

(9) In this section, “identification” means, in the case of any person issued with an identity card, the number of the identity card, in the case of a person not issued with an identity card, particulars of passport or such other similar evidence of identification as is available, if any.

(10) In this section “director” includes an alternate, substitute or local director.

### DIVISION 3

#### MEETINGS AND PROCEEDINGS

#### **Statutory meeting and statutory report**

**142.** (1) Every public company that is a limited company and has a share capital shall, within a period of not less than one month and not more than three months after the date at which it is entitled to commence business, hold a general meeting of the members of the company to be called the “statutory meeting”.

(2) The directors shall at least seven days before the day on which the meeting is to be held forward a report to be called the “statutory report” to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

- (a) the total number of shares allotted distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

- (c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report exhibiting under distinctive headings the receipts from shares and debentures and other sources the payments made thereof and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;
- (d) the names and addresses and descriptions of the directors, trustees for holders of debentures, if any, auditors, if any, managers, if any, and secretaries of the company; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of those shares and to the receipts and payments on capital account, be examined and reported upon by the auditors, if any.

(5) The directors shall cause a copy of the statutory report and the auditor's report, if any, to be lodged with the Registrar at least seven days before the date of the statutory meeting.

(6) The directors shall cause a list showing the names and addresses of the members and the number of shares held by them respectively to be produced at the commencement of the meeting and to remain open and accessible to any member during the continuance of the meeting.

(7) The members present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the articles either before or subsequently to the former meeting may be passed and the adjourned meeting shall have the same powers as an original meeting.

(9) The meeting may by ordinary resolution appoint a committee of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if notwithstanding any other provision of this Act at least seven days notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of any default in complying with this section every officer of the company who is in default and every director of the company who fails to take all reasonable steps to secure compliance with this section shall be guilty of an offence against this Act.

Penalty: \*Five thousand ringgit:  
Default penalty: One hundred ringgit.

### **Annual general meeting**

**143.** (1) A general meeting of every company to be called the “annual general meeting” shall in addition to any other meeting be held once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) Notwithstanding subsection (1) the Registrar on the application of the company, may if for any special reason he thinks fit so to do, extend the period of fifteen months or eighteen months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be at the annual general meeting of the company.

(4) If default is made in holding an annual general meeting—

(a) the company and every officer of the company who is in default shall be guilty of an offence against this Act;

Penalty: Five thousand ringgit.  
Default penalty: One hundred ringgit; and

(b) the Court may on the application of any member order a general meeting to be called.

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

**Convening of extraordinary general meeting on requisition**

**144.** (1) The directors of a company, notwithstanding anything in its articles, shall on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than one-tenth of the total voting rights of all members having at that date a right to vote at general meetings, forthwith proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days after the date of the deposit of the requisition proceed to convene a meeting the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be paid to the requisitionists by the company, and any sum so paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Act in the case of special resolutions.

### Calling of meetings

**145.** (1) Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company.

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than fourteen days or such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2) be deemed to be duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; or

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, together represents not less than ninety-five per centum of the total voting rights at that meeting of all the members.

(4) So far as the articles do not make other provision in that behalf notice of every meeting shall be served on every member having a right to attend and vote thereat in the manner in which notices are required to be served by Table A.

(5) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceedings at a meeting.

### Place of meeting

**145A.** Where any meeting (including an adjourned meeting) is required to be held under this Division it shall be held in the State where its registered office is situated.

**Articles as to right to demand a poll**

**146.** (1) Any provision contained in a company's articles shall be void so far as it would have the effect—

- (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
- (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made—
  - (i) by not less than five members having the right to vote at the meeting;
  - (ii) by a member representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (iii) by a member holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right; or
- (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

(3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act.

**Quorum, chairman, voting, etc., at meetings**

**147.** (1) So far as the articles do not make other provision in that behalf and subject to section 55—

- (a) two members of the company, personally present shall be a quorum;
- (b) any member elected by the members present at a meeting may be chairman thereof;
- (c) in the case of a company having a share capital—
  - (i) on a show of hands each member who is personally present and entitled to vote shall have one vote; and
  - (ii) on a poll each member shall have one vote in respect of each share held by him and where all or part of the share capital consists of stock or units of stock each member shall have one vote in respect of the stock or units of stock held by him which is or are or were originally equivalent to one share; and
- (d) in the case of a company not having a share capital every member shall have one vote.

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3) A corporation may by resolution of its directors or other governing body—

- (a) if it is a member of a company, authorize such person as it thinks fit to act as its representative, either at a particular meeting or at all meetings of the company or of any class of members; or
- (b) if it is a creditor (including a holder of debentures) of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorized shall, in accordance with his authority and until his authority is revoked by the corporation be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.

(4) Where—

- (a) a person present at a meeting is authorized to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3); and
- (b) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

(5) A certificate under the seal of the corporation shall be *prima facie* evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).

(6) Where a holding company is beneficially entitled to the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorized pursuant to subsection (3) stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

(7) Where by or under this Act any notice, copy of a resolution, or other document relating to any matter is required to be lodged by a company with the Registrar, and a minute referred to in subsection (6) is signed by the representative in pursuance of that subsection and the minutes relates to such a matter the company shall, within one month after the signing of the minute, lodge a copy thereof with the Registrar.

### **As to member's rights at meetings**

**148.** (1) Subject to subsection (2), every member shall notwithstanding any provision in the memorandum or articles have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting:

Provided that the company's articles may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.

(2) Notwithstanding subsection (1), the articles may provide that the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended upon such conditions as may be specified:

Provided that any preference shares issued after the commencement of this Act shall carry the right to attend any general meeting and in a poll thereat to at least one vote for each ringgit or part of a ringgit that is paid up on each share—

- (a) during such period as the preferential dividend or any part thereof remains in arrear and unpaid, such period starting from a date not more than twelve months, or such lesser period as the articles may provide, after the due date of the dividend;
- (b) upon any resolution which varies the rights attached to such shares; or
- (c) upon any resolution for the winding up of the company.

(3) For the purposes of subsection (2), a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend shall have been earned or declared.

## **Proxies**

**149.** (1) A member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide—

- (a) a proxy shall not be entitled to vote except on a poll;
- (b) a member shall not be entitled to appoint a person who is not a member as his proxy unless that person is an advocate, an approved company auditor or a person approved by the Registrar in a particular case;

- (c) a member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and
- (d) where a member appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(2) In every notice calling a meeting of a company or a meeting of any class of members of a company there shall appear with reasonable prominence a statement as to the rights of the member to appoint proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence against this Act.

(3) Any person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence against this Act.

Penalty: \*Two thousand ringgit.

(4) No person shall be guilty of an offence under subsection (3) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) Any person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence against this Act unless the invitation is accompanied by a form of proxy which shall entitle the member to direct the proxy to vote either for or against the resolution.

### **Power of Court to order meeting**

**150.** If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or

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

of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting.

### **Circulation of members' resolutions, etc.**

**151.** (1) Subject to this section a company shall on the requisition in writing of such number of members of the company as is specified in subsection (2) and (unless the company otherwise resolves) at the expense of the requisitionists—

- (a) give to the members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

- (a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than five hundred ringgit.

(3) Notice of a resolution referred to in subsection (1) shall be given, and any statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the

meeting, and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company, and the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto,

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall not be bound under this section to circulate any statement 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 under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default 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: \*Ten thousand ringgit.

### Special resolutions

**152.** (1) A resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding subsection (1), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represents not less than ninety-five per centum of the total voting rights that could be exercised at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which a special resolution is submitted a declaration of the chairman that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted a poll shall be deemed to be effectively demanded if demanded—

- (a) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in the articles, but it shall not in any case be necessary for more than five members to make the demand;

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

(b) if no such provision is made by the articles, by three members so entitled, or by one member or two members so entitled, if that member holds or those two members together hold not less than ten per centum of the paid-up share capital of the company or if that member represents or those two members together represent not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in manner provided by this Act or by the articles.

### **Transitory provisions**

(7) Any extraordinary resolution, duly and appropriately passed before the commencement of this Act, shall for the purposes of this Act be treated as a special resolution.

(8) Where in the case of a company incorporated before the commencement of this Act any matter is required or permitted to be done by extraordinary resolution that matter may be done by special resolution.

### **Resolution signed by all members deemed to be duly passed at meeting**

**152A.** (1) Notwithstanding anything to the contrary in this Act or the articles of the company, a resolution in writing signed by or on behalf of all persons for the time being entitled to receive notice of, and to attend and vote at general meetings of a company shall, for the purposes of this Act and the articles of the company, be treated as a resolution duly passed at a general meeting of the company and, where relevant, as a special resolution so passed.

(2) Any such resolution shall be deemed to have been passed at a meeting held at the registered office on the date on which it was signed by the last member.

(3) This section shall not be construed as requiring that the persons signing a resolution under this section shall sign the same document containing the resolution; but where two or more documents are used for the purpose of obtaining signatures under this section in respect of any resolution, each such document shall be certified in advance by the secretary of the company as containing the true and correct version of the proposed resolution.

### **Resolution requiring special notice**

**153.** Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than fourteen days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given,

### **Registration and copies of certain resolutions and agreements**

**154.** (1) A printed copy of—

- (a) every special resolution; and
- (b) every resolution or agreement which effectively binds any class of shareholders whether agreed to by all the members of that class or not,

shall except where otherwise expressly provided by this Act within one month after the passing or making thereof, be lodged by the company with the Registrar.

(2) Where articles have not been registered a printed copy of every resolution or agreement to which this section applies shall be forwarded to any member at his request on payment of one ringgit or such less sum as the company directs.

(3) In the event of any default 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.

(4) In the event of any default in complying with subsection (2) the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Twenty-five ringgit for each copy in respect of which default is made.

### **Resolutions at adjourned meetings**

**155.** Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### **Minutes of proceedings**

**156.** (1) Every company shall cause—

- (a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers, if any, to be entered in books kept for that purpose within fourteen days of the date upon which the relevant meeting was held; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

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

(2) Any minute so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and signed, then, until the contrary is proved—

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings had thereat shall be deemed to have been duly had; and
- (c) all appointments of officers or liquidators made thereat shall be deemed to be valid.

(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.

### Inspection of minute books

**157.** (1) The books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office of the company, and shall be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within fourteen days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in subsection (1) at a charge not exceeding one ringgit for every hundred words thereof.

(3) If any copy required under this section is not so furnished the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: †Five hundred ringgit. Default penalty.

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

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

## DIVISION 4

## REGISTER OF MEMBERS

**Register and index of members**

**158.** (1) Every company shall keep a register of its members and enter therein—

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

(2) Notwithstanding anything in subsection (1) where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in paragraph (1)(a).

(3) Notwithstanding anything in subsection (1) a company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

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

**Index of members of company**

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

(6) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

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

Penalty: \*Two thousand ringgit. Default penalty.

**Where register to be kept**

**159.** (1) The register of members and index, if any, shall be kept at the registered office of the company, but—

- (a) if the work of making them up is done at another office of the company within Malaysia they may be kept at that other office; or
- (b) if the company arranges with some other person to make up the register and index, if any, on its behalf they may be kept at the office of that other person at which the work is done if that office is within Malaysia.

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

(3) 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.

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

### **Inspection and closing of register**

**160.** (1) A company may, on giving not less than fourteen days notice to the Registrar, close the register of members or any class of members for any time, but so that no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(2) The register and index shall be open to the inspection of any member without charge and of any other person on payment for each inspection of one ringgit or such less sum as the company requires.

(3) Any member or other person may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of one ringgit or such less sum as the company requires for every hundred words or fractional part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of twenty-one days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

(4) If any copy so requested is not sent within the period prescribed by subsection (3) the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: \*Five hundred ringgit. Default penalty.

### **Consequences of default by agent**

**161.** Where, by virtue of paragraph 159 (1)(b), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection 159(1) or (2) or with section 160 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under section 362 shall extend to the making of orders against that other person and his officers and servants.

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

**Power of Court to rectify register**

**162.** (1) If—

- (a) the name of any person is without sufficient cause entered in or omitted from the register; or
- (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(2) On any application under subsection (1) the Court may decide—

- (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and
- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

(3) The Court when making an order for rectification of the register shall by its order direct a notice of the rectification to be so lodged.

(4) No application for the rectification of a register in respect of an entry which was made in the register more than thirty years before the date of the application shall be entertained by the Court.

**Limitation of liability of trustee, etc., registered as owner of shares**

**163.** (1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in Malaysia as the holder of a share in any corporation may become registered as the holder of that share as trustee executor