or administrator of that estate and shall, in respect of that share be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any corporation, being a share registered in a register or branch register kept in Malaysia may, with the consent of the corporation and of the registered holder of that share, become registered as the holder of that share as trustee, executor or administrator of that estate and shall, in respect of the share, be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in a corporation registered in a register or branch register kept in Malaysia and held by a trustee in respect of a particular trust may with the consent of the corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4) Except as provided in this section no notice of any trust expressed, implied or constructive shall be entered on a register or branch register or be receivable by the Registrar and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the corporation concerned shall not be affected with notice of any trust by anything so done.

Branch registers

164. (1) A company having a share capital may cause to be kept in any place outside Malaysia a branch register of members which shall be deemed to be part of the company's register of members.

(2) The company shall lodge with the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be lodged within one month after the opening of the office or of the change or discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept.

(4) The company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at that office duly entered up from time to time a copy of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) Subject to the provisions of this section with respect to the copy register the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall during the continuance of that registration be registered in any other register.

(6) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same place or to the principal register.

(7) This section shall apply to all companies incorporated within Malaysia by or under any Federal or State law.

(8) If by virtue of the law in force in any other country any corporation incorporated under that law keeps in Malaysia a branch register of its members, the Minister may by order declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modifications specified in the order, apply to and in relation to any such branch register kept in Malaysia as they apply to and in relation to the registers of companies under this Act and thereupon those provisions shall apply accordingly.

(9) If default is made in complying with this section the company and every officer of the company who is in default and every person who, pursuant to section 159 has arranged to make up the principal register, and who is in default shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

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

DIVISION 5

ANNUAL RETURN

Annual return by company having a share capital

165. (1) Every company having a share capital shall make a return containing the particulars referred to in Part l of the Eighth Schedule and accompanied by such copies of documents as are required to be included in the return in accordance with Part ll of that Schedule and such of the certificates and other particulars prescribed in that Part as are applicable to the company.

(2) The return shall be in accordance with the form set out in Part II of the Eighth Schedule or as near thereto as circumstances admit and shall be made up to the date of the annual general meeting of the company in the year or a date not later than the fourteenth day after the date of the annual general meeting.

(3) In the case of a company keeping a branch register the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

(4) The annual return signed by a director or by the manager or secretary of the company shall be lodged with the Registrar within one month or in the case of a company keeping pursuant to its articles a branch register in any place outside Malaysia within two months after the annual general meeting.

Annual return by company not having a share capital

(5) A company not having a share capital shall, within one month after each annual general meeting of the company, lodge with the Registrar a return in the prescribed form containing the particulars referred to in subsection (6) and made up to the date of the annual general meeting or a date not later than the fourteenth day after the date of the annual general meeting.

(6) The return of a company not having a share capital shall contain-—

(a) the address of the registered office of the company;

(b) in a case in which the register of members is, under this Act, kept elsewhere than at that office, the address of the place where it is kept;

(c) particulars of the total amount of the indebtedness of the company in respect of all charges, whether required to be registered with the Registrar or not;

(d) all such particulars with respect to the persons who, on the day to which the return is made up, are the directors, managers or secretaries of the company as are required to be contained in the register of directors, managers and secretaries;

(e) the name and address of the auditor of the company; and

(f) such other matters relating to the accounts of the company and to the unclaimed moneys held by the company as are prescribed.

(7) If a company fails to comply 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.

Auditor's statements

165A. (1) A company that is not required by this Act to lodge accounts with the Registrar shall include in or attach to its annual return under section 165 a statement relating to the accounts of the company required to be laid before the company at its annual general meeting held on the date to which the return is made up or if an annual general meeting is not held on that date, the annual general meeting last preceding that date, signed by the auditor of the company—

(a) stating whether the company has in his opinion kept proper accounting records and other books during the period covered by those accounts;

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

(b) stating whether the accounts have been audited in accordance with this Act;

(c) stating whether the auditor's report on the accounts was made subject to any qualification, or included any comment made under subsection 174(3), and, if so, particulars of the qualification or comment; and

(d) stating whether as at the date to which the profit and loss account has been made up, the company appeared to have been able to meet its liabilities as and when they fall due.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Exemption from filing list of members with annual return for certain public companies

166. (1) A public company which—

(a) has more than five hundred members; and

(b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

need not comply with such of the provisions of this Division and the Eighth Schedule as relate to the inclusion in the annual return of a list of members if there is included in the annual return—

(A) a certificate by the secretary that the company is of a kind to which this subsection applies; and

(B) a list showing the prescribed particulars of the twenty largest holders of each class of equity shares.

(2) The Minister may, by notice published in the *Gazette* require any company to which subsection (1) applies to comply with all or any of the provisions of this Division or of the Eighth Schedule referred to in subsection (1).

(3) If default is made in complying with the notice given under subsection (2), the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: *Two thousand ringgit. Default penalty.

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

PART VI

ACCOUNTS AND AUDIT

DIVISION 1

ACCOUNTS

Compliance with approved accounting standards

166A. (1) In this Part unless the contrary intention appears, "approved accounting standards" shall have the meaning assigned thereto in section 2 of the Financial Reporting Act 1997 [*Act 558*].

(2) The approved accounting standards shall apply to the accounts of a company or the consolidated accounts of a holding company if, at the time when the accounts or consolidated accounts are made out, the approved accounting standards—

(a) apply in relation to the financial year of the company or the holding company to which the accounts or consolidated accounts relate; and

(b) are relevant to those accounts or consolidated accounts.

(3) Without prejudice to the generality of the provisions of this Division, the directors of a company shall ensure that the accounts of the company and, if the company is a holding company for which consolidated accounts are required, the consolidated accounts of the company, laid before the company at its annual general meeting are made out in accordance with the applicable approved accounting standards.

(4) Notwithstanding subsection (3), the directors of a company or holding company shall not be required to ensure that the accounts or consolidated accounts, as the case may be, are made out in accordance with a particular approved accounting standard if they are of the opinion that making out the accounts or consolidated accounts in accordance with the approved accounting standard would not give a true and fair view of the matters required by section 169 to be dealt with in the accounts or consolidated accounts or a true and fair view of the results of the business and the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated accounts.

(5) Where the accounts or consolidated accounts of a company are not made out in accordance with a particular approved accounting standard under subsection (4), the directors of the company shall—

(a) disclose by way of a note on the accounts their reason for not making out the accounts or consolidated accounts in accordance with the approved accounting standard; and

(b) give particulars in the note of the quantified financial effect on the accounts or consolidated accounts if the relevant approved accounting standard was complied with.

(6) Notwithstanding subsection 169(14), where any conflict or inconsistency arises between the provisions of an applicable approved accounting standard and a provision in the Ninth Schedule in their respective applications to the accounts or consolidated accounts of a company, the provisions of the applicable approved accounting standard shall prevail.

Accounts to be kept

167. (1) Every company and the directors and managers thereof shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(1A) Every company and the directors and managers thereof shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which they relate.

(2) The company shall retain the records referred to in subsection (1) for seven years after the completion of the transactions or operations to which they respectively relate.

(3) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place in Malaysia as the directors think fit and shall at all times be open to inspection by the directors.

(4) Notwithstanding the provisions in subsection (3), the accounting and other records of operations outside Malaysia may be kept by the company at a place outside Malaysia and there shall be sent to and kept at a place in Malaysia and be at all times open to inspection by the directors, such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto.

(5) If any accounting and other records are kept at a place outside Malaysia pursuant to subsection (4), the company shall, if required by the Registrar to produce those records at a place in Malaysia, comply with the requirements.

(6) The Court may in any particular case order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(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: Imprisonment of *six months or five thousand ringgit or both.

As to accounting periods of companies within the same group

168. (1) Subject to subsections (11) and (12) the directors of every holding company that is not a foreign company shall take such steps as are necessary to ensure that—

(a) within two years after the commencement of this Act, the financial years of each of its subsidiaries coincide with the financial year of the holding company; and

(b) within two years after any corporation becomes a subsidiary of the holding company, the financial year of that corporation coincides with the financial year of the holding company.

**NOTE*—Previously "three months or five hundred ringgit"–*see* Companies (Amendment) Act 1985 [*Act A616*].

(2) Where the financial year of a holding company that is not a foreign company and that of each of its subsidiaries coincide, the directors of the holding company shall at all times take such steps as are necessary to ensure that without the consent of the Registrar the financial year of the holding company or any of its subsidiaries is not altered so that all such financial years do not coincide.

(3) Where the directors of the holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, the directors may apply in writing to the Registrar for an order authorizing any subsidiary to continue to have or to adopt (as the case requires) a financial year which does not coincide with that of the holding company.

(4) The application shall be supported by a statement by the directors of the holding company of their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply such information relating to the operation of the holding company and of any corporation that is deemed by virtue of section 6 to be related to the holding company as he thinks necessary for the purpose of determining the application.

(6) The Registrar may at the expense of the holding company of which the applicants are directors request any approved company auditor to investigate and report on the application.

(7) The Registrar may rely upon any report obtained pursuant to subsection (6) from the approved company auditor.

(8) The Registrar may make on order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit and shall serve the order on the holding company.

(9) Where the applicants are aggrieved by any order made by the Registrar, the applicants may, within two months after the service of the order upon the holding company, appeal against the order to the Minister.

(10) The Minister shall determine the appeal and in determining the appeal may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar might have exercised in relation to the original application.

(11) Where the directors of a holding company have applied to the Registrar for an order authorizing any subsidiary to continue to have a financial year which does not coincide with that of the holding company, the operation of subsection (1) shall be suspended in relation to that subsidiary until the determination of the application and of any appeal arising out of the application.

(12) Where an order is made authorizing any subsidiary to have a financial year which does not coincide with that of the holding company, compliance with the terms of the order of the Registrar or where there has been an appeal, compliance with the terms of any order made on the determination of the appeal shall be deemed to be a compliance with subsection (1) in relation to that subsidiary, but where an application for such an order and the appeal, if any, arising out of that application are refused the time within which the directors of the holding company are required to comply with subsection (1) in relation to that subsidiary shall be deemed to be the period of twelwe months after the date upon which the order of the Registrar is served on the holding company or the period of twelwe months after the determination of the appeal, as the case may be.

(13) Where the directors of a holding company have applied to the Registrar for an order authorizing any of its subsidiaries to continue to have or to adopt a financial year which does not coincide with that of the holding company and the application and the appeal, if any, arising out of that application, have been refused, the directors of the holding company shall not make a similar application with respect to that subsidiary within three years after the refusal of the application or where there is an appeal, after the determination of that appeal unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

Profit and loss account, balance sheet and directors' report

169. (1) The directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calender year at intervals of not more than fifteen months, lay before the company at its annual general meeting a profit and loss account for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to a date not more than six months before the date of the meeting.

(2) Notwithstanding subsection (1) the Registrar on application by the company, if for any special reason he thinks fit so to do, may extend the periods of eighteen months and fifteen months referred to in that subsection and with respect to any year extend the period of six months referred to in that subsection, notwithstanding that period is so extended beyond the calender year.

(3) The directors of every company shall cause to be made out, and to be laid before the company at its annual general meeting with the profit and loss account required by subsection (1) a balance sheet as at the date to which the profit and loss account is made up.

(4) The profit and loss account and the balance sheet of a company shall be duly audited before they are laid before the company at its annual general meeting as required by this section.

(5) The directors of a company shall cause to be attached to every balance sheet made out under subsection (3) a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year and if the company is a holding company also a report with respect to the state of affairs of the holding company and all its subsidiaries.

(6) Each report to which subsection (5) relates shall state with appropriate details—

(a) the names of the directors in office since the date of the last report;

(b) the principal activities of the company in the course of the financial year and any significant change in the nature of those activities during the period;

(c) the net amount of the profit or loss of the company for the financial year after provision for income tax;

(d) the amounts and particulars of any material transfer to or from reserves or provisions;

(e) where, during the financial year, the company has issued and shares or debetures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount of debentures of each class, and the terms of issue of the shares and debentures of each class;

(f) whether at the end of that financial year—

(i) there subsist arrangements to which the company is a party, being arrangements with the object of enabling directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate; or

(ii) there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party, and if so the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements;

(g) in respect of each person who, at the end of the financial year, was a director of the company—

(i) whether or not (according to the register kept by the company for the purposes of section 134 relating to the obligation of a director of a company to nofity such company of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's

holding company) he was at the end of that year, interested in shares in, or debentures of the company or any other such body corporate and , if he was so interested, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested;

(ii) whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director), when he became a director, interested in shares in, or debentures of, the company or any other such body corporate and, if he was so interested, the number and amount of shares in, and debentures of, each body (specifying it) in which according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director; and

(iii) the total number of shares in or debentures of the company or any other such corporate bought and sold by him during that financial year;

(h) the amount, if any, which the directors recommended should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous financial year, indicating which of those amounts, if any, have been shown in a previous report under this subsection or under a corresponding repealed provision of this Act;

(i) whether the directors (before the profit and loss account and balance sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provision for doubtful debts, and satisfied themselves that all known bad debts had been written off and that adequate provision had been made for doubtful debts;

(j) whether at the date of the report the directors are aware of any circumstances which would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent and, if so, giving particulars of the circumstances;

(k) whether the directors (before the profit and loss account and balance sheet were made out) have taken reasonable steps to ensure that any current assets which were unlikely to be realized in the ordinary course of business including their value as shown in the accounting records of the company have been written down to an amount which they might be expected so to realize;

(l) whether at the date of the report the directors are aware of any circumstances—

(i) which would render the values attributed to current assets in the accounts misleading; and

(ii) which have arisen which render adherence to the existing method of valuation of assets or liabilities of the company misleading or inappropriate;

and, if so, giving particulars of the circumstances;

(m) whether there exists at the date of the report—

(i) any charge on the assets of the company which has arisen since the end of the financial year which secures the liabilities of any other person and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured; and

(ii) any contingent liability which has arisen since the end of the financial year and, if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect thereof;

(n) whether any contingent or other liability has become enforceable, or likely to become enforceable, within the period of twelwe months after the end of the financial year which, in the opinion of the directors, will or may affect the liability of the company to meet its obligations when they fall due and, if so, giving particulars of any such liability;

(o) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading and, if so, giving particulars of the circumstances;

(p) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect thereof, if known or reasonably ascertainable; and

(q) whether there has arisen in the interval between the end of the financial year and the date report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the company's operations for the financial year in which the report is made and, if so, giving particulars of the item, transaction or event.

(7) In subsection (6) of this section, the expression "any item, transaction or event of a material and unusual nature" includes but is not limited to—

(a) any change in accounting policies adopted since the last report;

(b) any material change in the method of valuation of the whole or any part of the trading stock;

(c) any material item appearing in the accounts or consolidated accounts for the first time or not usually included in the accounts or consolidated accounts; and

(d) any absence from the accounts or consolidated accounts of any material item usually included in the accounts or consolidated accounts.

(8) The directors of a company shall state in the report whether a director of the company has since the end of the previous financial year received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.

(9) Every statements, report or other document relating to the affairs of a company or any of its subsidiaries attached to, or included with, a report of the directors laid before the company at its general meeting or sent to the members under section 170 (not being a statements, report or document required by this Act to be laid before the company in general meeting) shall, for the purposes of section 364 be deemed to be part of that last-mentioned report.

(10) Where at the end of a financial year a company is the subsidiary of another corporation, the directors of the company shall state in, or in a note as a statement annexed to, the company's accounts laid before the company at its annual general meeting the name of the corporation regarded by the directors as being the company's ultimate holding company and if known to them the country in which it is incorporated.

(11) Where any option has been granted during the period covered by the profit and loss account to take up unissued shares of a company the report required by subsection (5) shall state—

(a) the name of the person to whom the option has been granted;

(b) the number and class of shares in respect of which the option has been granted;

(c) the date of expiration of the option;

(d) the basis upon which the option may be exercised; and

(e) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share of any other company.

(12) Each report required by subsection (5) shall specify—

(a) particulars of shares issued during the period to which the report relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period; and

(b) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the

date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company;

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

(13) Paragraph (11)*(a)* shall not apply in any case where the option to take up shares of the company has been conferred generally on all the holders of a class of shares or debentures of the company.

(14) Every balance sheet referred to in subsection (3) shall give a true and fair view of the state of affairs of the company as at the end of the period to which it relates and every profit and loss account referred to in subsection (1) shall give a true and fair view of the profit or loss of the company for the period of accounting as shown in the accounting and other records of the company, and without affecting the generality of the foregoing, every such balance sheet and profit and loss account shall comply with the requirements of the Ninth Schedule so far as applicable thereto.

(15) The directors of a company shall cause to be attached to every balance sheet and profit and loss account laid before the company in general meeting (including any consolidated balance sheet and consolidated profit and loss account of a holding company) a statement made in accordance with a resolution of the directors and signed by at least two directors stating whether, in the opinion of the directors—

(a) the profit and loss account and, where applicable, the consolidated profit and loss account, is or are drawn up so as to give a true and fair view of the results of the business of the company and, if applicable, of all the companies the accounts of which are dealt with in the consolidated profit and loss account for the period covered by the account;

(b) the balance sheet, and where applicable the consolidated balance sheet, is or are drawn up so as to give a true and fair view of the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated balance sheet as at the end of that period; and

(c) the accounts, and where applicable the consolidated accounts, have been made out in accordance with the applicable approved accounting standards.

(16) Every balance sheet and profit and loss account of a company laid before the company in general meeting (including any consolidated balance sheet and consolidated profit and loss account annexed to the balance sheet and profit and loss account of a holding company) shall be accompanied by a statutory declaration by a director or where that director is not primarily responsible for the financial management of the company by the person so responsible setting forth his opinion as to the correctness or otherwise of the balance sheet and profit and loss account and, where applicable, the consolidated balance sheet and consolidated profit and loss account.

(17) Any document (other than a balance sheet prepared in accordance with this Act) or advertisement published issued or circulated by or on behalf of a company (other than a banking corporation) shall not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied—

(a) if the reserve is invested outside the business of the company—by a statement showing the manner in which and the security upon which it is invested; or

(b) if the reserve is being used in the business of the company—by a statement to the effect that the reserve is being so used.

(18) To the extent that any company registered under any written law relating to insurance is required to prepare balance sheets, revenue accounts and profit and loss accounts in the form prescribed by that law, the company shall be deemed to have complied with the requirements of subsections (5) to (17) and the Ninth Schedule if its balance sheet and profit and loss account is made out in accordance with that law but if the company carries on business other than insurance business so far as that law does not require the company to deal with any matters which are required to be dealt with under the Ninth Schedule, it shall be necessary for the company to comply with this section and the Ninth Schedule.

(19) The provisions of this Act relating to the form and content of the report of the directors and the annual balance sheet and profit and loss account shall apply to a banking corporation and

a licensed finance company, a licensed discount house, a licensed money-broker, a scheduled institution in respect of which the Minister charged with responsibility for finance has made an order under subsection 24(1) of the Banking and Financial Institutions Act 1989 and a non-scheduled institution in respect of which such Minister has made an order under subsection 93(1) of that Act with such modifications and exceptions as are determined either generally or in any particular case by the Bank Negara Malaysia.

Relief from requirements as to form and content of accounts and reports

169A. (1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of accounts or consolidated accounts or to the form and content of the report required by subsection 169(6) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the accounts or consolidated accounts or report as the Registrar thinks fit to impose.

(2) The Registrar may where he considers it appropriate make an order in respect of any class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of accounts or consolidated accounts or to the form and content of the report required by subsection 169(6) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of accounts or consolidated accounts or report as the Registrar thinks fit to impose.

(3) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would—

(i) render the accounts or consolidated accounts or report, as the case may be, misleading or inappropriate to the circumstances of the company; or

(ii) impose unreasonable burdens on the company or any officer of the company.

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in which case the Registrar shall give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

Power of Registrar to require a statement of valuation of assets

169B. (1) The Registrar may, with notice in writing, require the directors of any company to supply a statement of valuation at current value of assets and liabilities of the company within the time specified in the notice.

(2) The Registrar may, on the application of the company and in his absolute discretion, extend the period of time so specified in the notice referred to in subsection (1).

Members of company entitled to balance sheet, *etc.*

170. (1) A copy of every profit and loss account and balance sheet (including every document required by law to be attached thereto) which is to be laid before company in general meeting accompanied by a copy of the auditor's report thereon shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notice of general notice of general meeting of the company:

Provided that if the copies of the documents aforesaid are sent less than fourteen days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(2) Any member of a company (whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance sheets) to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last profit and loss account and balance sheet of the company (including every document required by this Act to be attached thereto) together with a copy of the auditor's report thereon.

(3) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default shall be guilty of an offence against this Act, unless it is proved that the member or holder of a debenture in question has already made a request for and been furnished for and been furnished with a copy of the document.

Penalty: Two thousand five hundred ringgit. Default penalty.

Penalty

171. (1) If any director of a company fails to comply or to take all reasonable steps to secure compliance by the company with the foregoing provisions of this Division or has by his own wilful act been the cause of any default by the company thereunder, he shall be guilty of an offence against this Act.

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

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

(3) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the Court dealing with the case the offence was committed wilfully.

DIVISION 2

AUDIT

Appointment and remuneration of auditors

172. (1) At any time before the first annual general meeting of a company, the directors of the company may appoint, or (if the directors do not make an appointment) the company at a general meeting may appoint, a person to be the auditor of the company, and any auditor so appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting.

(2) A company shall at each annual general meeting of the company appoint a person to be the auditor of the company, and any auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

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

(3) Subject to subsections (7) and (8), the directors of a company may appoint an approved company auditor to fill any casual vacancy in the office of auditor of the company, but while such a vacancy continues the surviving or continuing auditor, if any, may act.

(4) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by a company—

(a) it shall forthwith send a copy of the notice to the auditor concerned and to the Registrar; and

(b) the auditor may, within seven days after the receipt by him of the copy of the notice make representations in writing to the company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6) Unless the Registrar on the application of the company otherwise orders, the company shall send a copy of the representations as so requested and the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(7) Where an auditor of a company is removed from office in pursuance of subsection (4) at a general meeting of the company—

(a) the company may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled so to do vote in person or, where proxies are allowed, by proxy forthwith appoint another person nominated at the meeting as auditor; or

(b) the meeting may be adjourned to a date not earlier than twenty days and not later than thirty days after the meeting and the company may, by ordinary resolution, appoint another person as auditor, being a person notice of whose nomination as auditor has, at least ten days before the resumption of the adjourned meeting, been received by the company.

(8) A company shall, forthwith after the removal of an auditor from office in pursuance of subsection (4), give notice in writing of the removal to the Registrar and, if the company does not appoint another auditor under subsection (7), the Registrar shall appoint an auditor.

(9) An auditor appointed in pursuance of subsection (7) or (8) shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

(10) If a company does not appoint an auditor as required by this section, the Registrar may on the application in writing of any member of the company make the appointment.

(11) Subject to subsection (7), a person shall not be capable of being appointed auditor of a company at an annual general unless he held office as auditor of the company immediately before the meeting or notice of his nomination as auditor was given to the company by a member of the company not less than twenty-one days before the meeting.

(12) Where notice of nomination of a person as an auditor of a company is received by the company whether for appointment at an adjourned meeting under subsection (7) or at an annual general meeting, the company shall, not less than seven days before the adjourned meeting or the annual general meeting, send a copy of the notice to the person nominated, to each auditor, if any, of the company and to each person entitled to receive notice of general meetings of the company.

(13) If, after notice of nomination of a person as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date twenty-one days or less after the notice has been given, subsection (11) shall not apply in relation to the person and, if the annual general meeting is called for a date not more than seven days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under subsection (12), it is required to be sent, the company shall be deemed to have complied with that subsection in relation to the notice.

(14) An auditor of a company may resign—

(a) if he is not the sole auditor of the company; or

(b) at a general meeting of the company,

but not otherwise.

(15) If an auditor gives notice in writing to the directors of the company that he desires to resign, the directors shall call a general meeting of the company as soon as is practicable for the purpose of appointing an auditor in place of the auditor who desires to resign and on the appointment of another auditor the resignation shall take effect.

(16) The fees and expenses of an auditor of a company—

(a) in the case of an auditor appointed by the company at a general meeting—shall be fixed by the company in general meeting or, if so authorized by the members at the last preceding annual general meeting, by the directors; and

(b) in the case of an auditor appointed by the directors or by the Registrar—may be fixed by the directors or by the Registrar, as the case may be and, if not so fixed, shall be fixed as provided in paragraph *(a)* as if the auditor had been appointed by the company.

Auditors' remuneration

173. (1) If a company is served with a notice sent by or on behalf of—

(a) at least five per centum of the total number of members of the company; or

(b) the holders in aggregate of not less than five per centum in nominal value of the company's issued share capital,

requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall forthwith—

(c) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of the notice;

(d) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(e) lay the statement before the company in general meeting.

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

Penalty: Two thousand five hundred ringgit.

Powers and duties of auditors as to reports on accounts

174. (1) Every auditor of a company shall report to the members on the accounts required to be laid before the company in general meeting and on the company's accounting and other records relating to those accounts and if it is a holding company for which consolidated accounts are prepared shall also report to the members on the consolidated accounts.

(2) An auditor shall, in a report under this section, state—

(a) whether the accounts and, if the company is a holding company for which consolidated accounts are prepared, the consolidated accounts are in his opinion property drawn up—

(i) so as to give a true and fair view of the matters required by section 169 to be dealt with in the accounts and, if there are consolidated accounts, in the consolidated accounts;

(ii) in accordance with the provisions of this Act so as to give a true and fair view of the company's affairs; and

(iii) in accordance with the applicable approved accounting standards;

(aa) if in his opinion the accounts, and where applicable the consolidated accounts, have not been drawn up in accordance with a particular applicable approved accounting standard—

(i) whether in his opinion the accounts or consolidated accounts, as the case may be, would, if drawn up in accordance with the approved accounting standard, have given a true and fair view of the matters required by section 169 to be dealt with in the accounts or consolidated accounts;

(ii) if in his opinion the accounts or consolidated accounts, as the case may be, would not, if so drawn up, have given a true and fair view of those matters, his reasons for holding that opinion;

(iii) if the directors have given the particulars of the quantified financial effect under subsection 166A(5), his opinion concerning the particulars; and

(iv) in a case to which neither subparagraph (ii) nor (iii) applies, particulars of the quantified financial effect on the accounts or consolidated accounts of the failure to so draw up the accounts or consolidated accounts, as the case may be;

(b) whether the accounting and other records and the registers required by this Act to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with the provisions of this Act;

(c) in the case of consolidated accounts —

(i) the names of the subsidiaries, if any, of which he has not acted as auditor;

(ii) whether he has considered the accounts and auditor's reports of all subsidiaries of which he has not acted as auditor, being accounts that are included (whether separately or consolidated with other accounts) in the consolidated accounts;

(iii) whether he is satisfied that the accounts of the subsidiaries that are consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for those purposes; and

(iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qualification (other than a qualification that is not material in relation to the consolidated accounts), or included any comment made under subsection (3), and, if so, particulars of the qualification or comment;

(d) any defect or irregularity in the accounts or consolidated accounts and any matter not set out in the accounts or consolidated accounts without regard to which a true and fair view of the matters dealt with by the accounts or consolidated accounts would not be obtained; and

(e) if he is not satisfied as to any matter referred to in paragraph *(a)*, *(b)* or *(c)*, his reasons for not being so satisfied.

(3) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

(a) whether he has obtained all the information and explanations that he required;

(b) whether proper accounting and other records (including registers) have been kept by the company as required by this Act;

(c) whether the returns received from branch offices of the company are adequate; and

(d) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amount taken into any consolidated accounts were appropriate to the circumstances of the consolidation,

and he shall state in his report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(4) An auditor of a company has a right of access at all reasonable times to the accounting and other records (including registers) of the company, and is entitled to require from any officer of the company and any auditor of a related company such information and explanations as he desires for the purposes of audit.

(5) An auditor of a holding company for which consolidated accounts are required has a right of access at all reasonable times to the accounting and other records (including registers) of any subsidiary, if necessary, and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the consolidated accounts.

(6) The auditor's report shall be attached to or endorsed on the accounts or consolidated accounts and shall, if any member so requires, be read before the company in general meeting and shall be open to inspection by any member at any reasonable time.

(7) An auditor of a company or his agent authorized by him in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(8) If an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that—

(a) there has been a breach or non-observance of any of the provisions of this Act; and

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or consolidated accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company,

he shall forthwith report the matter in writing to the Registrar.

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

(9) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its holding company access, in accordance with this section, to any accounting and other records (including registers) of the corporation in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, shall be guilty of an offence against this Act.

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

Auditors and other persons to enjoy qualified privilege in certain circumstances

174A. (1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of his duties and required by or under this Act to be lodged with the Registrar.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

Duties of auditors to trustee for debenture holders

175. (1) The auditor of a borrowing corporation shall within seven days after furnishing the corporation with any balance sheet or profit and loss account or any report certificate or other document which he is required by this Act or by the debentures or trust deed to give to the corporation, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof.

(2) Where in the performance of his duties as auditor of a borrowing corporation the auditor becomes aware of any matter which is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the corporation he shall, within seven days after so becoming aware of the matter, send by post a report in writing on the matter to the borrowing corporation and a copy thereof to the trustee.

Penalty: *One thousand ringgit. Default penalty.

PART VII

ARRANGEMENT AND RECONSTRUCTIONS

Power to compromise with creditors and members

176. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them the Court may, on the application in a summary way of the company or of any creditor or member of the company, or in the case of a company being wound up of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members to be summoned in such manner as the Court directs.

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

(2) A meeting held pursuant to an order of the Court made under subsection (1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) An order under subsection (3) shall have no effect until an office copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

(6) Subject to subsection (7), a copy of every order made under subsection (3) shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company shall so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation

of any two or more companies) has been proposed, the directors of the company shall—

(a) if a meeting of the members of the company by resolution so directs, instruct such accountants or advocates or both as are named in the resolution to report on the proposals and forward their report to the directors as soon as may be; and

(b) make the report available at the registered office of the company for inspection by the shareholders and creditors of the company at least seven days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: *Two thousand ringgit.

Power of Court to restrain proceedings

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of those creditors, the Court may. in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(10A) The Court may grant a restraining order under subsection (10) to a company for a period of not more than ninety days or such longer period as the Court may for good reason allow if and only if—

(a) it is satisfied that there is a proposal for a scheme of compromise or arrangement between the company and its creditors or any class of creditors representing at least one-half in value of all the creditors;

(b) the restraining order is necessary to enable the company and its creditors to formalize the scheme of compromise or arrangement for the approval of the creditors or members pursuant to subsection (1);

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

(c) a statement in the prescribed form as to the affairs of the company made up to a date not more than three days before the application is lodged together with the application; and

(d) it approves the person nominated by a majority of the creditors in the application by the company under subsection (10) to act as a director or if that person is not already a director, notwithstanding the provisions of this Act or the memorandum and articles of the company, appoints the person to act as a director.

(10B) The person approved or appointed by the Court to act as a director of the company under subsection (10A) shall have a right of access at all reasonable times to the accounting and other records (including registers) of the company, and is entitled to require from any officer of the company such information and explanation as he may require for the purposes of his duty.

(10C) Any disposition of the property of the company, including things in action and any acquisition of property by the company, other than those made in the ordinary course of business, made after the grant of the restraining order by the Court shall, unless the Court otherwise orders, be void.

(10D) Where a company disposes or acquires any property, other than in the ordinary course of its business, without leave of the Court, every officer of the company who is in default shall be guilty of an offence against this Act.

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

(10E) Where an order is made under subsection (10), every company in relation to which the order is made shall, within seven days—

(a) lodge an office copy of the order with the Registrar; and

(b) publish a notice of the order in a daily newspaper circulating generally throughout Malaysia,

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

Penalty: One hundred thousand ringgit.

(10F) An order made by the Court under subsection (10) shall not have the effect of restraining further proceedings in any action or proceeding against any person other than the company that had applied for the restraining order.

(10G) For the purpose of subsection (10F) , the term "any person" includes a guarantor of the company.

Interpretation

(11) In this section—

"arrangement" includes a reorganization of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

"company" means any corporation or society liable to be wound up under this Act.

Information as to compromise with creditors and members

177. (1) Where a meeting is summoned under section 176 there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(4) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section within seven days of the receipt of a request in writing for information as to those matters.

(5) Where default is made in complying with any requirement of 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.

(6) For the purpose of subsection (5) the liquidator of the company and any trustee for debenture holders shall be deemed to be an officer of the company.

(7) Notwithstanding subsection (5) a person shall not be liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

Provisions for facilitating reconstruction and amalgamation of companies

178. (1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with scheme for the reconstruction of any company or the amalgamation of any two or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as the "transferor company") is to be transferred to another company (in this section referred to as the "transferee company"), the Court may either by the order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;

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

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;

(d) the dissolution, without winding up, of the transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order made under this section provides for the transfer of property or liabilities, then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free in the case of any particular property if the order so directs, from any change which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section every company in relation to which the order is made shall lodge within seven days of the making of the order—

(a) an office copy of the order with the Registrar; and

(b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every company which makes default in complying with this section 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.

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

**NOTE*—Previously "Five hundred ringgit"–*see* Companies (Amendment) Act 1986 [*Act A657*].

(5) In this section—

"liabilities" includes duties;

"property" includes property rights and powers of every description.

(6) Notwithstanding the provisions of subsection 176(11) "company" in this section does not include any company other than a company as defined in section 4.

179. (*Deleted by Act 498*).

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

180. (1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (in this section referred to as the "transferor company") to another company or corporation (in this section referred to as the "transferee company") has within four months after the making of the offer in that behalf by the transferee company been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than nine-tenths in nominal value of those shares or of the shares of that class (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may at any time within two months after the offer has been so approved give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within seven days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms which, under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company or if the offer contained two or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.

(2) Where a transferee company has given notice to any dissenting shareholder that it desires to acquire his shares the dissenting shareholder shall be entitled to require the company by a demand in writing served on that company within one month from the date on which the notice was given to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee company shall not be entitled or bound to acquire the share of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.

(3) Where in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in nominal value of the shares in the first-mentioned company or of any class of those shares, then—

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question,

and where a shareholder gives notice under paragraph *(b)* with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given or, after fourteen days after a statement has been supplied to a dissenting shareholder pursuant

to subsection (2) or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company, and pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

(6) Where any consideration other than cash is held in trust by a company for any person under this section or under any corresponding previous enactment, it may, after the expiration of two years and shall before the expiration of ten years from the date on which the consideration was allotted or transferred to it, transfer the same to the Minister charged with the responsibility for finance.

(7) The Minister charged with the responsibility for finance shall sell or dispose of any consideration so received in such manner as the thinks fit and shall deal with the proceeds of the sale or disposal as if it were moneys paid to him pursuant to the law relating to unclaimed moneys.

(8) In this section "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Remedy in cases of an oppression

181. (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground—

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of

debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may—

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in future;

(c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(e) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to paragraph (2)*(e)* the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, but subject to the order, the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) An office copy of any order made under this section shall be lodged by the applicant with the Registrar within fourteen days after the making of the order.

Penalty: *One thousand ringgit. Default penalty.

PART VIII

RECEIVERS AND MANAGERS

Disqualification for appointment as receiver

182. (1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a company:

(a) a corporation;

(b) an undischarged bankrupt;

(c) a mortgagee of any property of the company, an auditor of the company or an officer of the company or of any corporation which is a mortgagee of the property of the company; and

(d) any person who is not an approved liquidator or the Official Receiver.

(2) Nothing in paragraph (1)*(a)* or *(d)* shall apply to any corporation authorized by any written law to act as receiver of the property of a company.

(3) Nothing in this section shall disqualify a person from acting as receiver of the property of a company if acting under an appointment validly made before the commencement of this Act.

Liability of receiver

183. (1) Any receiver or other authorized person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession, for services rendered, goods purchased or property hired, leased, used or occupied.

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

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession.

Application for directions

(3) A receiver or manager of the property of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(4) Where a receiver or manager has been appointed to enforce any charge for the benefit of holders of debentures of the company any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

Power of Court to fix remuneration of receivers or managers

184. (1) The Court may, on application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the Court shall, where no previous order has been made with respect thereto—

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor;

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by paragraph (2)*(c)* shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(4) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this section.

Appointment of liquidator as receiver

185. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of the company which is being wound up by the Court, the liquidator may be so appointed.

Notification of appointment of receiver

186. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or of the property within Malaysia of any other corporation, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days after he has obtained the order or made the appointment, lodge notice of the fact with the Registrar.

(2) Where any person appointed receiver or manager of the property of a company or other corporation under the powers contained in any instrument ceases to act as such he shall, within seven days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

Penalty : *One thousand ringgit. Default penalty.

Statement that receiver appointed

187. (1) Where a receiver or manager of the property of a corporation has been appointed, every invoice, order for goods or business letter issued by or on behalf of the corporation or the receiver or manager or the liquidator of the corporation, being a document on or in which the name of the corporation appears, shall contain a statement immediately following the name of the corporation that a receiver or manager has been appointed.

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

(2) If default is made in complying with this section the corporation and every officer and every liquidator of the corporation and every receiver or manager who knowingly and wilfully authorizes or permits the default shall be guilty of an offence against this Act.

Provisions as to information where receiver or manager appointed

188. (1) Where a receiver or manager of the property of a company (in this section and in section 189 called "the receiver"), is appointed—

(a) the receiver shall forthwith send notice to the company of his appointment;

(b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 189 a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall within one month after receipt of the statement—

(i) lodge with the Registrar, a copy of the statement and of any comments he sees fit to make thereon;

(ii) send to the company, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and

(iii) where the receiver is appointed by or on behalf of the holders of debentures of the company send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs *(b)* and *(c)* thereof to the receiver shall (subject to subsection (3)) include references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up this section and section 189 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person makes default in complying with any of the requirements of this section, he shall be guilty of an offence against this Act.

Penalty: *Two thousand ringgit. Default penalty.

Special provisions as to statement submitted to receiver

189. (1) The statement as to the affairs of a company required by section 188 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver may require to submit and verify the statement, that is to say—

(a) persons who are or have been officers;

(b) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the receiver capable of giving the information required;

(d) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.

**NOTE*—Previously "Five hundred ringgit"–*see* Companies (Amendment) Act 1986 [*Act A657*].

(4) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

(5) References in this section to the receiver's successor shall include a continuing receiver or manager.

Lodging of accounts of receivers and managers

190. (1) Every receiver or manager of the property of a company or of the property within Malaysia of any other corporation shall—

(a) within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing—

(i) his receipts and his payments during each period of six months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;

(ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and

(iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every six months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and his estimate of the total value of all assets of the company or other corporation which are subject to that instrument; and

(b) before lodging the account, verify by affidavit all accounts and statements referred to therein.

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

(2) The Registrar may of his own motion or on the application of the company or other corporation or a creditor cause the accounts to be audited by an approved company auditor appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3) Where the Registrar causes the accounts to be audited upon the request of the company or other corporation or a creditor he may require the applicant to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the Registrar and be paid by the Receiver unless the Registrar otherwise determines.

(5) Every receiver or manager who makes default in complying with this section shall be guilty of an offence against this Act.

Penalty: *One thousand ringgit. Default penalty.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge

191. (1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then if the company is not at the time in the course of being wound up, debts which in every winding-up are preferential debts and are due by way of wages, salary, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of subsection 292(3) or (5) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

(2) For the purposes of subsection (1) the references in paragraphs 292(1)*(b)*, *(c)*, *(d)* and *(e)* to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid (as the case requires).

*_NOTE_—Previously "two hundred and fifty ringgit"–*see* Companies (Amendment) Act 1986 [*Act A657*].

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Enforcement of duty of receiver, *etc*., to make returns

192. (1) If any receiver or manager of the property of a company who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within fourteen days after the service on him by any member or creditor of the company or trustee for debenture holders of a notice requiring him to do so the Court may, on an application made for the purpose by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a company has misapplied or retained or become liable or accountable for any money or property of the company or being guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may, on the application of any creditor or contributory or of the liquidator, examine into the conduct of the receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

PART IX

INVESTIGATIONS

Application of Part

193. This Part does not authorize any investigation into the insurance business of a company or into the business of a banking corporation unless specifically provided for in this Part.

Interpretation

194. In this Part, unless the contrary intention appears—

"affairs", in relation to a company, includes—

(a) the promotion, formation, membership, control, trading, dealings, business and property of the company;

(b) the ownership of shares in, debentures of and interests issued by, the company;

(c) the ascertainment of the persons who are or have been financially interested in the success or failure or apparent success or failure of the company or are or have been able to control or materially to influence the policy of the company; and

(d) the circumstances under which a person acquired or disposed of or become entitled to acquire or dispose of shares in, debentures of or interests issued by the company;

"company" includes a foreign company which is a declared company;

"declared company" means a company or foreign company which the Minister has by order declared to be a company to which this Part applies;

"officer or agent" in relation to a corporation, includes—

(a) a director, banker, advocate or auditor of the corporation;

(b) a person who at any time—

(i) has been a person referred to in paragraph *(a)*; or

(ii) has been otherwise employed or appointed by the corporation;

(c) a person who—

(i) has in his possession any property of the corporation;

(ii) is indebted to the corporation; or

(iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

(d) where there are reasonable grounds for suspecting or believing that a person is a person referred to in paragraph *(c)*—that person.

Power to declare company or foreign company

195. The Minister may by order declare that a company or foreign company is a company to which this Part applies if he is satisfied—

(a) that a *prima facie* case has been established that, for the protection of the public, the holders of interests to which Division 5 of Part IV applies or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;

(b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;

(c) that for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; or

(d) in the case of a foreign company, that the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company.

Appointment of inspectors for declared companies

196. (1) Where a company or foreign company has been declared to be a company to which this Part applies, the Minister shall appoint one or more inspectors to investigate the affairs of that company, and to report his opinion thereon to the Minister.

(2) The expenses of and incidental to an investigation of a declared company shall be defrayed in the first instance out of moneys provided by Parliament.

(3) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who requested the appointment of the inspector the Minister may by notice published in the *Gazette* direct that the expenses be so paid.

(4) A notice under subsection (3) may specify the time and the manner in which the payment of the expenses shall be made.

(5) Where a notice has been published by the Minister under subsection (4) the persons named in the notice to the extent therein specified shall be liable to reimburse the Minister in respect of those expenses.

(6) Action to recover any such expenses may be taken in the name of the Government of Malaysia in any court of competent jurisdiction.

(7) Where a notice under subsection (3) has been published for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the company shall be deemed to be part of the costs and expenses of the winding up for the purposes of paragraph 292(1)*(a)*.

(8) The report of the inspector may if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the notice which he thinks proper in the light of his investigation to be given by the Minister under subsection (3).

Investigation of affairs of company by inspectors at direction of Minister

197. (1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs—

(a) in the case of a company having a share capital, on the application of—

(i) not less than two hundred members or of members holding not less than one-tenth of the shares issued; or

(ii) holders of debentures holding not less than one-fifth in nominal value of debentures issued; or

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.