

(2) An application under this section shall be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security to such amount as he thinks fit for payment of the costs of the investigation.

### **As to reports of inspectors**

**198.** (1) An inspector appointed by the Minister may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation the inspector shall report his opinion on or in relation to the affairs that he has been appointed to investigate together with the facts upon which his opinion is based to the Minister, and a copy of the report shall be forwarded by the Minister to the registered office of the company, and a further copy shall at the request of the applicants be delivered to them.

(2) The Minister may if he is of the opinion that it is necessary in the public interest so to do cause the report to be printed and published.

(3) If from any report of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted he shall cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) shall on being required by the Minister so to do give all assistance in connection with the prosecution which they are reasonably able to give.

(4) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any company dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that company or in the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained, he may himself bring proceedings for that purpose in the name of the company.

**Investigation by resolution of company**

**199.** (1) A company (not being a declared company) may by special resolution appoint one or more inspectors to investigate its affairs.

(2) On the conclusion of the investigation the inspector shall report his opinion in such manner and to such persons as the company in general meeting directs.

(3) The appointment of an inspector pursuant to this section shall cease and determine forthwith upon a company becoming a declared company.

**Investigation of affairs of related corporation**

**199A.** Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a related corporation, he may, with the consent in writing of the Minister, investigate the affairs of that corporation.

**Procedure and costs of inquiry**

**200.** (1) If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of section 6 he shall have power so to do, and he shall report on the affairs of the other corporation so far as he thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part shall, if required by an inspector appointed under this Part, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being investigated pursuant to this Part to appear for examination on oath or affirmation (which he is hereby authorized to administer)

in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who pursuant to this section requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part—

- (a) may take possession of all the books and documents;
- (b) may retain all the books and documents for such time as he considers to be necessary for the purpose of the investigation; and
- (c) shall permit such corporation to have access at all reasonable times to all the books and documents so long as they are in his possession.

(5) If any officer or agent of any corporation the affairs of which are being investigated pursuant to this Part fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him by an inspector with respect to the affairs of the corporation, the inspector may certify the failure or refusal under his hand to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.

(6) No person who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for making a false statement in answer to that question.

(7) Except as expressly provided in subsection (6) any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(8) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may, except in the case of any answer which that person would not have been required to give but for subsection (6), thereafter be used in evidence in any legal proceedings against that person.

### **As to costs of investigation under section 197**

**201.** (1) The expenses of and incidental to an investigation by an inspector appointed pursuant to section 197 (including the costs of any proceedings brought by the Minister in the name of the company), shall be paid by the company investigated or if the Minister so directs by the applicants or in part by the company and in part by the applicants.

(2) Notwithstanding subsection (1)—

- (a) if the company fails to pay the whole or any of the sum which it is so liable to pay, the applicants shall make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount, if any, which they have under subsection (1) been directed by the Minister to pay; and
- (b) any balance of the expenses not paid either by the company or the applicants shall be paid out of moneys provided by Parliament.

### **Report of inspector to be admissible in evidence**

**202.** A copy of the report of any inspector appointed under this Part certified as correct by the Minister shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which his opinion is based in relation to any matter contained in the report.

### **Powers of inspector in relation to a declared company**

**203.** (1) An inspector of a declared company may employ such persons as he considers necessary and in writing authorize any such person to do anything he could himself do, except to examine on oath or affirmation.

- (2) Any officer or agent of a corporation who—
- (a) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or
  - (b) refuses or fails to answer any question lawfully put to him by any such person,

shall be liable to be dealt with in the same manner as is provided in subsection 200(5) for refusing or failing to comply with the request of an inspector.

### **Suspension of actions and proceedings by declared company**

**204.** (1) On and after the appointment of an inspector in respect of any declared company until the expiration of three months after the inspector has presented his final report to the Minister, no action or proceeding shall without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as he thinks fit) be commenced or proceeded with in any Court—

- (a) by the company upon or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person—
  - (i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and
  - (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within three years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section shall be void and of no effect.

**Winding up of company****205.** (1) Application to the Court—

- (a) in the case of a company, for the winding up of the company; or
- (b) in the case of a foreign company, for the winding up so far as the assets of the company within Malaysia are concerned of the affairs of the company,

may be made on petition of the Minister at any time after a report has been made in respect of a declared company by an inspector whereupon this Act shall, with such adaptations as are necessary, apply as if—

- (c) (in the case of a company) a winding up petition had been duly presented to the Court by the company; and
- (d) (in the case of a foreign company) a petition for an order for the affairs of the company so far as assets within Malaysia are concerned to be wound up within Malaysia had been duly presented to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

(2) Where (in the case of a foreign company) on any petition under subsection (1) an order is made for the affairs of the company so far as assets within Malaysia are concerned to be wound up within Malaysia the company shall not carry on business or establish or keep a place of business within Malaysia.

**Penalties**

**206.** (1) Any person who with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part—

- (a) destroys or alters any book, document or record of or relating to a declared company; or
- (b) sends or attempts to send or conspires with any other person to send out of Malaysia any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

shall be guilty of an offence against this Act.

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

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

(2) If in any prosecution for an offence against this section it is proved that the person charged with the offence—

- (a) has destroyed or altered any book, document or record of or relating to the company; or
- (b) has sent or attempted to send or conspired to send out of Malaysia any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on him.

### **Appointment and powers of inspectors to investigate ownership of company**

**207.** (1) Where it appears to the Minister that there is good reason so to do, he may appoint one or more inspectors to investigate and report on the membership of any corporation (whether or not it is a declared company) and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the corporation or able to control or materially to influence the policy of the corporation.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 197, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section the provisions of this Part with respect to the investigation of declared companies shall apply with the necessary modifications of references to the affairs of the corporation or to those of any other corporation, but so that —

- (a) the Part shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with that of the corporation, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the corporation or of the other corporation, as the case may be; and
- (b) the Minister shall not be bound to furnish the corporation or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the Registrar a copy of the report or, as the case may be, the parts of the report, as respects which he is not of that opinion.

### **Power to require information as to persons interested in shares or debentures**

**208.** (1) Where it appears to the Minister that there is good reason so to do, he may appoint one or more inspectors to investigate and report on the ownership of any shares in or debentures of a corporation or on the circumstances under which a person acquired or disposed of or became entitled to acquire or dispose of any shares in or debentures of a corporation whether the corporation is a declared company or not.

(2) An inspector may, by notice in writing, require any person whom he has reasonable cause to believe to be capable of giving any information in connection with an investigation conducted under subsection (1) to appear for examination and to give to the inspector any information in connection with the investigation that person has or can reasonably be expected to obtain.

(3) A notice under subsection (2) may require the production of all books and documents relevant to the investigation which are in the custody or under the control of the person to whom the notice is addressed.

(4) An inspector who pursuant to this section requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this section—

- (a) may take possession of all such books and documents;
- (b) may retain all such books and documents for such time as he considers to be necessary for the purpose of the investigation; and
- (c) shall permit the corporation to have access at all reasonable times to all such books and documents so long as they are in his possession.

(5) Any person who fails to comply with the requirements of any notice issued under subsection (3) or who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence against this Act.

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

(6) No person who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this section shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question might incriminate him and but for this

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

subsection he would have been entitled to refuse to answer the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for perjury committed by him in answer to that question.

(7) Except as expressly provided in subsection (5) any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

### **Power to require information as to persons interested in shares or debentures**

**208A.** (1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a corporation and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe—

(a) to be or to have been interested in those shares or debentures;  
or

(b) to act or to have acted in relation to those shares or debentures as the agent of someone interested therein,

to give him any information which he has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any person who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if the persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence against this Act.

Penalty: Imprisonment for twelve months or ten thousand ringgit.

(4) This section shall apply to an insurance company but nothing herein shall, subject to the provisions of the \*Insurance Act 1963 [Act 89], require disclosure by an insurance company to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the insurer.

### **Power to impose restrictions on shares or debentures**

**209.** (1) Where in connection with an investigation under section 207 or 208, it appears to the Minister that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Minister may by notice published in the *Gazette* direct that the shares are until further notice subject to the following restrictions:

- (a) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) that no voting rights shall be exercisable in respect of those shares;
- (c) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and
- (d) that except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2) Where the Minister gives notice directing that shares are subject to all or any of the restrictions referred to in subsection (1) or, having given such a notice in relation to any shares, refuses to make an order directing that the shares shall cease to be subject to those restrictions, any person aggrieved thereby may apply to the Yang di-Pertuan Agong who may, if he sees fit, direct that the shares shall cease to be subject to those restrictions.

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\*NOTE—The Insurance Act 1963 [Act 89] has since been repealed by the Insurance Act 1996 [Act 553]—see s. 214 of Act 553.

(3) Any order of the Minister or of the Yang di-Pertuan Agong directing that shares shall cease to be subject to the restrictions referred to in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of paragraphs (1)(c) and (d), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(4) Where any shares are for the time being subject to any restrictions referred to in subsection (1), any person who—

- (a) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;
- (b) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
- (c) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom he does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence against this Act.

Penalty: Imprisonment for twelve months or two thousand five hundred ringgit or both.

(5) Where shares in any company are issued in contravention of the restrictions imposed pursuant to subsection (1) 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) A prosecution shall not be instituted under this section except by or with the consent of the Minister.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

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

**Inspectors appointed in other countries**

**210.** Where—

- (a) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and
- (b) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Malaysia,

the Minister may by notice declare that the inspector so appointed shall have the same powers and duties in Malaysia in relation to the investigation as if the corporation were a declared company and the inspector had been appointed under section 196 and thereupon the inspector shall have those powers and duties.

**PART X****WINDING UP****DIVISION 1****PRELIMINARY****Modes of winding up**

**211.** The winding up of a company may be either—

- (a) by the Court; or
- (b) voluntary.

**Application of winding up provisions**

**212.** Unless inconsistent with the context or subject matter the provisions of this Act with respect to winding up apply to the winding up of a company in either of those modes.

**Government bound by certain provisions**

**213.** The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Government.

**Liability as contributories of present and past members**

**214.** (1) On a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to subsection (2) and the following qualifications:

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e) in the case of a company limited by guarantee, no contribution shall, subject to subsection (4), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

**Unlimited liability of directors**

(2) In the winding up of a limited company any director, whether past or present, whose liability is unlimited shall in addition to his liability, if any, to contribute as an ordinary member be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company.

(3) Notwithstanding anything in subsection (2)—

- (a) a past director shall not be liable to make a further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
- (b) a past director shall not be liable to make a further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and
- (c) subject to the articles of the company, a director shall not be liable to make a further contribution, unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs charges and expenses of the winding up.

(4) On the winding up of a company limited both by shares and guarantee every member shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

**Nature of liability of contributory**

**215.** The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

**Contributories in the case of death of member**

**216.** (1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

**Contributories in case of bankruptcy of member**

(2) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories—

- (a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and
- (b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

## DIVISION 2

## WINDING UP BY THE COURT

*Subdivision (1)—General***Application of winding up**

**217.** (1) A company (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the petition of—

- (a) the company;
- (b) any creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory or any person who is the personal representative of a deceased contributory or the trustee in bankruptcy or the Director General of Insolvency of the estate of a bankrupt contributory;
- (d) the liquidator;
- (e) the Minister pursuant to section 205 or on the ground specified in paragraph 218(1)(d);
- (f) in the case of a company which is a licensed institution, or 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, or a non-scheduled institution in respect of which such Minister has made an order under subsection 93(1) of that Act, Bank Negara Malaysia;

- (g) in the case of a company which is licensed under the Insurance Act 1996 [Act 553], Bank Negara Malaysia;
- (h) the Registrar on the ground specified in paragraph 218(1)(m) or (n),

or of any two or more of those parties.

(2) Notwithstanding anything in subsection (1)—

- (a) a person referred to in paragraph (1)(c) may not present a petition on any of the grounds specified in paragraph 218(a), (b), (c), (e) or (i) unless—
  - (i) the number of members of the company (not being a company the whole of the issued shares of which is held by a holding company) is reduced below two; or
  - (ii) the share in respect of which the contributor was a contributory or some of them were originally allotted to the contributor, or have been held by him and registered in his name for at least six months during the eighteen months before the presentation of the petition or have devolved on him through the death or bankruptcy of a former holder;
- (b) a petition shall not, if the ground of the petition is default in lodging the statutory report or in holding the statutory meeting, be presented by any person except a contributory or the Minister nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;
- (c) the Court shall not hear the petition if presented by a contingent, or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court; and
- (d) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

**Circumstances in which company may be wound up by Court**

**218.** (1) The Court may order the winding up if—

- (a) the company has by special resolution resolved that it be wound up by the Court;
- (b) default is made by the company in lodging the statutory report or in holding the statutory meeting;
- (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;
- (d) the number of members is reduced in the case of a company (other than a company the whole of the issued shares in which are held by a holding company) below two;
- (e) the company is unable to pay its debts;
- (f) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which appears to be unfair or unjust to other members;
- (g) an inspector appointed under Part IX has reported that he is of opinion—
  - (i) that the company cannot pay its debts and should be wound up; or
  - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;
- (h) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved;
- (i) the Court is of opinion that it is just and equitable that the company be wound up;
- (j) the company has held a licence under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, and that licence has been revoked or surrendered;

- (k) the company has carried on Islamic banking business, licensed business, or scheduled business, or it has accepted, received or taken deposits in Malaysia, in contravention of the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989, as the case may be; or
- (l) the company has held a licence under the Insurance Act 1996 and—
  - (i) that licence has been revoked;
  - (ii) Bank Negara Malaysia has petitioned for its winding up under subsection 58(4) of the Insurance Act 1996; or
  - (iii) an order under paragraph 59(4)(b) of the Insurance Act 1996 has been made in respect of it;
- (m) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; or
- (n) the company is being used for any purpose prejudicial to national security or public interest.

### **Definition of inability to pay debts**

(2) A company shall be deemed to be unable to pay its debts if—

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred ringgit then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorized requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

**Commencement of winding up by the Court**

**219.** (1) Where before the presentation of the petition a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case the winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up.

**As to payment of preliminary costs, etc., by petitioner (other than company or liquidator)**

**220.** (1) The persons, other than the company itself or the liquidator thereof, on whose petition any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.

(3) Where the company has no assets or not sufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding seven hundred and fifty ringgit, be reimbursed to the petitioner out of moneys provided by Parliament for the purpose.

**As to costs when order made on petition of company or liquidator**

(4) Where any winding up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of the assets of the company in like manner as if they were the costs of any other petitioner.

**Powers of Court on hearing petition**

**221.** (1) On hearing a winding up petition the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or in the case of a petition by a contributory that there will be no assets available for distribution amongst the contributories.

(2) The Court may on the petition coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—

- (a) direct that any notices be given or any steps taken before or after the hearing of the petition;
- (b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court;
- (c) direct that oral evidence be taken on the petition or any matter relating thereto;
- (d) direct a speedy hearing or trial of the petition or any issue or matter;
- (e) allow the petition to be amended or withdrawn; and
- (f) give such directions as to the proceedings as the Court thinks fit.

(3) Where the petition is presented on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may instead of making a winding up order, direct that the statutory report shall be lodged or that a meeting shall be held and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

**Power to stay or restrain proceedings against company**

**222.** At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against

the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

### **Avoidance of dispositions of property, etc.**

**223.** Any disposition of the property of the company including things in action and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

### **Avoidance of certain attachments, etc.**

**224.** Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.

### **Petition to be *lis pendens***

**225.** Any petition for winding up a company shall constitute a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

### **Copy of order to be lodged, etc.**

**226.** (1) Within seven days after the making of a winding up order the petitioner shall lodge with the Registrar notice of—

- (a) the order and its date; and
- (b) the name and address of the liquidator.

(2) On the passing and entering of the winding up order the petitioner shall within seven days—

- (a) lodge an office copy of the order with the Registrar and with the Official Receiver;
- (b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the Court directs; and
- (c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

**Actions stayed on winding up order**

(3) When a winding up order has been made or a provisional liquidator has been appointed no action or proceeding shall be proceeded with or commenced against the company except—

(a) by leave of the Court; and

(b) in accordance with such terms as the Court imposes.

**Effect of order**

(4) An order for winding up a company shall operate in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor and of a contributory.

(5) If default is made in complying with subsection (1) or (2) the petitioner shall be guilty of an offence against this Act.

Penalty: \*One thousand ringgit. Default penalty.

*Subdivision (2)—Liquidators***Appointment, style, etc., of liquidators**

**227.** The following provisions with respect to liquidators shall have effect on a winding up order being made:

- (1) if an approved liquidator other than the Official Receiver is not appointed to be the liquidator of the company the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (2) if there is no liquidator appointed the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

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

- (3) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;
- (4) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;
- (5) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
- (6) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;
- (7) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of “the liquidator”, and, where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”, of the particular company in respect of which he is appointed, and not by his individual name.

### **Provisions where person other than Official Receiver is appointed liquidator**

**228.** Where in the winding up of a company by the Court a person other than the Official Receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

### **Control of unofficial liquidators by Official Receiver**

**229.** (1) Where in the winding up of a company by the Court a person other than the Official Receiver is the liquidator, the Official Receiver shall take cognizance of his conduct and if the liquidator

does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any such liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Official Receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct a local investigation to be made of the books and vouchers of such liquidator.

### **Control of Official Receivers by Minister**

**230.** The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receivers who are concerned in the liquidation of companies, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Minister by any creditor or contributory in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of that person.

### **Provisional liquidator**

**231.** The Court may appoint the Official Receiver or an approved liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order and the provisional liquidator shall have and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be prescribed by the rules or as the Court may specify in the order appointing him.

**General provisions as to liquidators**

**232.** (1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

(2) A provisional liquidator other than the Official Receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator other than the Official Receiver shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined—

- (a) by agreement between the liquidator and the committee of inspection, if any;
- (b) failing such agreement or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or
- (c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in paragraph (3)(a) the Court may, on the application of a member whose shareholding represent in the aggregate not less than ten per centum of the issued capital of the company, confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in paragraph (3)(b) the Court may, on the application of the liquidator or a member referred to in subsection (4), confirm or vary the determination.

(6) Subject to any order of the Court the Official Receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(7) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to this Act the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

### **Custody and vesting of company's property**

**233.** (1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under this section every liquidator of a 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 liquidator who makes default in complying with this section 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 an appropriate entry or memorandum thereof is made by or with the appropriate authority.

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

**Statement of company's affairs to be submitted to Official Receiver**

**234.** (1) There shall be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement as to the affairs of the company as at the date of the winding up order showing—

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement shall be submitted by one or more of the persons who are at the date of the winding up order directors, and by the secretary of the company, or by such of the persons hereinafter mentioned as the Official Receiver or the liquidator, subject to the direction of the Court, requires, that is to say, persons—

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company, at any time within one year before the date of the winding up order; or
- (c) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days after the date of the winding up order or within such extended time as the Official Receiver or the liquidator or the Court for special reasons specified, and the Official Receiver or the liquidator shall within seven days after its receipt cause a copy of the statement to be filed with the Court and lodged with the Registrar, and in the case of a company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, Bank Negara Malaysia, and where the Official Receiver is not the liquidator shall cause a copy to be lodged with the Official Receiver.

(4) Any person making or concurring in making the statement required by this section may subject to the rules be allowed, and be paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the Official Receiver or the liquidator considers reasonable subject to an appeal to the Court.

(5) Every person who without reasonable excuse makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

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

### **Report by liquidator**

**235.** (1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

(3) The liquidator of a company which is an insurer shall submit the preliminary report in subsection (1) and the further reports in subsection (2) to Bank Negara Malaysia at the same time as he submits them to the Court.

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

**Powers of liquidator**

**236.** (1) The liquidator may with the authority either of the Court or of the committee of inspection—

- (a) carry on the business of the company so far as is necessary for the beneficial winding up thereof, but the authority shall not be necessary to so carry on the business during the four weeks next after the date of the winding up order;
- (b) subject to section 292 pay any class of creditors in full;
- (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims, present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and
- (e) appoint an advocate to assist him in his duties.

(2) The liquidator may—

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) compromise any debt due to the company other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds one thousand five hundred ringgit;
- (c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;

- (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;
- (e) prove rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors;
- (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (g) raise on the security of the assets of the company any money requisite;
- (h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself;
- (i) appoint an agent to do any business which the liquidator is unable to do himself; and
- (j) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

### **Exercise and control of liquidator's powers**

**237.** (1) Subject to this Part the liquidator shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of

the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Part the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

### **Payment by liquidator into bank**

**238.** (1) Every liquidator shall, in the manner and at the times prescribed by the rules pay the money received by him into such bank account as is prescribed by the rules or as is specified by the Court.

(2) If any liquidator retains for more than ten days a sum exceeding two hundred ringgit, or such other amount as the Court in any particular case authorizes him to retain, then unless he explains the retention to the satisfaction of the Court he shall pay interest on the amount so retained in excess computed from the expiration of the ten days until he has complied with subsection (1) at the rate of twenty per centum per annum, and shall be liable—

- (a) to disallowance of all or such part of his remuneration as the Court thinks just;
- (b) to be removed from his office by the Court; and
- (c) to pay any expenses occasioned by reason of his default.

(3) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) shall be guilty of an offence against this Act.

**Release of liquidators and dissolution of company**

**239.** When the liquidator—

- (a) has realized all the property of the company or so much thereof as can in his opinion be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or
- (b) has resigned or has been removed from his office,

he may apply to the Court—

- (c) for an order that he be released; or
- (d) for an order that he be released and that the company be dissolved.

**As to orders for release or dissolution**

**240.** (1) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

(2) The Court—

- (a) may cause a report on the accounts of a liquidator (not being the Official Receiver) to be prepared by the Official Receiver or by some approved company auditor appointed by the Court;
- (b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and
- (c) shall either grant or withhold the release accordingly.

(3) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.

(6) Where the Court has made—

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and that the company be dissolved,

an office copy of the order shall within fourteen days after the making thereof be lodged by the liquidator with the Registrar and with the Official Receiver, and a liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence against this Act.

Penalty: \*Two thousand ringgit. Default penalty.

### *Subdivision (3)—Committees of Inspection*

## **Meetings to determine whether committee of inspection to be appointed**

**241.** (1) The liquidator may, and shall, if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall decide the difference and make such order as it thinks fit.

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

**Constitution and proceedings of committee of inspection**

**242.** (1) The committee of inspection shall consist of creditors and contributories of the company or persons holding—

- (a) general powers of attorney from creditors or contributories;  
or
- (b) special authorities from creditors or contributories authorizing the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or in case of difference as are determined by the Court.

(2) The committee shall meet at such times and places as they from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The Committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which meeting seven days' notice has been given stating the object of the meeting.

(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power or special authority as specified in subsection (1).

(8) The liquidator may, at any time of his own motion and shall, within seven days after the request in writing of a creditor or contributory, summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7) and the meeting may confirm or revoke the appointment and appoint another creditor or contributory or person holding a general power or special authority as specified in subsection (1), as the case requires, in his stead.

(9) The continuing members of the committee if not less than two may act notwithstanding any vacancy in the committee.

*Subdivision (4)—General Powers of Court*

**Power to stay winding up**

**243.** (1) At any time after an order for winding up has been made the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.

(2) On any such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(3) An office copy of every order made under this section shall be lodged by the company with the Registrar and with the Official Receiver within fourteen days after the making of the order.

Penalty: \*One thousand ringgit. Default penalty.

**Settlement of list of contributories and application of assets**

**244.** (1) As soon as may be after making a winding up order the Court shall settle a list of contributories and may rectify the register of members in all cases where rectification is required in pursuance of this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

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

(2) Notwithstanding subsection (1) where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(4) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

**Payment of debts due by contributory to company and extent to which set-off allowed**

**245.** (1) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and may—

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract but not any money due to him as a member of the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance,

and in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**Power of Court to make calls**

(2) The Court may either before or after it has ascertained the sufficiency of the assets of the company—

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made,

and in making a call may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**Payment into bank of moneys due to company**

(3) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into some bank named in the order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(4) All moneys and securities paid or delivered into any bank pursuant to this Division shall be subject in all respects to orders of the Court.

**Order on contributory conclusive evidence**

(5) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

**Appointment of special manager**

**246.** (1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special

manager of the estate or business of the company other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager—

- (a) shall give such security and account in such manner as the Court directs;
- (b) shall receive such remuneration as is fixed by the Court; and
- (c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court.

### **Claims of creditors and distribution of assets**

**247.** (1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs charges and expenses incurred in the winding up in such order of priority as the Court thinks fit.

### **Inspection of books by creditors and contributories**

**248.** The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

**Power to summon persons connected with company**

**249.** (1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all question relating to that lien.

(4) An examination under this section or section 250 may, if the Court so directs and subject to the rules, be held before any Sessions Court Judge named for the purpose by the Court, and the powers of the Court under this section and section 250 may be exercised by such Sessions Court Judge.

(5) If any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the Court at the time appointed not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

**Power to order public examination of promoters, directors, etc.**

**250.** (1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company the Court may after consideration of the report direct that the

person or officer, or any other person who was previously an officer of the company, including any banker, advocate or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by an advocate.

(3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5) A person ordered to be examined under this section shall before his examination be furnished with a copy of the liquidator's report.

(6) Where a person directed to attend before the Court under subsection (1) applies to the Court to be exculpated from any charges made or suggested against him the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as in its discretion it thinks fit.

(7) Notes of the examination—

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter be used in evidence in any legal proceedings against him; and

(d) shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may if it thinks fit adjourn the examination from time to time.

### **Power to arrest absconding contributory**

**251.** The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory, director or former director of the company is in hiding or had absconded or is about to quit Malaysia or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, or otherwise avoiding, delaying or embarrassing proceedings in the winding up, may cause the contributory, director or former director to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court orders.

### **Delegation to liquidator of certain powers of Court**

**252.** Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not without the special leave of the Court rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

**Powers of Court cumulative**

**253.** (1) Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

(2) Subject to the rules an appeal from any order or decision made or given in the winding up of a company shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

## DIVISION 3

## VOLUNTARY WINDING UP

*Subdivision (1)—Introductory***Circumstances in which company may be wound up voluntarily**

**254.** (1) A company may be wound up voluntarily—

(a) when the period, if any, fixed for the duration of the company by the memorandum or articles expires, or the event, if any, occurs, on the occurrence of which the memorandum or articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or

(b) if the company so resolves by special resolution.

(2) A company shall—

(a) within seven days after the passing of a resolution for voluntarily winding up lodge a printed copy of the resolution with the Registrar; and

(b) within ten days after the passing of the resolution give notice of the resolution in a newspaper circulating generally throughout Malaysia.

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

Penalty: \*One thousand ringgit. Default penalty.

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

(4) A company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, shall not be wound up voluntarily before the transfer of the whole of its insurance business to another insurer under section 128 of that Act.

### **Provisional liquidators**

**255.** (1) Where the directors of a company have made a statutory declaration in the prescribed form which has been lodged with the Registrar and with the Official Receiver—

- (a) that the company cannot by reason of its liabilities continue its business; and
- (b) that meetings of the company and of its creditors have been summoned for a date within one month of the date of the declaration,

the directors shall forthwith appoint an approved liquidator to be the provisional liquidator.

(2) A provisional liquidator shall have and may exercise all the functions and powers of a liquidator in a creditors' winding up subject to such limitations and restrictions as may be prescribed by the rules.

(3) The appointment of a provisional liquidator under this section shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow in any particular case or until the appointment of a liquidator (whichever first occurs).

(4) Notice of the appointment of a provisional liquidator under this section together with a copy of the declaration lodged with the Registrar shall be advertised within fourteen days of the appointment of the provisional liquidator in some newspaper circulating generally throughout Malaysia.

(5) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

**Date of commencement of winding up**

- (6) A voluntary winding up shall commence—
- (a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and
  - (b) in any other case, at the time of the passing of the resolution for voluntary winding up.

**Effect of voluntary winding up**

**256.** (1) The company shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the company shall notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members made after the commencement of the winding up, shall be void.

**Declaration of solvency**

**257.** (1) Where it is proposed to wind up a company voluntarily the directors of the company, or in the case of a company having more than two directors, the majority of the directors may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company, and that at a meeting of directors have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the commencement of the winding up.

(2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form—

- (a) the assets of the company, and the total amount expected to be realized therefrom;

- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made shall have no effect for the purposes of this Act unless it is—

- (a) made at the meeting of directors referred to in subsection (1);
- (b) made within five weeks immediately preceding the passing of the resolution for voluntary winding up; and
- (c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

(4) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration shall be guilty of an offence against this Act.

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

(5) If the company is wound up in pursuance of a resolution for voluntary winding up passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

*Subdivision (2)—Provisions applicable only to  
Members' Voluntary Winding Up*

## Liquidators

**258.** (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them.

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

(2) On the appointment of a liquidator all the powers of the directors shall cease except so far as the liquidator or the company in general meeting with the consent of the liquidator approves the continuance thereof.

(3) The company may, in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators, remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court on the application of the liquidator or a creditor has ordered that the liquidator be not removed.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any contributory, or if there were more liquidators than one by the continuing liquidators.

(5) The meeting shall be held in manner provided by this Act or by the articles or in such manner as is on application by any contributory or by the continuing liquidators determined by the Court.

### **Duty of liquidator to call creditors' meeting in case of insolvency**

**259.** (1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 257, he shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

(2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person under subsection (2) the winding up shall thereafter proceed as if the winding up were a creditor's voluntary winding up.

(4) Within seven days after a meeting has been held pursuant to subsection (1) the liquidator or if some other person has been appointed by the creditors to be the liquidator the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form and if default is made in complying with this subsection the liquidator or the person so appointed (as the case requires) shall be guilty of an offence against this Act.

Penalty: \*One thousand ringgit. Default penalty.

### **Alternative provisions as to annual meetings in case of insolvency**

(5) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than three months before the end of that year.

#### *Subdivision (3)—Provisions applicable only to Creditors' Voluntary Winding Up*

### **Meeting of creditors**

**260.** (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

- (a) give to the creditors at least seven clear days' notice by post of the meeting; and
- (b) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

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

(3) The company shall cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in a newspaper circulating generally throughout Malaysia.

(4) The directors of the company shall—

(a) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and

(b) appoint one of their number to attend the meeting.

(5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(6) The creditors may appoint one of their number or the director appointed under subsection (4) to preside at the meeting.

(7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(9) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.

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

Penalty: \*Two thousand ringgit.

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

**Liquidators**

**261.** (1) The company shall and the creditors may at their respective meetings nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(2) Notwithstanding subsection (1) where different persons are nominated any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee the creditors, approve the continuance thereof.

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court dies, resigns or otherwise vacates the office the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

**Committee of inspection**

**262.** (1) The creditors at the meeting summoned pursuant to section 259 or 260 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, whether creditors or not and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons but not more than five as it thinks fit to act as members of the committee.