



# LAWS OF MALAYSIA

REPRINT

Act 441

## OFFSHORE COMPANIES ACT 1990

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**OFFSHORE COMPANIES ACT 1990**

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# LAWS OF MALAYSIA

## Act 441

### OFFSHORE COMPANIES ACT 1990

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## SCHEDULE

**LAWS OF MALAYSIA****Act 441****OFFSHORE COMPANIES ACT 1990**

An Act to provide for the incorporation, registration and administration of offshore companies and foreign offshore companies and for matters connected therewith.

[1 October 1990, P.U. (B) 591/1990]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**PART I****PRELIMINARY****Short title**

1. This Act may be cited as the Offshore Companies Act 1990.

**Interpretation**

2. (1) In this Act, unless the context otherwise requires—

“allot” includes sell, issue, assign, and convey; and “allotment” has a corresponding meaning;

“annual fee payment date” means the date on which the annual fee of an offshore company shall be payable pursuant to subsection 15(6);

“annual return” means the return required to be made by an offshore company under section 109 and includes any document

accompanying the return;

“approved auditor” means a person approved under subsection 10(1);

“approved liquidator” means a person approved under subsection 12(1);

“books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;

“certified” means certified in the prescribed manner to be a particular document or to be a true copy thereof;

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

“contributory”, in relation to an offshore company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

“corporation” means a domestic company, an offshore company, a foreign company or a foreign offshore company;

“Court” means the High Court or a judge thereof;

“debenture” includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of the company or not;

“director” means any person, by whatever name called, occupying the position of director of an offshore company or a foreign offshore company, and includes a person in accordance with whose directions or instructions the directors of such a company are accustomed to act and an alternate or substitute director;

“document” includes summons, order and other legal process, and notice and register;

“dollar” means a dollar unit of the currency of the United States of America;

“domestic company” means a company incorporated under the Companies Act 1965 [Act 125];

“expert” includes engineer, valuer, accountant, auditor and any other person whose profession or reputation gives authority to a statement made by him;

“foreign company” means—

- (a) a company, society, association or other body incorporated outside Malaysia; or
- (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the society, association or body duly appointed for that purpose, and which does not have its head office or principal place of business in Malaysia;

“foreign offshore company” means a foreign company registered under Part VIII;

“issued share capital”, in relation to par value shares, means, at any particular time, the sum of the par value of all shares of an offshore company that have been issued;

“Labuan” means the Federal Territory of Labuan;

“lodged” means lodged in accordance with the provisions of this Act;

“memorandum”, in relation to an offshore company, means the memorandum of association of that company for the time being in force; and, in relation to a foreign offshore company, means the charter, statute, memorandum of association or instrument constituting or defining the constitution of the company;

“Minister” means the Minister for the time being charged with the responsibility for finance;

“month” means a period of thirty days;

“officer”, in relation to an offshore company or a foreign offshore company, includes—

- (a) any director, secretary or employee of the company;
- (b) any receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; and
- (c) any liquidator of the company appointed in a voluntary winding up,

but does not include—

- (d) any receiver who is not also a manager;
- (e) any receiver and manager appointed by the Court; or
- (f) any liquidator appointed by the Court or by the creditors;

“offshore company” means a company incorporated, or deemed to be incorporated, under this Act;

“person” includes a corporation, partnership, a body of persons and a corporation sole;

“post” includes communication by mail, courier, freight, telex or facsimile;

“printed” includes typewritten or lithographed or reproduced by any mechanical means;

“prescribed” means prescribed by or under this Act;

“promoter”, in relation to a prospectus issued by or in connection with an offshore company, means a promoter of the company who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional or advisory capacity;

“prospectus” means any prospectus, notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase, or offering to the public for

subscription or purchase, any shares in or debentures of, or any units of shares in or units of debentures of, an offshore company or a proposed offshore company;

“Registrar” means the Labuan Offshore Financial Services Authority established under the Labuan Offshore Financial Services Authority Act 1996 [Act 545];

“regulations” means regulations under this Act;

“resident” means—

- (a) in relation to a natural person, a citizen or permanent resident of Malaysia; or
- (b) in relation to any other person, a person who has established a place of business, and is operating, in Malaysia,

and includes a person who is declared to be a resident pursuant to section 43 of the Exchange Control Act 1953 [Act 17];

“secured debenture” means—

- (a) any debenture which is stated on its face to be a secured debenture; or
- (b) any debenture which is issued on terms affording the holder of that debenture rights and powers to vote and demand a poll in respect of the business and undertaking of the company (whether in addition to the rights of members of the company or in substitution for those rights);

“share”, in relation to an offshore company, means a share in the share capital of that company, and includes stock;

“trust company” means a domestic company or foreign company incorporated for the purpose of undertaking or offering to undertake, as a whole or a part of its business, all or any of the duties of a trustee, and registered under the Labuan Trust Companies Act 1990 [Act 442].

(2) For the purposes of this Act, a person shall be deemed to hold a beneficial interest in a share—

- (a) if that person, either alone or together with other persons, is entitled (otherwise than as a trustee for, on behalf of, or on account of, another person) to receive, directly

or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the shares; or

- (b) if that person, being a corporation, holds any beneficial interest in a share of another corporation which holds, or a subsidiary of which holds, any beneficial interest in the first-mentioned share.

(3) Whenever in this Act any person holding or occupying a particular office or position is mentioned or referred to, such mention or reference shall, unless the contrary intention appears, be taken to include all persons who shall at any time thereafter occupy for the time being the said office or position.

(4) Any provision of this Act overriding or interpreting a corporation's articles shall, except where otherwise provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a corporation's memorandum as it applies in relation to its articles.

### **Definition of subsidiary and holding company**

**3.** (1) For the purposes of this Act, a corporation shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another corporation if—

- (a) that other corporation—
  - (i) controls the composition of the board of directors of the first-mentioned corporation;
  - (ii) controls more than half of the voting power of the first-mentioned corporation; or
  - (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purposes of subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled

by another corporation if that other corporation, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation—

- (a) any shares held or power exercisable by that other corporation in a trustee or fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a trustee or fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a trustee or fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the

purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a corporation shall be read as a reference to a corporation of which the last-mentioned corporation is a subsidiary.

### **Related companies**

4. Where a corporation—

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

### **Non-application of Companies Act 1965**

5. Except as otherwise expressly provided in this Act, the provisions of the Companies Act 1965 shall not apply to an offshore company or a foreign offshore company incorporated or registered under this Act.

### **Resident doing any act under this Act deemed to be non-resident**

6. A resident of Malaysia who does any act permitted by this Act to be done by such resident shall be deemed to be a non-resident for the purposes of section 8 of the Labuan Trust Companies Act 1990.

### **Permitted purpose for incorporation**

7. (1) Subject to subsection (2), an offshore company may be incorporated for any lawful purpose, and may carry on in, from or through Labuan any business which may lawfully be carried on in Malaysia, but it shall not carry on the business of banking or insurance or any such similar business unless it is licensed so to do under the laws currently in force in Malaysia.

(2) An offshore company shall only carry on business in, from or through Labuan.

(3) No offshore company shall—

- (a) carry on business with a resident of Malaysia except as permitted by the Offshore Banking Act 1990 [Act 443] or by the Registrar;
- (b) carry on banking business except as permitted by the Offshore Banking Act 1990;
- (c) carry on business in the Malaysian currency except for defraying its administrative and statutory expenses and where section 147 applies;
- (d) carry on business as an insurance or a reinsurance company except as permitted by the Offshore Insurance Act 1990 [Act 444];
- (e) carry on shipping operations in Malaysia; or
- (f) carry on any business of a trust company.

(4) For the purposes of paragraph (3)(a), an offshore company shall not be treated as carrying on business with persons resident in Malaysia by reason only that—

- (a) it makes or maintains deposits with a person carrying on business within Malaysia;
- (b) it makes or maintains professional contact with any counsel and attorney, accountant, book-keeper, trust company, domestic company wholly owned by a trust company made available by the trust company to act or be appointed as a resident director or a resident secretary of an offshore company, management company, investment adviser or other similar person carrying on business within Malaysia;
- (c) it prepares or maintains books and records within Malaysia;
- (d) it holds, within Malaysia, meetings of its directors or members;
- (e) it acquires or holds any lease of any property for the purposes of its operation or as accommodation for its officers or employees;
- (f) it holds shares, debt obligations or other securities in a company incorporated under this Act or in a domestic company in accordance with section 147, or it holds

shares, debt obligations or other securities for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; or

- (g) a resident of Malaysia holds shares in that offshore company.

## PART II

### ADMINISTRATION OF ACT

#### **Registrar of Companies**

**8.** (1) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorized or required to be done or signed by the Registrar may be done or signed by any Regional Registrar, Deputy Registrar or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(2) No person dealing with any Regional Registrar, Deputy Registrar or Assistant Registrar shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Regional Registrar, Deputy Registrar or Assistant Registrar, so far as it affects any such person, shall be as valid and effectual as if done or omitted by the Registrar.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar and of any Regional Registrar, Deputy Registrar or Assistant Registrar.

(4) For the purpose of ascertaining whether an offshore company or a foreign offshore company is complying with the provisions of this Act, the Registrar or any person authorized by him may inspect any book, minute book, register or record required by or under this Act to be kept by the company.

(5) An offshore company or a foreign offshore company or any officer thereof shall, on being required by the Registrar or any person authorized by him, produce any such book, register or record.

(6) An offshore company or a foreign offshore company or any officer thereof shall not obstruct or hinder the Registrar or any person authorized by him while exercising any of the powers referred to in subsection (4).

(7) Any person who, except for the purposes of this Act or in the course of any criminal proceedings, makes a record of, or divulges or communicates to any other person, any information which he has acquired by reason of an inspection under subsection (4) shall be guilty of an offence against this Act.

(8) There shall be paid to the Registrar such fees as may be prescribed.

### **Lodging of documents**

**9.** (1) Every document required or permitted to be lodged or filed with the Registrar under the provisions of this Act shall be lodged or filed through a trust company.

(2) Every application to the Registrar for any certificate to be issued under this Act or for any extract or copy of any certificate issued under this Act or of any document lodged or filed with the Registrar shall be made through a trust company:

Provided that this subsection shall not apply—

- (a) where an application is made in respect of an offshore company or a foreign offshore company by a member of that company and the document, certificate, extract or copy is for his own personal use; or
- (b) where an application is made by an offshore company or a foreign offshore company for a licence for the purpose of undertaking or offering to undertake the business of a management company under Part VIII<sub>A</sub>.

### **Electronic lodgement or filing of documents**

**9A.** (1) The Registrar may provide a service for the electronic lodgement or filing of documents required by this Act to be lodged or filed with the Registrar.

(2) A trust company shall become a subscriber to the service provided under subsection (1) and shall pay the prescribed fee and comply with such terms and conditions as may be determined by the Registrar.

(3) A document electronically lodged or filed under this section shall be deemed to have satisfied the requirement for lodgement or filing if the document is communicated or transmitted to the Registrar in such manner as may be specified or approved by the Registrar.

(4) The Registrar may, by notice in writing, specify the documents that may be electronically lodged or filed.

(5) A document that is required to be certified or authenticated shall, if it is to be electronically lodged or filed, be certified or authenticated in such manner as may be specified or approved by the Registrar.

(6) Where a document is electronically lodged or filed with the Registrar, the Registrar or his authorized agents shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however arising appearing in any document obtained by any person under the service referred to in subsection (1) if such error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Registrar or of his authorized agents or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

### **Evidentiary value of electronically lodged or filed documents**

**9B.** A copy of or an extract from any document electronically lodged or filed with the Registrar under section 9A duly certified by the Registrar as a true copy of or extract from that document shall be admissible in evidence in any proceedings as of equal validity as the original document.

### **Original copies to be kept at office of trust company**

**9c.** (1) The original copies of the documents specified or approved by the Registrar to be electronically lodged or filed with the Registrar by the trust company shall, at all times, be kept at the office of the trust company.

(2) A trust company that fails to comply with subsection (1) shall be guilty of an offence against this Act.

Penalty: Ten thousand ringgit. Default penalty.

### **Approved auditors**

**10.** (1) Subject to such conditions as he deems fit to impose, the Registrar may approve any person to be an approved auditor for the purposes of this Act.

(2) No person shall perform the duties of auditor of an offshore company unless he is an approved auditor.

(3) The Registrar may revoke any approval given under subsection (1).

(4) The Registrar shall keep a register of approved auditors.

(5) An approved auditor shall pay to the Registrar such annual fee as may be prescribed.

### **Company auditors**

**11.** (1) A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any offshore company under this Act and shall not prepare for or on behalf of the company any report required by this Act to be prepared by an approved auditor—

- (a) if he is not an approved auditor;
- (b) if he is indebted to the company or to a company which is deemed to be related to that company by virtue of section 4 in an amount exceeding five thousand dollars or an equivalent amount in any other currency;
- (c) if he is—
  - (i) an officer of the company;
  - (ii) a partner, employer or employee of an officer of the company;
  - (iii) a partner, or employee of an employee of an officer of the company;
  - (iv) a spouse of an officer of the company;
  - (v) a spouse of an employee of an officer of the company; or
  - (vi) a shareholder, or the spouse of a shareholder, of a

corporation whose employee is an officer of the company; or

- (d) if he is responsible for, or if he is the partner, employer or employee of a person responsible for, the keeping of the register of members or the register of holders of debentures of the company.

(2) For the purposes of subsection (1), a person shall be deemed to be an officer of an offshore company if he is an officer of a company that is deemed to be related to the offshore company by virtue of section 4 or he has, at any time within the preceding period of twelve months, been an officer or promoter of the offshore company or of the other company.

(3) For the purposes of this section, a person shall not be deemed to be an officer by reason only of his having been appointed as auditor of a company.

(4) No person shall appoint a person as auditor of an offshore company unless the person to be appointed auditor has, prior to such appointment, consented in writing to act as such auditor.

(5) The Minister may make regulations requiring approved auditors to insure against their liabilities as auditors of offshore companies.

### **Approved liquidator**

**12.** (1) Subject to such conditions as he deems fit to impose, the Registrar may approve any person to be an approved liquidator.

(2) The Registrar may revoke any approval given under subsection (1).

(3) The Registrar shall keep a register of approved liquidators.

(4) No person shall be appointed or shall act as liquidator of an offshore company—

- (a) if he is not an approved liquidator;
- (b) if he is indebted to the company in liquidation or to a company which is deemed to be related to that company in liquidation by virtue of section 4 in an amount ex-

ceeding five thousand dollars or an equivalent amount in any other currency; or

(c) if he has not consented in writing to such appointment.

(5) Where an approved liquidator is appointed to be a liquidator of an offshore company, whether by the Court or in a voluntary winding up, he shall forthwith notify the Registrar in writing of any interest which he has in the offshore company as an officer, employer or employee of the offshore company or as a partner, employer or employee of an officer of the offshore company, and any interest which any company related to him has in the offshore company.

## **Registers**

**13.** (1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

(2) Any officer, member, debenture-holder, director or liquidator of an offshore company or a foreign offshore company, or any other person having the written permission of such officer, member, debenture-holder, director or liquidator or who can demonstrate to the Registrar that he has a good reason for doing so, may, subject to this Act and on payment of the prescribed fee—

(a) inspect any document filed or lodged with the Registrar in respect of the company; or

(b) require any certificate to be issued under this Act or a copy or extract from any document in respect of the company to be given or given and certified by the Registrar.

(3) A copy of or extract from any document filed or lodged at the office of the Registrar, certified to be a true copy or extract under the hand and seal of the Registrar, shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(4) In any legal proceedings—

(a) a certificate under the hand and seal of the Registrar that, at a date or during a period specified in the certificate,

no company was registered under this Act by a name specified in the certificate shall be received as prima facie evidence that at the date or during that period, as the case may be, no company was registered by that name under this Act; and

- (b) a certificate under the hand and seal of the Registrar that a requirement of this Act specified in the certificate—
  - (i) had or had not been complied with at a date or within a period specified in the certificate; or
  - (ii) had been complied with at a date specified in the certificate but not before that date,

shall be received as prima facie evidence of matters specified in the certificate.

(5) If the Registrar is of the opinion that a document submitted for lodgement with the Registrar—

- (a) contains matter contrary to law;
- (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
- (c) by reason of an omission or misdescription has not been duly completed;
- (d) does not comply with the requirements of this Act; or
- (e) contains an error, alteration or erasure,

the Registrar may refuse to register or receive the document and may request—

- (f) that the document be appropriately amended or completed and re-submitted;
- (g) that a fresh document be submitted in its place; or
- (h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.

(6) The Registrar may require a person who submits a document for lodgement with the Registrar to produce to the Registrar such other document, or to furnish to the Registrar such information, as the Registrar thinks necessary in order to form an opinion whether he may refuse to receive or register the document.

(7) Any person aggrieved by the refusal of the Registrar to register an offshore company or a foreign offshore company or to register or receive any document, or by any act or decision of the Registrar, may appeal within thirty days of the decision of the Registrar to the Minister, who may confirm the refusal, act or decision or give such directions in the matter as he deems proper or otherwise determine the matter but this subsection shall not apply to any act or decision of the Registrar—

- (a) in respect of which any provision in the nature of appeal or review is expressly provided in this Act; or
- (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

(8) If an offshore company or a foreign offshore company or person, having made default in complying with—

- (a) any provision of this Act or of any other law which requires the lodging or filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or
- (b) any request of the Registrar to amend or complete and re-submit any document or submit a fresh document,

fails to make good the default within thirty days after the service on the company or person of a notice requiring it to be done, the Registrar may order the company and any officer thereof or such person to make good the default within such time as is specified in the order.

(9) The Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy or give to the National Archives—

- (a) in the case of an offshore company or a foreign offshore company—
  - (i) any return of allotment of shares for cash which has

- been lodged or filed for not less than six years;
- (ii) any annual return or balance sheet that has been lodged or filed for not less than seven years or any document creating or evidencing a charge or the complete or partial satisfaction of a charge where a memorandum of satisfaction of the charge has been registered for not less than seven years; or
  - (iii) any other document (other than the memorandum and articles or any other document affecting them) which has been lodged, filed or registered for not less than fifteen years;
- (b) in the case of an offshore company or a foreign offshore company that has been dissolved or has ceased to be registered for not less than fifteen years, any document lodged, filed or registered; or
- (c) any document a transparency of which has been incorporated with a register kept by the Registrar.

### PART III

## CONSTITUTION OF COMPANIES

### DIVISION 1

### INCORPORATION

#### **Formation of companies**

**14.** (1) Subject to this Act, a trust company or any other person may, by subscribing its or his name to a memorandum and complying with the requirements as to registration, form an offshore company for any lawful purpose.

(2) If a subscriber to a memorandum is a corporation or a trust company, the memorandum may be subscribed by the corporation or the trust company, as the case may be, under its seal or by some person duly authorized on its behalf.

(3) Every offshore company shall be a company limited by shares.

#### **Registration and incorporation**

**15.** (1) A person desiring the incorporation of an offshore company shall lodge with the Registrar the memorandum and articles of the proposed company and the other documents required to be lodged by or under this Act, and the Registrar on payment of the prescribed fees shall, subject to this Act, register the company by registering the memorandum and articles.

(2) The Registrar may require a statutory declaration made by an officer to be lodged stating that all or any of the requirements of this Act have been complied with, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3) On the registration of the memorandum, the Registrar shall certify under his hand and seal that the company is, on and from the date specified in the certificate, incorporated, and that the company is a company limited by shares.

(4) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, the subscribers to the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and of suing and being sued, and having perpetual succession and a common seal, with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

(5) A certificate of incorporation of a company issued by the Registrar shall be prima facie evidence of compliance with all the requirements of this Act in respect of incorporation.

(6) An incorporated offshore company shall pay such annual fee as may be prescribed, not later than thirty days from each anniversary of the date of its incorporation.

(7) Every subscriber to the memorandum shall be deemed to have agreed to become a member of an offshore company and, on the incorporation of the company, shall be entered as a member in its register of members in respect of the shares subscribed for or by him in the memorandum, and every other person who agrees to be a member of a company and whose name is entered into the register of members shall be a member of the company.

**Application for registration of foreign company as being continued in Labuan**

**16.** (1) Subject to section 7, a foreign company incorporated under the laws of any country other than Malaysia, or of any jurisdiction within such a country, may, if it is so authorized by the laws of that country or jurisdiction, apply to the Registrar to be registered as being continued in Labuan as if it had been incorporated under this Act.

(2) Upon application under subsection (1), supported by such material as he considers adequate and satisfactory, the Registrar may, if he is satisfied that the consent of such number or proportion of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of that country or jurisdiction, and the consent of the proper officer of that country or jurisdiction, to such registration has been obtained by the company, register such company as being so continued and, if so registered, the company shall be deemed thereafter to be an offshore company incorporated under this Act and domiciled in Labuan:

Provided that no foreign company may be registered under this section if—

- (a) it is in the process of winding up or liquidation;
- (b) a receiver of its property has been appointed; or
- (c) there is any scheme or order in force in relation thereto whereby the rights of creditors are suspended or restricted.

(3) The registration of a foreign company under this section shall not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the continuity of the company;
- (c) to affect the property of the company;
- (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the company or

any other person; or

- (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person.

(4) Upon the registration of a foreign company under this section—

- (a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association, shall be deemed to be the memorandum of association of the company; and
- (b) so much of its constitution as does not, by virtue of paragraph (a), comprise its memorandum of association, shall be deemed to be the articles of association of the company,

and such deemed memorandum and articles shall be binding on the company and its members accordingly.

### **Prior approval in principle**

**17.** (1) A foreign company may, prior to applying for registration under section 16, request that such registration be approved in principle and upon such request and payment of the prescribed fee, the Registrar may, if he is satisfied that the company is eligible for registration under section 16, issue a certificate confirming his approval of the company being so registered subject to an application under section 16 being made within a period of twelve months from the date of the certificate.

(2) The certificate of approval given by the Registrar under subsection (1) shall not relieve the foreign company to whom it is issued from complying with the provisions of section 16 on a subsequent application for registration.

### **Requirements as to memorandum**

**18.** (1) The memorandum of every offshore company shall be printed and divided into numbered paragraphs and dated and shall state the following:

- (a) the name of the company;
- (b) the objects of the company;
- (c) the amount of the share capital with which it is proposed to be registered and the division thereof into shares of a fixed amount;
- (d) the full name and address of each subscriber thereto; and
- (e) that the subscriber or subscribers to the memorandum are desirous of being formed into an offshore company in pursuance of the memorandum and respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2) Members of the offshore company shall be liable to the company for the amount unpaid on their shares but their liability as members is, subject to the provisions of this Act, limited to the amount, if any, unpaid on the shares held by them.

## DIVISION 2

### STATUS AND NAME

#### **Powers of companies**

**19.** The powers of an offshore company shall include, unless expressly excluded or modified by its articles, the powers set forth in the Schedule, which shall be exercisable in Labuan and elsewhere, and such other powers as are set out in its articles or granted to it generally or specially by regulations.

#### **Ultra vires transactions**

**20.** (1) No act or purported act of an offshore company (including the entering into of an agreement by the company and including any act done on behalf of the company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by an offshore company shall be invalid by reason only of the fact that the company was without capacity or power to do the act or to execute or take the conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or

relied upon only in—

- (a) any proceedings against the offshore company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures, or by a trust company acting as trustee for the holders of those debentures, to restrain the doing of any act or the conveyance or transfer of any property to or by the company;
- (b) any proceedings by the company or by any member of the company against the present or former officers of the company; or
- (c) any petition by the Minister to wind up the company.

(3) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under paragraph (2)(a) is being or is to be performed or made pursuant to any contract to which the offshore company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the setting aside and restraining of the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

### **Names of offshore companies**

**21.** (1) Except with the consent of the Minister, an offshore company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or includes a name, of a kind that the Registrar is not otherwise willing to accept for registration.

(2) An offshore company shall have—

- (a) the word “Corporation” or the word “Incorporated” or the abbreviation “Corp.” or “Inc.”;
- (b) the word “Limited” or the abbreviation “Ltd.”;
- (c) the words “Public Limited Company” or the abbreviation

“P.L.C.”;

- (d) the words “Societe Anonyme” or “Sociedad Anonima” or the abbreviation “S.A.”;
- (e) the words “Aktiengesellschaft” or the abbreviation “A.G.”;
- (f) the words “Naamloze Vennootschap” or the abbreviation “N.V.”;
- (g) the words “Perseroan Terbatas” or the abbreviation “P.T.”; or
- (h) in romanized characters, any word or words in the national language of any country which connote a joint stock company limited by shares, or any abbreviation thereof,

as part of its name.

(2A) An offshore company may have the word “(L)” as part of its name.

(2B) Notwithstanding subsection (2), an offshore company may have as part of its name the word “Berhad” or the abbreviation “Bhd.” but where the word “Berhad” or the abbreviation “Bhd.” is used as part of the name of the offshore company, the offshore company shall in addition have the word “(L)” as part of its name.

(3) No description of an offshore company shall be deemed inadequate or incorrect by reason of the use of an abbreviation or abbreviations in place of any word or words referred to in subsection (2) and vice versa.

(4) A person may lodge with the Registrar an application in the prescribed form for the reservation of a name set out in the application as—

- (a) the name of an intended offshore company; or
- (b) the name to which an offshore company proposes to change its name.

(5) If the Registrar considers that the application is made bona

vide and is satisfied that the proposed name is a name by which the intended offshore company or the offshore company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of three months from the date of the lodging of the application.

(6) During a period for which a name is reserved, no person (other than the offshore company or intended offshore company in respect of which the name is reserved) shall be registered under this Act or any other Act, whether originally or on a change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(7) The reservation of a name under this section in respect of an intended offshore company or an offshore company shall not in itself entitle the intended company or company to be registered by that name, either originally or on change of name.

### **Change of name**

**22.** (1) An offshore company may, by special resolution, resolve that its name should be changed to a name by which the company could have been registered without contravention of subsection 21(1).

(2) If the Registrar approves the name which the company has resolved should be its new name, he shall, on payment of the prescribed fee, issue a certificate of incorporation of the company under the new name and upon the issue of such certificate of incorporation the change of name shall become effective.

(3) If the name of an offshore company is (whether through inadvertence or otherwise and whether originally or by a change of name) a name by which the company could not be registered without contravention of subsection 21(1), the company may, by special resolution, change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within six weeks after the date of direction or such longer period as the Registrar allows, unless the Minister, by written notice, annuls the direction, and if the company fails to comply with the direction it shall be guilty of an offence against this Act.

Penalty: One thousand ringgit.

(4) A change of name pursuant to this Act shall not affect the identity of the offshore company or any rights or obligations of the company or render defective any proceedings by or against the company; and any legal proceedings that might have been continued or commenced by or against the company by its former name may be continued or commenced by or against the company by its new name.

### **Articles of association**

**23.** (1) There shall be lodged with the memorandum of an offshore company articles of association signed by the subscribers to the memorandum prescribing regulations for the company.

(2) Articles shall be—

- (a) printed;
- (b) divided into numbered paragraphs; and
- (c) signed by each subscriber to the memorandum or, if any subscriber is a company, sealed with its company seal or signed on its behalf.

### **Alteration of memorandum or articles**

**24.** (1) Subject to this Act, an offshore company may, by special resolution, alter or add to its memorandum or articles.

(2) Any alteration or addition so made in the memorandum or articles shall take effect from the date the notice of the relevant resolution is lodged with the Registrar and be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

### **Copies of memorandum and articles**

**25.** (1) An offshore company shall, on being so required by any member, furnish to him a copy of the memorandum and of the articles (if any) on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the cost of preparing and furnishing it.

(2) Where an alteration is made in the memorandum or articles of an offshore company, a copy of the memorandum or articles shall not be issued by the company after the date of alteration unless—

- (a) the copy is in accordance with the alteration; or
- (b) a printed copy of the resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

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

Penalty: One thousand ringgit.

### **Transactions and establishment of a branch**

**26.** (1) Contracts on behalf of an offshore company may be made as follows:

- (a) a contract which, if made between private persons, would by law be required to be in writing under seal, may be made on behalf of the company in writing under the common seal of the company;
- (b) a contract which, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing and signed by any person acting under its authority, express or implied; or
- (c) a contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied,

and any contract so made shall be effectual in law and shall bind the company and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorized to be made.

(2) A document or proceeding requiring authentication by an offshore company may be signed by an authorized officer of the company and need not be under its common seal.

(3) An offshore company may, by writing under its common seal, empower any person either generally or in respect of any specified matters as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of that company under his seal or under the appropriate seal of the company, shall bind the company; and all persons dealing in good faith shall be entitled to presume the regular and proper execution of the deed, and to act accordingly.

(4) An offshore company may, if authorized by its articles, establish a branch in any part of the world but it shall not establish a branch in any part of Malaysia outside Labuan.

(5) An offshore company and any branch thereof may have for use in any place outside Labuan a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the name of that branch; that seal shall be known as the branch seal.

(6) Where an offshore company has established a branch it may, in the instrument establishing the branch or in a subsequent instrument signed or sealed by the resident secretary or under its own seal, appoint one or more persons to be branch directors and to constitute a local board and make provision for a branch seal and for its custody and prescribe the person by whom such seal is to be affixed; and subject to any directions or restrictions imposed from time to time by the directors of the company, a branch shall have power to bind the company and to issue shares or debentures of the company.

(7) A branch may enter into transactions in the same manner as the offshore company may enter into transactions.

(8) Instruments made or authenticated under or by use of any branch seal of an offshore company shall be as effective as if the common seal of the company had been affixed thereto; and the date on which and the place at which the branch seal is affixed to any instrument shall be shown on the instrument.

**Prohibition against carrying on business when offshore company has no members**

27. (1) Subject to subsection (2), if at any time an offshore company has no members and carries on business for more than six months while it has no members, every officer, servant, employee or agent of that company during the time that it so carries on business after those six months who knows that the company has no members shall be liable, and if more than one, jointly and severally, for the payment of all the debts of the company contracted during the time that it so carries on business after those six months, and such officer, servant, employee or agent shall be guilty of an offence against this Act if the company so carries on business after those six months.

(2) Subsection (1) shall not apply in respect of an officer, servant, employee or agent of an offshore company which has no members who carries on the business of the company after those six months, if the officer, servant, employee or agent does so by virtue of a direction of the Court or under the direction of an approved liquidator appointed in respect of the company.

## PART IV

## SHARES, DEBENTURES AND CHARGES

## DIVISION 1

## PROSPECTUSES

**Restriction on inviting investments from public**

28. (1) No person shall—

- (a) issue an invitation to the public to deposit money with or lend money to an offshore company or a foreign offshore company; or
- (b) issue an invitation, or distribute forms of application, to the public to subscribe for shares or debentures in an offshore company or a foreign offshore company,

otherwise than in accordance with this Part.

(2) Any reference in this Act to an invitation or offer to the public shall be construed as including an invitation or offer which is not addressed exclusively to a restricted circle of persons.

(3) For the purposes of subsection (2), an invitation or offer to the public shall not be considered to be addressed to a restricted circle of persons unless—

- (a) the invitation or offer is addressed to an identifiable category of persons to whom it is directly communicated by the person making the invitation or the offer or by his appointed agent; or
- (b) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation or offer,

and the number of persons to whom the invitation or offer is communicated does not exceed twenty.

### **Invitation to public**

**29.** (1) Any offshore company or foreign offshore company which, or any officer, director, agent or any other person on behalf of the company who—

- (a) issues an invitation or distributes forms of application to the public or to any member of the public to subscribe for shares or debentures in the company; or
- (b) issues an invitation to the public or to any member of the public to deposit money with or lend money to the company,

shall be guilty of an offence against this Act, unless—

- (c) the Registrar has given his prior written consent to the issuing of that invitation or the distribution of those forms of application to the public; and
- (d) that invitation or the distribution of forms of application to the public is made in accordance with this Part.

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

(2) Unless otherwise allowed in writing by the Registrar, no invitation to subscribe for debentures, or to deposit money with

or lend money to an offshore company or a foreign offshore company, shall be made to residents of Malaysia, except by an offshore company or foreign offshore company granted a licence under the Offshore Banking Act 1990 and any person, other than an offshore company or foreign offshore company so granted a licence under that Act, who contravenes the provisions of this subsection shall be guilty of an offence against this Act.

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

### **Requirement to issue forms of application for shares or debentures with prospectus**

**30.** (1) Subject to subsection 32(1) and to subsection (2) of this section, a person shall not issue, circulate or distribute any form of application for shares in or debentures of an offshore company or a foreign offshore company unless the form is issued, circulated or distributed together with a prospectus a copy of which has been registered by the Registrar.

(2) Subsection (1) shall not apply if the form of application is issued, circulated or distributed in connection with shares or debentures which are not offered to the public.

(3) An offshore company shall not, without the approval of a special resolution, vary the terms of a contract referred to in the prospectus, unless the variation is made subject to the approval of a special resolution.

(4) Any person who contravenes the provisions of this subsection shall be guilty of an offence against this Act.

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

### **Invitations to public to lend money to or deposit money with an offshore company or a foreign offshore company**

**31.** (1) An invitation to the public to deposit money with or lend money to an offshore company or a foreign offshore company shall not be issued, circulated or distributed by the company or by any other person unless—

(a) a prospectus in relation to the invitation has been registered by the Registrar;

(b) the prospectus contains an undertaking by the company

that it will, within two months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit or loan; and

- (c) the document is described or referred to in the prospectus and in any other document, whether constituting or relating to the invitation, as—
  - (i) an unsecured note or an unsecured deposit note;
  - (ii) a mortgage debenture or certificate of mortgage debenture stock; or
  - (iii) a debenture or certificate of debenture stock,

in accordance with this section.

(2) For the purposes of this Division, any offshore company or foreign offshore company which accepts or agrees to accept from any person any money on deposit or loan shall be deemed to make an invitation to the public to deposit money with or lend money to the company or proposed company.

(3) Notwithstanding subsection (2), an offshore company or a foreign offshore company is not required to issue a prospectus if it is not, at any one time, under a liability (whether or not such liability is present or future) to repay any money accepted by it on deposit or loan from more than twenty persons.

(4) Where, pursuant to an invitation referred to in subsection (1), an offshore company or a foreign offshore company has accepted from any person any money as a deposit or loan, the company shall, within two months after the acceptance of the money, issue to that person a document which—

- (a) acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit or loan; and
- (b) complies with the description contained in the prospectus and with the regulations and contains on its face a statement that it is a document of that description.

(5) Nothing in this section shall apply to a prescribed company and nothing in this Act shall require a prospectus to be issued

in connection with any invitation to the public to deposit money with a prescribed company.

(6) In this section, “prescribed company” means—

- (a) an offshore company or a foreign offshore company granted a licence under the Offshore Banking Act 1990; or
- (b) an offshore company or a foreign offshore company or a trust company which has been declared by the Minister by notice published in the Gazette to be a prescribed company for the purposes of this section.

(7) Any person who contravenes or fails to comply with any of the provisions of this section and any officer of an offshore company or a foreign offshore company who is in default, shall be guilty of an offence against this Act.

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

(8) For the purposes of this section, a document issued by a borrowing company certifying that a person named therein in respect of any deposit with or loan to the company is the registered holder of a specified number or value—

- (a) of unsecured notes or unsecured deposit notes;
- (b) of mortgage debentures or certificates of mortgage debenture stock; or
- (c) of debentures or certificates of debenture stock,

issued by the company upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of that company in respect of that deposit or loan.

### **Approval of Registrar, or compliance with regulations, as regards issue of prospectuses**

**32.** (1) Until regulations relating to the issue of prospectuses have been made, no prospectus shall be issued unless it has been approved as to its form and content by the Registrar.

(2) Upon regulations relating to the issue of prospectuses being made, a prospectus shall be issued only in accordance with the provisions of such regulations.

### **Advertisements**

**33.** (1) No advertisement offering, or calling attention to an offer or intended offer of, shares in or debentures of an offshore company or a foreign offshore company or proposed offshore company to the public for subscription or purchase shall be published in Labuan or elsewhere until it has been approved by the Registrar; and every such advertisement must contain the advice that Malaysian residents are disqualified from accepting the offer.

(2) Application for approval of an advertisement shall be lodged with the Registrar together with a copy of the advertisement verified in such manner as the Registrar directs.

(3) Any person who publishes or causes to be published in Labuan or elsewhere an advertisement without the prior approval of the Registrar in breach of the provisions of subsection (1) shall be guilty of an offence against this Act.

Penalty: Ten thousand ringgit.

### **Retention of over-subscriptions in debenture issues**

**34.** (1) An offshore company shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the company has specified in the prospectus—

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit on the amount of the over-subscription that may be accepted or retained.

(2) Subject to any regulation, where an offshore company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions—

- (a) the company shall not make, authorize or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating

to the issue, other than a statement or reference to the total assets and the total liabilities of the company and of its guarantor company (if any); and

- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

### **Registration of prospectus**

**35.** (1) A prospectus shall not be issued, circulated or distributed by any person unless a copy thereof has first been registered by the Registrar.

(2) The Registrar shall not register a copy of any prospectus if it contains any statement or matter which is in his opinion misleading in the form and context in which it is included and unless—

- (a) a copy signed by every director and by every person who is named therein as a proposed director of the company or by his agent authorized in writing is lodged with the Registrar on or before the date of its issue;
- (b) the prospectus appears to comply with the requirements of this Act and the regulations or the Registrar is satisfied that any departure from the requirements of this Act or the regulations by such prospectus is justified and is unlikely to mislead a person investing on the faith of its content; and
- (c) there is lodged with the Registrar a copy, verified as prescribed, of any consent required by section 37 to the issue of the prospectus and any material contract referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof, verified as prescribed.

(3) If a prospectus is issued without a copy thereof having been so registered, the offshore company or foreign offshore company and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence against this Act.

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

**Document containing offer of shares to be deemed prospectus**

**36.** (1) Where an offshore company or a foreign offshore company allots or agrees to allot to any person any shares or debentures of the company with a view to all or any of them being offered for sale to the public, the offer to the public shall be made through a trust company and any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all written laws and rules of law as to the contents of prospectuses and as to liability in respect of advertisements and statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability (if any) of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made by an offshore company or a foreign offshore company with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer of the shares or debentures or of any of them for sale to the public was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of an offshore company or a foreign offshore company.

(4) In addition to complying with the other requirements of this Division, the document making the offer shall state—

- (a) the net amount of the consideration received or to be received by the offshore company or foreign offshore company making the offer in respect of the shares or debentures to which the offer relates; and

- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted may be inspected.

(5) Where an offer to which this section relates is made by an offshore company or a foreign offshore company, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the company by two directors of the company and any such director may sign by his agent authorized in writing.

### **Expert's consent to issue of prospectus containing statement by him**

**37.** (1) A prospectus inviting subscription for or purchase of shares in or debentures of an offshore company or a foreign offshore company and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless—

- (a) he has given and has not, before the delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) there appears in the prospectus a statement that he has given and not withdrawn his consent.

(2) If any prospectus is issued by an offshore company or a foreign offshore company in contravention of this section, the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence against this Act.

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

### **Civil liability for mis-statement in prospectus**

**38.** (1) Subject to this section, each of the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any shares or debentures in an offshore company or a foreign offshore company on the faith of a prospectus for any loss or damage sustained by reason of an untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be

material, that is so to say every person who—

- (a) is a director of the company at the time of issue of the prospectus;
- (b) authorized or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) is a promoter of the company; or
- (d) authorized or caused the issue of the prospectus.

(2) Notwithstanding anything in subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not by reason only thereof be liable as a person who has authorized or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture-holders, auditor, banker, barrister, advocate or solicitor or stock or share broker shall not for that reason alone be construed as an authorization by such person for the issue of the prospectus.

(3) No person shall be so liable if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
- (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;
- (c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
  - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or

debentures believe, that the statement was true;

- (ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of an extract from the report or valuation, and he had reasonable ground to believe. and did up to the time of the issue of the prospectus believe, that the expert making the statement was competent to make it and that that expert had given the consent required by section 37 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the person's knowledge, before any allotment or sale thereunder; and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 37, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 37, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

- (a) that, having given his consent under section 37 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, he on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of

the withdrawal and the reasons therefor; or

- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.

(6) Where—

- (a) a prospectus contains the name of a person as a director of an offshore company or a foreign offshore company, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or
- (b) the consent of a person is required under section 37 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

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

### **Criminal liability for mis-statement in prospectus**

**39.** (1) Where in any prospectus, or in any advertisement of the kind referred to in subsection 33(1), there is an untrue statement or wilful non-disclosure, any person who authorized or caused the issue of the prospectus or advertisement shall be guilty of an offence against this Act unless he proves that the statement or non-disclosure was immaterial or that he had reasonable ground for believing and did, up to the time of the issue of the prospectus, believe that the statement was true or that the non-disclosure was immaterial.

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

(2) A person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the

consent required by this Division to the inclusion therein of a statement purporting to be made by him as an expert.

## DIVISION 2

### RESTRICTIONS ON ALLOTMENT

#### **Trust company as agent in public offer**

**40.** (1) No allotment shall be made of any shares of an offshore company offered to the public unless the shares have been offered to the public through a trust company.

(2) A trust company shall be the agent of an offshore company which has offered shares to the public through the trust company to receive applications for allotment of the shares and shall be so described in the prospectus.

(3) All moneys payable on application for the shares in an offshore company shall be paid to the trust company acting as an agent for the offshore company, and pending receipt by the trust company of the amount of the minimum subscription, it shall hold all moneys received by it upon trust for the applicant, and if the amount of the minimum subscription is not received by the trust company within the time stated in the prospectus, the trust company shall, subject to any right under the terms of the prospectus to deduct any costs and charges owing to it or to the Registrar in connection with the prospectus or the offer or his acting as a broker in the matter, return the application moneys or such proportion thereof as remains after making deductions (if any) in accordance with the terms of the prospectus to the applicants pro rata based on the respective amounts paid by them.

(4) Upon receipt by a trust company acting as agent for an offshore company of the amount of the minimum subscription on behalf of the company the trust company shall, subject to its right to deduct from such moneys its proper remuneration and disbursement, hold such moneys and any further application moneys as agent for the company.

#### **Prohibition of allotment unless minimum subscription received**

**41.** (1) No allotment shall be made of any shares of an offshore company offered to the public unless—

(a) the minimum subscription has been subscribed; and

- (b) the sum payable on application for the shares so subscribed has been received by the company,

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

(2) The minimum subscription shall be—

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

(3) The amount payable on application on each share offered to the public shall not be less than five per centum of the nominal amount of the share or of the issue price, as the case may be.

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

(5) No offshore company shall allot, and no officer or promoter of an offshore company or a proposed offshore company shall authorize or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of four months from the issue of the prospectus.

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

### **Application moneys to be held in trust until allotment**

**42.** (1) Subject to subsections 40(3) and (4) and subsection 41(1), all application and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public by an offshore company shall, until the allotment of such shares or debentures, be held upon trust for the applicant and such moneys shall be paid into and kept in a separate trust account, pending allotment, at a commercial bank approved by the Registrar in writing.

(2) If default is made in complying with this section, every officer of the company who is in default and who knowingly and

wilfully authorizes or permits the default shall be guilty of an offence against this Act.

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

### DIVISION 3

### SHARES

#### **Return of allotment**

**43.** (1) Where an offshore company makes any allotment of its shares, the company shall, within one month thereafter, lodge with the Registrar a return of the allotment stating—

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

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

Penalty: One thousand ringgit. Default penalty.

#### **Calls**

**44.** An offshore company may—

- (a) make arrangements, on the issue of shares, for varying the amounts and times of payment of calls as between shareholders;
- (b) accept from any member the whole or any part of the amount remaining unpaid on any shares although no part of that amount has been called up; and
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some

shares than on others.

### **Reserve liability**

**45.** An offshore company may, by special resolution, determine that any portion of its uncalled share capital shall not be capable of being called up except in the event of the company being wound up, but no such resolution shall prejudice the rights acquired by any person before the passing of the resolution.

### **Share premium account**

**46.** (1) Where an offshore company which is not licensed pursuant to the provisions of the Offshore Banking Act 1990 issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called the “share premium account”, and the provisions of this Act relating to the reduction of the share capital of an offshore company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) Where assets are acquired by the issue of shares of an offshore company and no consideration is recorded, the assets so acquired shall be valued, and if the value of the assets is more than the par value of such shares, the difference between the par value of the shares and the value of the assets so acquired shall be transferred to the share premium account.

(3) The share premium account may, notwithstanding anything contained in subsection (1), be applied by the offshore company—

- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;
- (b) in writing off—
  - (i) the preliminary expenses of the company; or
  - (ii) the expenses of, or the commission paid or discount allowed on, any issue of shares in, or debentures of, the company; or
- (c) in providing for the premium payable on redemption of debentures or redeemable preference shares.

(4) Where shares are issued for a consideration other than cash under subsection (2), the shares shall not be allotted until—

- (a) the undertaking constituting the consideration has been performed; or
- (b) the assets constituting the consideration have been transferred to the company; and assets shall be considered as transferred to a company—
  - (i) in the case of goods, when the ownership or property therein passes to the company or when they are delivered to it;
  - (ii) in the case of negotiable instruments, when the company becomes entitled to enforce all the rights embodied in them in its own name without the concurrence of any other person; and
  - (iii) in any other case, when the ownership or lesser rights agreed to be vested in the company are legally vested in it.

### **Power to issue shares and voting rights**

**47.** (1) An offshore company shall have power to issue the number of shares stated in its memorandum, which may be divided into one or more classes, with such designations, preferences, limitations and relative rights as shall be stated or provided for in the articles, and all prices and values given in respect of shares shall be expressed in a currency other than Malaysian currency.

(2) The articles may limit or deny voting rights of, or provide special voting rights for, the shares of any class or the shares within any class to any extent not inconsistent with the provisions of this Act or the regulations.

### **Dealing by an offshore company in its own shares, etc.**

**48.** (1) An offshore company may provide financial assistance, whether directly or indirectly, for the purpose of or in connection with the purchase of its own shares or the shares of any of its subsidiaries or of its holding company—

- (a) in the ordinary course of its business, if the lending of money is part of the ordinary business of the offshore company;
- (b) where the transaction has been approved by a special resolution of the company, and the directors have certi-

fied to the meeting, in writing, to the effect that there are no reasonable grounds for believing that—

- (i) the company is, or would after giving the financial assistance be, insolvent; or
  - (ii) the realizable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance or loan, be less than the aggregate of the company's liabilities and stated capital; or
- (c) to employees (other than an employee who is also a director) of the company or of any of its subsidiaries or of its holding company.

(2) An offshore company may purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, or the shares of any of its subsidiaries or of its holding company, but the purchases thereof, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor; and if the articles so provide, or with the affirmative votes of the holders of at least three-fourths of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

(3) Notwithstanding subsection (2), provided that there are no reasonable grounds for believing that the company is, or would after the payment be, insolvent or that the realizable value of the company's assets would, after the payment, be less than the aggregate of its liabilities and stated capital, an offshore company may purchase or otherwise acquire its own shares for the purposes of—

- (a) eliminating fractional shares;
- (b) paying dissenting shareholders entitled to payment for their shares under the provisions of this Act or the regulations; or
- (c) effecting, subject to this Act, the retirement of its redeemable shares by redemption or by purchase at a price not exceeding the redemption price.

### **Cancellation of reacquired shares by an offshore company**

**49.** An offshore company may at any time, by resolution of its directors, cancel all or any part of the shares of the company of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be lodged with the Registrar within thirty days from the date of cancellation.

### **Issue of shares at a discount**

**50.** (1) Subject to this section, an offshore company may issue at a discount shares of the company of a class already issued.

(2) No shares shall be issued at a discount without the prior written approval of the Registrar.

(3) An application to issue shares at a discount shall be made to a trust company, and shall be accompanied with the names and addresses of all members together with notices addressed to those members notifying them of the proposed issue and specifying the maximum rate of discount at which the shares are to be issued.

(4) The trust company to which application is made shall, upon receipt of the application and the notices, despatch those notices and inform the members to whom they are addressed that any objection must be conveyed so as to be received by the trust company within forty-two days from the date of the notice.

(5) On the expiry of sixty days from the date of despatch of the notices referred to in subsection (3), the trust company shall lodge the application, together with any objections received by it, with the Registrar.

(6) Where any such application is made, the Registrar may, if, having regard to the circumstances of the case and any objections, he thinks it proper so to do, approve the issue on such terms and conditions as he thinks fit.

### **Alteration of share capital**

**51.** (1) An offshore company may, by special resolution, alter the conditions of its memorandum and articles in any one or more of the following ways:

- (a) increasing its share capital by the creation of new shares of such amount as it thinks expedient;
- (b) consolidating and dividing all or any of its share capital into shares of larger amount than its existing shares;
- (c) subdividing its shares or any of them into shares of smaller amount than is fixed by the memorandum and articles, so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (d) converting all or any of its paid-up shares into stock and reconverting that stock into paid-up shares of any denomination;
- (e) cancelling shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any persons, and diminishing the amount of the share capital by the amount of the shares so cancelled;
- (f) redenominating the currency of any shares by the conversion of shares denominated in one currency to the same number of shares of another currency with the prior written consent of the creditor, if any.

(1A) A redenomination of the currency of any shares under paragraph (1)(f) shall be deemed not to effect a cancellation of the existing shares and the issue of fresh shares.

(2) A cancellation of shares under paragraph (1)(e) shall not be deemed to be a reduction of share capital within the meaning of this Act.

(3) Where, under subsection (1), an offshore company has increased its share capital beyond the capital stated in its memorandum by shares of a fixed amount, it shall, within one month after the passing of the resolution authorizing the increase, cause to be lodged with the Registrar notice in the prescribed form of the increase.

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

Penalty: One thousand ringgit. Default penalty.

### **Validation of shares improperly issued**

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

### **Special resolution for reduction of share capital**

**53.** (1) Subject to confirmation by the Court, an offshore company may, if so authorized by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) cancel any paid-up capital which is lost or unrepresented by available assets; or
- (c) pay off any paid-up share capital which is in excess of the needs of the company, or which it is otherwise in the interests of the company as a whole to have paid off,

and may, so far as necessary, alter its memorandum by reducing

the amount of its share capital and of its shares accordingly.

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

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

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

(4) The Court, if satisfied with respect to every creditor who under subsection (2) is entitled to object, that either his consent to the reduction has been obtained, or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit, and may require the offshore company to publish as the Court directs the reasons for reduction or such other information as the Court thinks expedient, and, if the Court thinks fit, the causes which led to the reduction.

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

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

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

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

(9) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference between the amount of the share as fixed by the order and the amount paid, or the reduced amount which is to be deemed to have been paid on the share, as the case may be, but where any creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect upon his claim, not entered on the list of

creditors, and after the reduction the offshore company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim—

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

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

(10) Any officer of an offshore company who—

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

shall be guilty of an offence against this Act.

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

### **Rights of holders of preference shares to be set out in articles**

**54.** (1) No offshore company shall allot a preference share, or convert an issued share into a preference share, unless there is set out in its articles the rights of the holder of such a share with respect to the repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other

shares or other classes of preference shares.

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

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

### **Redeemable preference shares**

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

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

(3) The shares shall not be redeemed—

- (a) except out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and
- (b) unless they are fully paid up.

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

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

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

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

(8) If an offshore company redeems any redeemable preference shares, it shall, within one month after so doing, give notice thereof to the Registrar specifying the shares redeemed.

#### DIVISION 4

#### DEBENTURES

### **Interpretation**

**56.** In this Division, unless the context otherwise requires—

“borrowing company” means an offshore company that is or will be under a liability, whether or not such liability is present or future, to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the company;

“guarantor company”, in relation to a borrowing company, means an offshore company that has guaranteed, or has agreed to guarantee, the repayment of any money received or to be received by the borrowing company in response to an invitation to the public to subscribe for or purchase debentures of the borrowing company.

### **Power to issue debentures**

**57.** (1) Subject to this Division and to the terms and conditions of its memorandum and articles, an offshore company shall have the power to issue debentures to non-residents of Malaysia on such terms and conditions as it thinks fit and in particular,

but without limiting the generality of the foregoing, may issue debentures—

- (a) constituting a charge on any or all of the assets of the company;
- (b) convertible from debentures into shares in the company;  
or
- (c) as secured debentures.

(2) The debt payable under any debenture, whether sealed or signed on behalf of the company, shall be a specialty debt of the company, and where the debenture is issued by a branch of a company, shall be located at that branch.

(3) The Minister may make regulations—

- (a) restricting the right of an offshore company or any particular class of offshore companies to issue debentures which may be converted into shares; and
- (b) prescribing the terms and conditions or the event or events upon which conversion shall or may take place.

### **Offshore company to maintain register of debenture holders**

**58.** (1) Subject to the provisions of this section, every offshore company which issues debentures shall keep and maintain at its registered office in Labuan—

- (a) a register of holders of the debentures; and
- (b) a copy of all the terms of debentures so issued.

(2) Every register of holders of debentures of an offshore company shall, except when duly closed, be open to the inspection of the registered holder of any such debenture and any holder of shares in that company, and shall contain, in the case of ordinary debentures, particulars of the names and addresses of the debenture holders and of the number of debentures held by each of them.

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

(4) Any registered holder of debentures issued by, and any holder of shares in, an offshore company shall, at his request, be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof, on payment of such amount, not exceeding five dollars, as the company may require, but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(5) A copy of any trust deed relating to or for securing any issue of debentures by an offshore company shall be forwarded by the company to a holder of those debentures at his request, on payment of such amount, not exceeding five dollars, as the company may require.

(6) If inspection is refused, or a copy is refused or not forwarded, within a reasonable time (but not more than one month) after a request has been made pursuant to this section, the offshore 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.

(7) Every offshore company which has issued debentures shall, until every such debenture has been redeemed and cancelled, lodge with the Registrar, at least once in every calendar year, a return of debentures setting out the prescribed particulars.

### **Perpetual debentures**

**59.** A condition contained in a debenture, or in a deed for securing a debenture, shall not be invalid by reason only that the debenture is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.

### **Reissue of redeemed debentures**

**60.** (1) Where an offshore company has redeemed any debentures—

- (a) unless any provision to the contrary, whether express or implied, is contained in any contract entered into by the

company; or

- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

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

(3) Where an offshore company has deposited any of its debentures to secure advances on current accounts or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the company's account having ceased to be in debit while the debentures remain so deposited.

### **Trustee for debenture holders**

**61.** (1) Every offshore company which offers debentures to the public for subscription or purchase under this Act shall make provision in those debentures, or in a trust deed relating to those debentures, for the appointment of a trust company as trustee for the holders of the debentures.

(2) A borrowing company shall not allot any debentures until such time as a trust company has been appointed trustee for the holders of those debentures.

(3) If default is made by a borrowing company in complying with any provision of this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(4) No person, other than a trust company, shall act as trustee for the holders of debentures.

**Duties of trustee**

**62.** (1) A trust company when acting as trustee for the holders of debentures—

- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing company and each of its guarantor companies, which are or may be available by way of securities or otherwise, are sufficient, or are likely to be or become sufficient, to discharge the principal debt as and when it becomes due;
- (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;
- (c) shall exercise reasonable diligence to ascertain whether or not the borrowing company and each of its guarantor companies have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
- (d) except where it is satisfied that a breach of the covenants, terms and provisions of the debentures or the trust deed would not materially prejudice the security (if any) for the debentures or the interests of the holders of the debentures, shall take all steps and do all such things as it is empowered to do to cause the borrowing company and any of its guarantor companies to remedy any breach of those covenants, terms and provisions;
- (e) where the borrowing company or any of its guarantor companies fails, when so required by the trust company, to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed, shall place the matter before a meeting of holders of the debentures, submit such proposal for the protection of their investment as the trust company considers necessary and appropriate and obtain the directions of the holders in relation thereto; and
- (f) where the borrowing company submits to those holders a compromise or arrangement, shall give them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due enquiry, a trust company acting as trustee

for the holders of debentures at any time is of the opinion that the assets of a borrowing company and of any of its guarantor companies which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient to discharge the principal debt as and when it becomes due, the trust company may lodge an application in the prescribed form with the Registrar for a direction under this subsection and the Registrar may, on such application, after giving the borrowing company an opportunity for making representations in relation to the application, by direction in writing served on the company at its registered office in Labuan, impose such restrictions on the activities of the company, including restrictions on advertising for deposit or loans and on borrowing by the company, as the Registrar thinks necessary for the protection of the interests of the holders of the debentures, or the Registrar may, and if the borrowing company so requires shall, direct the trust company to lodge an application with the Court for an order under subsection (4) and the trust company shall apply accordingly.

(3) Where—

- (a) after due enquiry, a trust company acting as trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing company and of any of its guarantor companies which are or should be available are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the company has contravened or failed to comply with a direction by the Registrar under subsection (2),

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

(4) Where an application is lodged by a trust company with the Court under subsection (2) or (3), the Court, after giving the borrowing company an opportunity of being heard, may, by order, do all or any of the following things, namely—

- (a) direct the trust company to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests as the trust company considers necessary or appropriate and for the purpose of obtaining their directions in relation thereto, and give such directions in relation to the conduct of the meeting as the Court thinks fit;
- (b) stay all or any actions or proceedings before any Court by or against the borrowing company;

- (c) restrain the payment of any moneys by the borrowing company to the holders of debentures of the company or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security (if any) for debentures or any part thereof;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of debentures, the members of the borrowing company or any of its guarantor companies or the public,

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

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

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

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

### **Obligations of directors of borrowing company**

**63.** (1) Where a trust company acts as trustee for the holders of any debentures of a borrowing company, the directors of the borrowing company shall—

- (a) at the end of a period not exceeding three months ending on a day which the trust company is hereby required to notify to the borrowing company in writing; and
- (b) at the end of each succeeding period thereafter, being a period of three months or such shorter time as the trust company may, in any special circumstances, allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and, within thirty days after the end of each such period, lodge a copy of the report relating to that period with the Registrar and with the trust company.

Penalty: Ten thousand ringgit. Default penalty.

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

- (a) whether or not the limitations on the amount that the company may borrow have been exceeded;
- (b) whether or not the borrowing company and each of its guarantor companies have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provisions of the relevant trust deed to become enforceable and, if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing company, its subsidiaries or its guarantor companies or any of them have occurred which materially affect any security or charge created by the debentures or any trust deed and, if so, particulars of those circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing company or any of its subsidiaries or any of its guarantor companies since the debentures were first issued to the public which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing company has deposited money with, or lent money to, or assumed any liability of, a company which pursuant to section 4 is deemed to be related to the borrowing company, particulars of—
  - (i) the total amount so deposited or lent and the extent of any liabilities so assumed during the period covered by the report;
  - (ii) the total amount owing to the borrowing company in respect of money so deposited or lent and the extent of any liabilities so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liability which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed

on behalf of a company if that company has guaranteed the repayment of the debentures of the borrowing company and has secured the guarantee by a charge over its assets in favour of the trust company acting as trustee for the holders of the debentures of the borrowing company.

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

(4) The directors of every borrowing company which has issued debentures to the public and of every guarantor company which has guaranteed the repayment of the moneys raised by the issue of the debentures to the public shall, at some date not later than nine months, or in the case of any particular company, not later than such other period as is for the time being fixed by the Registrar with the consent of the trust company acting on behalf of the debenture holders for that company, after the expiration of each financial year of the company, cause to be made out and lodged with the Registrar and with the trust company a profit and loss account together with a detailed statement of outstanding liability under such debentures for the period from the end of that financial year until the expiration of six months after the end of that financial year and a balance sheet as at the end of the period to which the profit and loss account relates.

(5) Where any guarantor company, being a company which is incorporated in any state or territory nominated for the purposes of this section by the Minister, has lodged with the appropriate authority in any such nominated state or territory a profit and loss account and balance sheet for the relevant period, that shall be sufficient compliance with the requirements of subsection (4) if, with the consent of the trust company acting as trustee for the holders of the debentures of the borrowing company, there is lodged with the Registrar and the trust company certified copies

of the profit and loss account and balance sheet so lodged.

(6) Where the directors of a borrowing company do not lodge with the trust company acting as trustee for the holders of the debentures of the company a report as required by subsection (1), or where the directors of a borrowing company or of its guarantor companies do not lodge with the Registrar and the trust company the profit and loss account, detailed statement and balance sheet as required by subsection (4) within the time prescribed, the trust company shall, as soon as possible, lodge notice of that fact with the Registrar.

### **Obligation of guarantor company to furnish information**

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

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

Penalty: Ten thousand ringgit. Default penalty.

### **Loan and deposits to be immediately repayable on certain events**

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

(2) Each such report shall be included in the report required to be furnished to the trust company under subsection 63(1).

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

(4) A trust company shall not give a notice pursuant to subsection (3) if it is satisfied—

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

## DIVISION 5

### INTERESTS OTHER THAN SHARES, DEBENTURES, ETC.

#### **Interpretation**

**66.** In this Division, unless the context otherwise requires—

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

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

whether or not the right or interest is evidenced by a formal

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

- (d) any share in or debenture of a corporation;
- (e) any interest in, or arising out of, a policy of life insurance;
- (f) any interest in a partnership agreement unless the agreement—
  - (i) relates to an undertaking, scheme, enterprise or investment contract promoted by, or on behalf of, a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts; or
  - (ii) is an agreement, or is within a class of agreements, prescribed by regulations for the purposes of this paragraph;

“investment contract” means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which, under or in accordance with the terms of investment, will or may, at the option of the investor, be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances;

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

### **Approved deeds**

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

- (a) the Registrar has granted his approval to the deed under this Division; and
- (b) the Registrar has granted his approval under this Division to the trust company appointed for the purposes of the deed acting as a trustee or representative, and that approval has not been revoked and the trustee or

representative has not ceased to hold office.

### **Approval of deeds**

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

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

- (a) stipulates that no part of the interests to which the deed relates shall be offered to residents of Malaysia;
- (b) complies with the requirements of this Division; and
- (c) makes provision for such other matters and things as are required by or under the regulations to be included in the deed, and if regulations have been made prescribing the charges that may be made by a management company, unless the deed provides—
  - (i) that the charges to be made by the management company do not exceed such percentages or amounts as are prescribed; and
  - (ii) that the price at which the interests to which the deed relates are to be sold or purchased by the management company are consistent with the regulations relating to those prices.

### **Interests to be issued by an offshore company or a foreign offshore company only**

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

### **Statement to be issued**

**70.** Before an offshore company or a foreign offshore company or an agent of such company issues or offers to the public for subscription or purchase, or invites the public to subscribe for

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

### **No issue without approved deed**

**71.** (1) No person shall issue or offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

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

### **Register of interest holders**

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

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

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

### **Penalty for contravention of Division, etc.**

**73.** (1) A person shall not—

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

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

(2) No person shall be relieved from any liability to any holder of an interest by reason of any contravention of, or failure to comply with, this Division.

### **Winding up of schemes, etc.**

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

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

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

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

(4) On an application by the trustee or representative the Court may, if it is satisfied that it is in the interest of the holders of

the interests, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

### **Liability of trustees**

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

(2) Subsection (1) shall not invalidate—

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

## DIVISION 6

### TITLE AND TRANSFERS

#### **Nature of shares**

**76.** The share or other interest of any member in an offshore company shall be movable property, transferable in the manner provided by the articles, and shall not be of the nature of immovable property.

#### **Numbering of shares**

**77.** (1) Each share in an offshore company shall be distinguished by its appropriate number.

(2) Notwithstanding subsection (1)—

- (a) if at any time all the issued shares in an offshore com-

pany, or all the issued shares therein of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks pari passu for all purposes with all shares of the same class for the time being issued and fully paid up; or

- (b) if all the issued shares in an offshore company are evidenced by certificates in accordance with section 78 and each certificate is distinguished by its appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

### **Certificate to be evidence of title**

**78.** (1) A certificate, under the seal of an offshore company or any branch thereof, specifying any shares held by a member shall be prima facie evidence of his title to the shares.

(2) Every share certificate shall be under the seal of the offshore company or a branch thereof and shall state—

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

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

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

### **An offshore company may have share seal**

**79.** An offshore company may, if authorized by its articles, have a seal which shall have on its face the name of the company and the words “Share Seal”, and a share certificate under such seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

**Instruments of transfer and transfer by personal representative**

**80.** (1) An offshore company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in, or debenture of, the company has been transmitted by operation of law.

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

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

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

**Duties of offshore company with respect to issue of certificate**

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

(2) If default is made in complying with this section, the offshore 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.

(3) If an offshore company on which a notice has been served

requiring it to make good any default in complying with the provisions of this section fails to make good the default within twenty-one days after the service of the notice, the Court may, on the application of the person entitled to have the certificate for the shares or debentures delivered to him, direct the company and every officer of the company to make good the default within such time as is specified in the direction, and the direction may provide that all costs and expenses of and incidental to the application shall be borne by the company and by any officer of the company in default in such proportion as the Court thinks fit.

## DIVISION 7

### REGISTER OF CHARGES

#### **Non-application of Division**

**82.** Nothing in this Division shall apply to a charge created by a foreign offshore company on property outside Malaysia.

#### **Register of charges**

**83.** (1) Every offshore company or foreign offshore company shall keep at its registered office a register of charges and shall enter in it all charges specifically affecting property of the company within one month after the creation of such charges, giving in each case a short description of the property charged, the amount secured by the charge, the names of the chargees or persons entitled to such charge, and particulars relating to the satisfaction of or release from such charge.

(2) If any property of an offshore company or a foreign offshore company is charged without such entry as required by subsection (1) being made, every officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall be guilty of an offence against this Act.

Penalty: Ten thousand ringgit.

(3) Every offshore company or foreign offshore company shall cause a copy of every instrument creating any charge to be kept at its registered office.

(4) The register of charges and the copies of instruments kept in pursuance of this section shall be open to inspection by any creditor or member of the company at all reasonable times without charge.

(5) If default is made in complying with subsection (3) or (4), the offshore company or foreign offshore company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Two thousand ringgit. Default penalty.

### **Notice of creation and satisfaction of charge**

**84.** (1) Every offshore company or foreign offshore company shall, within one month after the creation of each charge, lodge a statement of the prescribed particulars with the Registrar, and within one month after such charge is satisfied or released, lodge a notice in the prescribed form with the Registrar.

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

Penalty: Two thousand ringgit. Default penalty.

## PART V

### MANAGEMENT AND ADMINISTRATION

#### DIVISION 1

#### OFFICE AND NAME

### **Registered office of an offshore company**

**85.** (1) Every offshore company shall at all times have a registered office in Labuan, which office shall be the principal office of a trust company.

(2) Notice of the situation of an offshore company's registered office shall be given in the prescribed form to the Registrar within one month after the date of the company's incorporation.

(3) Where an offshore company has changed its registered office, it shall give notice of such change in the prescribed form to the Registrar within one month of the change.

(4) A trust company shall display at its principal office, in a conspicuous position in romanized letters easily legible, the names of the offshore companies having their registered office at its address.

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

Penalty: One thousand ringgit. Default penalty.

**Name to be displayed at all offices and to appear on seals, letters, etc.**

**86.** (1) Every offshore company or foreign offshore company shall paint or affix, and keep painted or affixed, its name in a conspicuous position, in romanized letters easily legible, on the outside of every office or place in which its business is carried on.

Penalty: One thousand ringgit. Default penalty.

(2) The name of an offshore company or a foreign offshore company shall (whether or not it is carrying on business under a business name) appear in legible romanized letters on—

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

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

(2A) The name of an offshore company or a foreign offshore company shall (whether or not it is carrying on business under a business name) appear in legible romanized letters and the company number of the offshore company or the foreign offshore company shall appear on its memorandum and articles of asso-

ciation and such other documents as may be prescribed and if default is made in complying with this subsection, the company shall be guilty of an offence against this Act.

(3) Where an offshore company or a foreign offshore company has changed its name, the former name of the company shall also appear beneath the present name on all documents, business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of, or purporting to be issued or signed by or on behalf of, the company for a period of not less than twelve months from the date of the change.

(4) If an officer of an offshore company or a foreign offshore company or any person on its behalf—

- (a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name does not so appear;
- (b) issues or authorizes the issue of any business letter, statement of account, invoice or official notice or publication of the company wherein its name or former name (if applicable) is not so mentioned;
- (c) signs, issues or authorizes to be signed or issued, on behalf of the company, any bill of exchange, promissory note, cheque or other negotiable instrument or any endorsement, order, receipt or letter of credit wherein its name or former name (if applicable) is not so mentioned; or
- (d) signs or authorizes to be signed, on behalf of the company, the memorandum and articles of association or such other documents as may be prescribed by the Registrar when the name and the company number of the offshore company or the foreign offshore company are not so mentioned,

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

Penalty: One thousand ringgit. Default penalty.

## DIVISION 2

## DIRECTORS AND OFFICERS

**Directors**

**87.** (1) Every offshore company shall have at least one director who may be a resident director.

(2) No person, other than an officer of a trust company or a domestic company wholly owned by the trust company made available for the appointment by the trust company, shall act or be appointed as a resident director of an offshore company:

Provided that an officer of a domestic or foreign company granted a licence or registered under the \*Insurance Act 1963 [Act 89], Islamic Banking Act 1983 [Act 276], Takaful Act 1984 [Act 312] or the Banking and Financial Institutions Act 1989 [Act 372] made available for the appointment by such domestic or foreign company, as the case may be, may act or be appointed as a resident director of an offshore company in which such domestic or foreign company holds shares.

(3) Any casual vacancy in directors may, so far as the articles of an offshore company do not otherwise provide, be filled by a person appointed by the continuing director or directors or, if there is no continuing director, by the Registrar on application made by a member of the company.

(4) Subject to any contrary provision in the articles of an offshore company, a director of an offshore company may be a corporation and such corporation may act by itself or through a nominee appointed in writing and may be appointed or may act as a director of more than one company.

(5) A resident director of an offshore company shall not be subject to retirement, but he may, upon agreement between the trust company which made him available for the appointment and the offshore company of which he was appointed resident director, be replaced by another officer of the trust company at any time.

(6) A resident director of an offshore company shall be entitled

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

to vote upon the resolution of the board of directors without disclosing his interests as a director of any other offshore company.

(7) Notice received by a resident director of an offshore company shall not be deemed to be notice to that company unless it is given to the resident director specifically as notice to that company.

(8) A director of an offshore company shall not disclose to any person, or use for any purpose, any information obtained by reason of his office except in accordance with his duty as a director of the company and so far as he may be compelled by law so to do, but a director may disclose to an appropriate public officer in Malaysia, or otherwise use within Malaysia, any information within his knowledge which he honestly believes suggests that a fraud is being or is likely to be practised by the company or by any of its members or directors or upon the company or any of its members.

(9) A director of an offshore company who, in contravention of subsection (8), discloses to any person, or uses for any purpose, any information obtained by reason of his office shall be guilty of an offence against this Act.

(10) The fees of a resident director of an offshore company payable by an offshore company shall be paid to the trust company which made him available for the appointment in such manner and at such times as may be agreed between the trust company and the offshore company.

(11) Notwithstanding any other provision of this Act or the regulations to the contrary, and unless otherwise provided in the articles of an offshore company, a resident director of an offshore company shall not be liable to any penalty provided for under this Act for any damage caused to or suffered by any person, howsoever arising, otherwise than by reason of his wilful misconduct, wilful default or wilful neglect.

### **Consent to act as director**

**88.** A person shall not be appointed or named as a director or proposed director in the articles of an offshore company or in a prospectus unless, before the registration of the articles or the issue of the prospectus, he has, by himself or by his agent authorized in writing for the purpose, signed and caused to be lodged with the Registrar a consent in writing to act as a director.

**Validity of acts of directors**

**89.** The acts of a director of an offshore company shall be valid notwithstanding any defect that may be discovered in his appointment or qualification.

**Registrar's power to restrain persons from managing offshore companies**

**90.** (1) The Registrar may issue a direction that a person who, in Labuan or elsewhere—

- (a) has been convicted of an offence in connection with the promotion, formation or management of a corporation;
- (b) has been convicted of any act involving fraud or dishonesty; or
- (c) is an undischarged bankrupt or insolvent,

be disqualified from acting as a director or promoter of, or being in any way directly or indirectly concerned with, or taking part in the management of, an offshore company.

(2) After a direction has been issued by the Registrar under subsection (1), an offshore company shall not thereafter appoint or retain a person so disqualified as a director, and a person so disqualified who acts in contravention of that direction without leave of the Court shall be guilty of an offence against this Act.

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

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

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

all the other directors particulars of his interest.

(2) Subsection (1) shall not apply in a case where the interest of the director of an offshore company consists only in him being a member or creditor of another offshore company which is interested in a contract or proposed contract with the first-mentioned company, if that interest may properly be regarded as not being a material interest.

(3) For the purposes of this section, a resident director shall be deemed to be interested in all contracts or proposed contracts with any offshore company of which he is a director and to be exempted from any requirement of circulation of notice or declaration in writing; and an oral declaration noted in the minutes is deemed sufficient compliance with the provisions of subsection (1).

(4) Subject to any contrary provision in the articles of an offshore company, a director of the company shall not, for the purposes of this section, be deemed to be interested in or to have at any time been interested in a contract or proposed contract, by reason that the contract or proposed contract—

- (a) has been or will be made with;
- (b) is for the benefit of; or
- (c) is on behalf of,

a company which, by virtue of the provisions of section 4, is deemed to be a related company, and that he is also a director of that company.

(5) For the purposes of subsection (1), a general notice given to the directors of an offshore company by a director to the effect that he is an officer or a member of a specified offshore company or a member of a specified firm and he is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be sufficient declaration of interest in relation to any contract so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure it is brought up and read at the next meeting of the directors after it is given.

(6) Every director of an offshore company who holds any

office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as a director, shall declare at a meeting of the directors of the company or cause to be circulated in writing to the other directors the fact and the nature, character and extent of the conflict:

Provided that this subsection shall not apply to a resident director unless the articles of the company otherwise provide.

(7) The declaration required of a director under subsection (6) shall be made at the first meeting of the directors held—

(a) after he becomes a director; or

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

unless the fact has already been circulated in writing before that meeting.

(8) Every declaration under this section shall be recorded in the minutes of the meeting at which it was made.

(9) This section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the articles of an offshore company restricting a director of that company from having any interest in contracts with the company or from holding office or possessing properties involving duties or interests in conflict with his duties or interests as a director:

Provided that this subsection does not apply to a resident director unless the articles of the company otherwise provide.

### **Duty and liability of officers**

**92.** (1) Every officer of an offshore company shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer of an offshore company shall not make improper

use of any information acquired by reason of his office to gain, whether directly or indirectly, an advantage for himself or any other person or to cause detriment to the company.

(3) An officer of an offshore company who contravenes this section shall be—

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

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

### **Secretary**

**93.** (1) Every offshore company shall appoint one or more secretaries at least one of whom shall be a resident secretary.

(1A) Subject to subsection (2) and any contrary provision in the memorandum and articles of association of an offshore company, a secretary of an offshore company may be a corporation and such corporation may act by itself or through a nominee appointed in writing and may be appointed or may act as a secretary of more than one company.

(2) No person, other than an officer of a trust company or a domestic company wholly owned by the trust company made available for the appointment by the trust company, shall act or be appointed as a resident secretary.

(3) Subject to subsection (4), the resident secretary of an offshore company shall be responsible for the compliance by the company with the requirements of this Act in relation to the lodging of all documents with the Registrar and the maintenance of the company's records at the registered office of the company and dealing with communications served to the company at its registered office.

(4) Notwithstanding any other provision in this Act to the contrary, the resident secretary shall not be liable as an officer of the company to any penalty provided for in this Act save for anything done or omitted to be done by him in carrying out the duties of his office, nor shall he be liable for any damage caused

to or suffered by any person how so ever arising otherwise than by reason of his wilful misconduct, wilful default or wilful neglect.

(5) An offshore company shall forthwith pay any costs, charges and expenses incurred by the resident secretary in respect of anything done under this Act on behalf of the company.

(6) The salary of the resident secretary of an offshore company shall be fixed by agreement between the company and the trust company which made him available for the appointment and shall be paid in such manner and at such times as shall be agreed between the trust company and the offshore company.

(7) Every secretary of an offshore company shall be appointed by the directors of the company.

### **Register of directors and secretaries**

**94.** (1) Every offshore company shall keep at its registered office in Labuan a register of its directors and secretaries.

(2) The register shall contain with respect to each director, in the case of an individual, his present full name and any former name, his usual residential address and identification (if any) and the name of the trust company of which he is an officer and the address of its registered office, or in the case of a corporation, the corporation's full name, the address of its registered office and the names of its authorized nominees and representatives in Labuan.

(3) The register shall contain with respect to each secretary, in the case of an individual, his present full name and any former name, his usual residential address and identification (if any) and the name of the trust company of which he is an officer and the address of its registered office, or in the case of a corporation, the corporation's full name, the address of its registered office and the names of its authorized nominees and representatives in Labuan.

(4) The register kept by an offshore company shall be open for inspection by any director, member or auditor of the company without charge.

(5) An offshore company shall lodge with the Registrar—

- (a) within one month after its incorporation, a return in the prescribed form containing, in relation to its directors and secretaries, the particulars required to be specified in the register;
- (b) within one month after a person named in a return ceases to be a director or secretary of the company, a return in the prescribed form notifying the Registrar of the change and containing with respect to each then director or secretary of the company the particulars required to be specified in the register and the date of cessation;
- (c) within one month after a person becomes a director or a secretary of the company, a return in the prescribed form notifying the Registrar of that fact and containing the particulars required to be specified in the register and the date of appointment; and
- (d) within one month of any change in the prescribed particulars of directors and secretaries, a notice in the prescribed form notifying the Registrar of the change.

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

Penalty: One thousand ringgit. Default penalty.

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

### **Offence against any provision of this Act committed by directors and secretaries**

**94A.** Where any offence against any provision of this Act has been committed by any domestic company made available by a trust company to act or be appointed as resident director or resident secretary of an offshore company, any person who at the time of the commission of the offence was a director or an officer of the trust company or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such trust company, or was assisting in such management, shall be guilty of that offence

unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and all the circumstances.

### DIVISION 3

#### MEETINGS AND PROCEEDINGS

##### **Meetings of members**

**95.** (1) Subject to any limitations in the memorandum or articles, the directors of an offshore company may convene meetings of the members of the company in such manner and at such times and places within or outside Labuan as the directors consider necessary or desirable.

(2) The directors of an offshore company, notwithstanding anything in the articles, shall, on the requisition of ten or more members, or members holding at the date of the deposit of the requisition not less than one-tenth of the total paid-up capital of the company, forthwith proceed to convene a meeting of members.

(3) Subject to any limitations in the memorandum or articles, a member shall be deemed to be present at a meeting of members if—

- (a) he participates by telephone or other electronic means; and
- (b) all members participating in the meeting are able to hear each other and recognize each other's voice, and for this purpose participation constitutes prima facie proof of recognition.

(4) A member may be represented at a meeting of members by a proxy who may speak and vote on his behalf.

(5) The following provisions apply in respect of joint ownership of shares:

- (a) if two or more persons hold shares jointly, each of them may be present in person or by proxy at a meeting of members and may speak as a member;

- (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c) if two or more of them are present in person or by proxy, they shall vote as one.

### **Notice of meetings of members**

**96.** (1) Subject to any requirement in the memorandum or articles to give longer notice, the directors shall give not less than seven days' notice of meetings of members to those persons whose names on the date the notice is given appear as members in the register of members referred to in section 105 and who are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), but subject to any limitations in the memorandum or articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a ninety per centum majority, or such lesser majority as may be specified in the memorandum or articles, of—

- (a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or
- (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

have waived notice of the meeting; and for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure of the directors to give notice of a meeting to a member, or the fact that a member has not received the notice, shall not invalidate the meeting.

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

**97.** (1) Except as otherwise provided in the articles of an offshore company, where an offshore company has more than one member, and two or more members are present at a meeting of members, the members present shall be a quorum, and at the meeting—

- (a) any member elected by those members may be chairman thereof; and

- (b) every member shall have one vote in respect of each share held by him.

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

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

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

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

(4) Where—

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

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

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

(6) Where—

- (a) a holding company is beneficially entitled to the whole of the issued shares of a subsidiary; or
- (b) an offshore company has only one member,

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

### **Voting by members**

**98.** (1) Except as otherwise provided in the memorandum or articles of an offshore company, all shares vote as one class and each share has one vote.

(2) The directors of an offshore company may fix the date notice is given of a meeting as the record date for determining the shares that are entitled to vote at the meeting.

### **Action by consent of members in writing**

**99.** Subject to any limitations in the memorandum or articles of an offshore company, an action that may be taken by members at a meeting of members may also be taken by a resolution of all members consented to in writing, or by telex, telegram, telefax, cable or other written electronic communication, without the need for any notice.

### **Power of Court to direct meetings to be called**

**100.** (1) If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act, the

Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and the Court may give such ancillary or consequential directions as it thinks expedient.

(2) Any meeting called, held and conducted in accordance with any direction made pursuant to this section shall, for all purposes, be deemed to be a meeting duly called, held and conducted.

### **Special resolution**

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

(2) Notwithstanding subsection (1), if it is so agreed by a majority in number of the members having the right to vote at the meeting, being a majority which together holds in aggregate not less than seventy-five per centum of the total votes of the members entitled to vote, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

### **Resolution requiring special notice**

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

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

**103.** (1) A printed copy of every resolution or agreement to which this section applies shall, within fourteen days after the passing or making thereof, be lodged by the offshore company with the Registrar.

(2) A copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles of an offshore company have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request on payment of such amount (if any), not exceeding the amount prescribed, as the company directs.

(4) This section shall apply to—

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of an offshore company, being resolutions which, if not so agreed to, would not have been effective or the purposes of the resolutions unless they had been passed as special resolutions;
- (c) resolutions or agreements which have been agreed to by all the members of the same class of shareholders, being resolutions which, if not so agreed to, would not have been effective for the purposes of the resolutions unless they had been passed by some particular majority or otherwise in some particular manner; and
- (d) all resolutions or agreements which effectively bind all the members of any class of shareholders whether agreed to by all members of that class or not.

(5) If an offshore company fails to comply with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: One thousand ringgit. Default penalty.

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

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

(7) For the purposes of subsections (5) and (6), a liquidator of an offshore company shall be deemed to be an officer of the company.

### **Minutes of proceedings**

**104.** (1) Every offshore company shall cause minutes of all proceedings of meetings of members and of meetings of directors to be entered in books kept for that purpose.

(2) Unless the Registrar otherwise directs, all minute books of an offshore company shall be kept at the registered office of the company but duplicates of the minute books or any of them may be kept elsewhere and shall be open for inspection by any member without charge.

## DIVISION 4

### REGISTER OF MEMBERS

#### **Register of members**

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

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

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

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

Penalty: Two thousand ringgit. Default penalty.

### **Where register to be kept**

**106.** (1) Unless the Registrar otherwise directs, the register of members of an offshore company shall be kept at the registered office of the company and shall be open for the inspection of any member without charge.

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

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

**107.** Where the register of members is kept at some place other than the registered office of an offshore company and, by reason of any default of the person in charge of such office, the company fails to comply with section 106 or with any other requirements of this Act as to the production of the register, that person shall be liable to the same penalties as if he were an officer of the company who was in default.

### **Power of Court to rectify register**

**108.** (1) If, in relation to an offshore company—

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

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

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

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

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

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

## DIVISION 5

### ANNUAL RETURN

#### **Annual return**

**109.** (1) An offshore company shall make an annual return containing the prescribed particulars and accompanied by such copies of documents as are required to be included in the return.

(2) The annual return shall be in accordance with the form prescribed for the purpose or as near thereto as circumstances permit and shall be made up to a date not earlier than fourteen days before the date of lodgement.

(3) The annual return signed by a director or secretary of the

company shall be lodged with the Registrar, once in each calendar year, not later than thirty days prior to the anniversary of the date of its incorporation.

(4) Subject to section 113A, the annual return lodged with the Registrar shall be accompanied by a certificate from an approved auditor stating that—

- (a) proper accounts of the company for the financial period ending on the date specified have been kept and a balance sheet and profit and loss account for that period have been prepared and audited by that auditor; and
- (b) the director giving the certificate under subsection (5) has been furnished with a copy of those accounts,

and the approved auditor shall retain for seven years a copy of the accounts to which his certificate relates.

(5) An annual return of an offshore company shall be accompanied by a certificate from a director stating that he has considered the audited accounts mentioned in subsection (4) or the company's unaudited accounts, as the case may be, and certifying, with or without qualifications—

- (a) that those accounts show that the company was solvent at the date to which they were made up;
- (b) that he is unaware of any circumstances which render those accounts untrue; and
- (c) that no circumstances have occurred since the date to which those accounts were made up which would render the company insolvent,

and if such a certificate cannot be given without qualification, the respects in which it is qualified shall be set out.

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

Penalty: Two thousand ringgit. Default penalty.

## PART VI

## ACCOUNTS AND AUDIT

## DIVISION 1

## ACCOUNTS

**Accounts to be kept**

**110.** (1) An offshore company shall cause to be kept proper accounting and other records as will sufficiently explain the transaction and financial position of the company.

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

(3) The accounting and other records of an offshore company shall be kept at the registered office of the company or at such other place in Labuan as the directors think fit and shall at all times be open to inspection by any director and shall be kept in such manner as to enable them to be conveniently and properly audited.

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

(5) Any director of an offshore company who fails to take all reasonable steps to secure compliance by the company with the requirements of this section and sections 112 and 113, or a resident director who has by his own wilful act been the cause of any default by the company under the said sections, shall be guilty of an offence against this Act.

**Audited accounts to be laid before meeting**

**111.** (1) The directors of an offshore company shall cause to be laid before the company at a meeting of members the audited accounts or unaudited accounts, as the case may be, of the company not more than nine months after the date to which the audited accounts or unaudited accounts are made up.

(2) A copy of the audited accounts laid at the meeting of members of the company shall be lodged with the Registrar within one month after it is so laid.

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

Penalty: Ten thousand ringgit. Default penalty.

### **Audited accounts to be sent to members**

**112.** A copy of every audited accounts or unaudited accounts, as the case may be, which are to be laid before an offshore company at a meeting of members accompanied by a copy of the auditor's report thereon (if applicable) shall, not less than seven days before the date of the meeting, be sent to all members of the company.

## DIVISION 2

### AUDIT

#### **Auditor to be appointed**

**113.** (1) The directors of an offshore company shall, within ninety days of its incorporation, appoint a person or persons to be the auditor or auditors of the company.

(2) An offshore company shall, whenever it appoints an auditor, lodge with the Registrar, within thirty days of the appointment, a notice thereof in the prescribed form accompanied by the auditor's written consent.

#### **Auditor not required in certain circumstances**

**113A.** An offshore company shall not be required to appoint an auditor so long as—

- (a) it is not a company licensed under the Offshore Banking Act 1990 or the Offshore Insurance Act 1990;
- (b) the company or an officer, director, agent or any person on behalf of the company does not—
  - (i) issue an invitation or distribute forms of application to the public or to any member of the public to subscribe for shares or debentures in the company;

or

- (ii) issue an invitation to the public or to any member of the public to deposit money with, or lend money to, the company; and
- (c) the members of the company so resolve at a meeting of members of the company that such an appointment need not be made in respect of each financial year.

### **Removal and resignation of auditors**

**114.** (1) An offshore company may, at a meeting of members of which special notice has been given to the auditor and the Registrar, but not otherwise, remove an auditor from office, but shall, at that meeting at which the auditor is removed or at a meeting of members held within one month thereafter, appoint an approved auditor to take the place of the auditor so removed.

(2) An auditor of an offshore company may, if he is not a sole auditor, resign at any time but a sole auditor of an offshore company may only resign at a meeting of members.

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

(4) An offshore company shall, within thirty days of any change in the auditor of the company, lodge with the Registrar a notice thereof in the prescribed form and such notice shall be accompanied by the new auditor's consent.

### **Remuneration of auditor**

**115.** The fees and expenses of an auditor of an offshore company, unless required by the auditor to be fixed by a resolution of the members of the company, may be fixed by the directors.

### **Auditor may attend meetings**

**116.** An auditor of an offshore company may attend and address all meetings of members of the company.

### **Rights and duties of auditors**

**117.** (1) Every auditor of an offshore company shall report to the members whether, in his opinion, the accounts of the company are properly drawn up so as to give a true and fair view of the company's affairs.

(2) Every auditor of an offshore company shall be entitled to be furnished with a copy of the memorandum and articles of the company and shall familiarise himself with the terms and conditions contained therein.

## **PART VII**

### **ARRANGEMENTS AND RECONSTRUCTIONS**

#### **Arrangements**

**118.** (1) In this section "arrangement" means—

- (a) a reorganization or reconstruction of an offshore company incorporated under this Act;
- (b) a merger or consolidation of one or more offshore companies with one or more other offshore companies, if the surviving company or the consolidated company is an offshore company;
- (c) a separation of two or more businesses carried on by an offshore company; or
- (d) any combination of any of the things specified in paragraphs (a) to (c).

(2) The directors of an offshore company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement.

(3) Upon approval of the plan of arrangement by the directors, the offshore company shall make an application to the Court for approval of the proposed arrangement.

(4) The Court may, upon an application made under subsection (3), make an interim or final order, and in making the order the Court may—

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;

- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations other securities in the company may dissent from the proposed arrangement and receive payment of the value of his shares, debt obligations or other securities;
- (d) conduct a hearing and permit any interested persons to appear; and
- (e) approve or reject the plan of arrangement as proposed or approve it with such amendments as it may direct.

(5) Where the Court makes an order approving a plan of arrangement, the directors of the offshore company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court, whether or not the Court has directed any amendments to be made thereto.

(6) The directors of the offshore company, upon confirming the plan of arrangement, shall—

- (a) give notice to the persons to whom the Court has required notice to be given; and
- (b) submit the plan of arrangement to those persons for approval if required by the order of the Court.

(7) After the plan of arrangement has been approved by those persons from whom approval is required by the order of the Court, the articles of arrangement shall be executed by the offshore company and shall contain—

- (a) the plan of arrangement;
- (b) the order of the Court approving the plan of arrangement; and
- (c) the manner in which the plan of arrangement was approved, if approval is required by the order of the Court.

(8) The articles of arrangement shall be lodged with the Registrar who shall retain and register them in the register.

(9) Upon registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.

(10) A certificate of arrangement issued by the Registrar under subsection (9) shall be prima facie evidence of compliance with all the requirements of this Act in respect of the arrangement.

(11) An arrangement shall be effective as from the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, which date shall not be more than thirty days from the date the articles of arrangement are registered with the Registrar, as is stated in the articles of arrangement.

### **Regulations in respect of takeovers and mergers**

**119.** The Minister may make regulations for the supervision and control of takeover and merger transactions.

## **PART VIII**

### **FOREIGN OFFSHORE COMPANIES**

#### **Interpretation**

**120.** (1) This Part applies to a foreign company only if it has a place of business or is carrying on business in Labuan and is not registered under the Companies Act 1965.

(2) In this Part the expression “carrying on business in Labuan” includes—

- (a) carrying on business in, from or through Labuan;
- (b) establishing or using a share transfer or share registration office in Labuan or administering, managing or otherwise dealing with property situated in Labuan as an agent, legal personal representative or trustee, whether by servants or agents or otherwise; and
- (c) in the case of a foreign offshore company which the Minister has by notice published in the Gazette specified for the purposes of this paragraph—
  - (i) permitting or suffering the company’s own shares to be, in Labuan, dealt with, issued, transferred or made the subject of options or agreements;
  - (ii) permitting or suffering to be made in Labuan transfers of, or dealings in respect of, or agreements or options to sell or purchase, securities, notes or rights issued by it to the public; or

- (iii) permitting or suffering to be made in Labuan transfers of, or dealings in respect of, or agreements or options to sell or purchase, securities, notes or rights, by reason of which transfers, dealings, agreements or options the public might acquire an interest in the company.

(3) Notwithstanding subsection (1), a foreign offshore company shall not be regarded as carrying on business in Labuan by reason only of the fact that in Labuan it—

- (a) is, or becomes, a party to any action or suit or any administrative or arbitration proceedings or any claim or dispute; or
- (b) conducts unsolicited isolated transactions that are completed within a period of thirty one days, not being one of a number of similar transactions repeated more than twice.

### **Registration of foreign offshore companies**

**121.** (1) A foreign company shall not have a place of business in Labuan or carry on business in Labuan unless it is registered as a foreign offshore company under this Part, and a foreign company which acts, and every officer thereof who permits the foreign company to act, in contravention of this subsection shall be guilty of an offence against this Act.

(2) Every foreign company shall, prior to establishing a place of business, or carrying on business, in Labuan, lodge with the Registrar for registration—

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin, or a document of similar effect;
- (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;
- (c) a list of its directors and officers containing similar particulars with respect to its directors as are required to be contained in the register of the directors and secretaries of an offshore company under section 94;

- (d) where the list referred to in paragraph (c) includes directors resident in Labuan who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign offshore company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name of a trust company that is authorized to accept on its behalf service of process and any notice required to be served on the company; and
- (f) a statutory declaration in the prescribed form made by an officer of the trust company,

and the Registrar may, on payment of the prescribed fees, and subject to this Act and any condition which he may impose, register the company under this Part as a foreign offshore company by registration of the documents.

(3) The Registrar shall issue a certificate in the prescribed form of every registration of a foreign offshore company and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

(4) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of paragraph(2)(e) is executed by a person on behalf of a foreign offshore company, a copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(5) A foreign offshore company shall pay an annual fee of such amount as may be prescribed not later than thirty days from each anniversary of the date of its registration.

### **Prohibition and restriction on foreign offshore company**

**122.** (1) A foreign offshore company shall not carry on in Labuan any business which an offshore company is prohibited to carry on.

(2) The Minister may, by notice published in the Gazette, order that any foreign offshore company be restricted from carrying on any specified business in Labuan and may, by notice published in the Gazette, impose conditions subject to which any specified business may be carried on by a foreign offshore company in Labuan.

### **Registered office of foreign offshore companies**

**123.** (1) Every foreign offshore company shall at all times have a registered office in Labuan, which office shall be the principal office of a trust company.

(2) Notice in the prescribed form of the situation of the registered office and any change thereof shall be lodged with the Registrar within one month after the date of registration of the foreign offshore company or the date of the change, as the case may be.

(3) If default is made in complying with this section the foreign offshore 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.

### **Return to be lodged where documents, etc., altered**

**124.** (1) Where any change or alteration is made in—

- (a) the charter, statute, memorandum or articles of a foreign offshore company, or other instrument relating to the company, lodged with the Registrar;
- (b) the directors of a foreign offshore company or in the name or address of any director;
- (c) the address of the registered office of a foreign offshore company in its place of incorporation or origin;
- (d) the name of a foreign offshore company;
- (e) the powers of any directors resident in Labuan who are members of the local board of directors of a foreign offshore company; or
- (f) the trust company or the name or address of the trust company referred to in paragraph 121(2)(e),

the foreign offshore company shall, within one month after the change or alteration, lodge with the Registrar particulars of the

change or alteration and such documents as the regulations may require.

(2) Upon receipt of the aforesaid particulars of the change or alteration, the Registrar shall, subject to this Act, register the change or alteration.

(3) On the lodging with the Registrar of particulars of any change or alteration of the name of a foreign offshore company referred to in paragraph (1)(d), the Registrar shall issue a certificate in the prescribed form under his hand and seal, and that certificate shall be prima facie evidence in all Courts as to the change or alteration of the name of the company.

(4) If a foreign offshore company increases or decreases its authorized share capital, it shall, within thirty days after such change, lodge with the Registrar notice of the amount from which hand to which it has been so changed.

(5) If a foreign offshore company not having a share capital increases the number of its members beyond the registered number, it shall, within thirty days after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

### **Service on foreign offshore companies**

**125.** Any process or document required to be served on a foreign offshore company shall be sufficiently served if addressed to the foreign offshore company and left at or sent by post to its registered office in Labuan, but—

- (a) where any such company makes default in filing with the Registrar the name and address of a registered office which is authorized to accept on behalf of the company service of process or notices;
- (b) if at any time the registered office so notified has ceased to exist; or
- (c) if for any other reason service of process or notice cannot be effected,

the document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Labuan, or, if no such place of business has been established, the document may be served on the company by registered post to any place of business of the company in the country of its incorporation.

**Cessation of business in Labuan**

**126.** If a foreign offshore company ceases to have a place of business or to carry on business in Labuan it shall, within one month after it so ceases, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged, its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall forthwith remove the name of the foreign offshore company from the register.

**Liquidation or dissolution of company in place of incorporation or origin**

**127.** (1) If a foreign offshore company goes into liquidation or is dissolved in its place of incorporation or origin—

- (a) the trust company shall, within one month after the commencement of the liquidation or dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, a notice of such appointment;
- (b) the Registrar shall, after receipt of the notice, forthwith appoint a liquidator and, until the winding up of its affairs in Labuan is completed, the foreign offshore company shall be deemed to continue to exist in Labuan; and
- (c) the Court shall be deemed to have ordered that it be wound up.

(2) The liquidator appointed by the Registrar shall get in all the assets of the foreign offshore company situate or recoverable in Labuan and shall, in so doing, have all the powers of a liquidator of an offshore company.

(3) Before paying or transferring to a foreign liquidator of a foreign offshore company in the place where it was formed or incorporated any of the assets got in within Labuan, the liquidator appointed by the Registrar shall—

- (a) pay to the Registrar all penalties, costs, fees and charges due and owing;
- (b) pay the amount of all taxes payable under the Labuan Offshore Business Activity Tax Act 1990 [Act 445];

and

- (c) pay to any person resident in Labuan to whom, at the time of the appointment of the liquidator in Labuan, any debt incurred bona fide by a foreign offshore company in respect of supply of services to or for the foreign offshore company is due, the amount of such debt,

and such penalties, costs, fees, charges, taxes and debts shall be a charge upon the assets of the foreign offshore company ranking after the costs of the liquidator appointed by the Registrar but in priority to all other charges and claims whatsoever.

(4) The provisions of Part X of the Companies Act 1965 relating to the striking-off from the register of the names of defunct companies shall apply mutatis mutandis to a foreign offshore company.

### **Names of foreign offshore companies**

**128.** (1) Except with the consent of the Minister, a foreign offshore company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or includes a name, of a kind that the Registrar is not otherwise willing to accept for registration.

(2) If a foreign offshore company is registered, either in error or otherwise, with a name with which it should not have been registered, the Registrar may, after giving thirty days' notice to the foreign offshore company requiring it to change its name, strike the company from the register upon default in complying.

(3) No foreign offshore company shall use, in Labuan or elsewhere, in respect of acts done or to be done in Labuan, any name other than that under which it is registered under this Part and every foreign offshore company and every officer of the company who knowingly authorizes or permits the default shall be guilty of an offence against this Act.

### **Returns by foreign offshore companies**

**129.** (1) A foreign offshore company shall make an annual return containing the prescribed particulars and accompanied by such copies of documents as are required to be included in the return, and shall lodge the return with the Registrar once in each calendar year not later than thirty days prior to the anniversary of the date of its registration.

- (2) The Minister may make regulations—
- (a) prescribing the registers and returns to be kept and made by a foreign offshore company and fixing the times within which the same must be kept and made; and
  - (b) prescribing the fees and charges to be paid for the lodging of any annual return.

### **Application of this Part to certain foreign companies registered under Companies Act 1965**

**130.** Notwithstanding any other provision in this Part, a foreign company registered under the Companies Act 1965 and licensed under the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, or the Insurance Act 1963, as the case may be, may be registered under this Part as a foreign offshore company, and upon its registration the provisions of this Part shall apply accordingly to the company.

## **PART VIIIA**

### **COMPANY MANAGEMENT**

#### **Interpretation**

**130A.** In this Part, unless the context otherwise requires—

“company management” means the provision of management services, administrative services, treasury processing services and such other services, and to such persons, as may be permitted by the Registrar;

“management company” means any offshore company incorporated or foreign offshore company registered under this Act for the purpose of undertaking or offering to undertake the business of company management.

#### **Register of management companies**

**130B.** (1) The Registrar may keep a register of all management companies licensed under this Part.

- (2) The register kept under subsection (1) shall show—
- (a) the information required under paragraph 130D(2)(c) with respect to each management company licensed under

this Part;

- (b) the date of grant of the licence; and
- (c) if such licence is revoked, the date of its revocation.

(3) The register shall be in such form as the Registrar may determine and may be open to public inspection during office hours on payment of such inspection fee as may be prescribed.

### **Licensing**

**130c.** No person shall carry on the business of company management in, from or through Labuan unless the person is licensed under this Part.

### **Application for licence**

**130d.** (1) No person, except an offshore company incorporated, or a foreign offshore company registered, under this Act, may apply to the Registrar for a licence to carry on the business of company management in, from or through Labuan.

(2) An application under subsection (1) shall be—

- (a) made in such manner as the Registrar may determine; and
- (b) accompanied by—
  - (i) such application fees as may be prescribed;
  - (ii) a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and
  - (iii) such other documents or information as the Registrar may reasonably require for the purpose of considering the application;
- (c) contain—
  - (i) the address of the applicant's place of business and its address for service in Labuan;
  - (ii) the name and address of a person resident in Labuan who is authorized to represent the applicant and to accept service on its behalf; and
  - (iii) the address of any place or of business that the applicant may have outside Labuan.

(3) If any information referred to in paragraph (2)(c) is altered at any time after its submission, the applicant, upon being granted a licence under this Part, shall give in writing to the Registrar particulars of the alteration within one month of the date of the grant of the licence or within one month after the alteration is made, whichever is the later.

### **Grant of licence**

**130E.** (1) The Registrar may in his discretion grant or refuse to grant a licence to any applicant.

(2) The Registrar shall not grant a licence unless he is satisfied that the applicant—

- (a) is of sufficient good repute to be engaged in the business of company management;
- (b) has or has available to it adequate knowledge, expertise, resources and facilities necessary for the proper management or administration of its business;
- (c) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; and
- (d) will be in a position to comply with any conditions imposed by the Registrar.

(3) Notwithstanding subsection (2) the Registrar shall reject an application if he determines that it is not in the public interest that a licence should be granted.

(4) A licence may be granted subject to such terms, conditions, restrictions or limitations as the Registrar deems fit to specify therein.

(5) A licence shall—

- (a) be in such form as may be prescribed;
- (b) be admitted in all courts as prima facie evidence of the facts stated therein; and
- (c) remain in force until it is revoked.

### **Power to grant exemptions**

**130F.** (1) The Registrar may, if he is satisfied that to do so would

not be prejudicial to public interest, direct that all or any of the provisions of this Part shall—

- (a) not apply; or
- (b) apply subject to such modifications as he may specify in the direction,

to a management company.

(2) A direction under this section may be revoked at any time at the discretion of the Registrar.

### **Licensing procedure**

**130g.** (1) Where the Registrar grants a licence to an applicant he shall—

- (a) enter the particulars of the applicant in the register maintained by him; and
- (b) issue a licence to the applicant on payment of such licence fee as may be prescribed.

(2) Every licence issued under this Part shall bear the date on which the licence is granted.

### **Annual fees**

**130h.** (1) A management company to whom a licence under this Part is granted shall pay, not later than thirty days from each anniversary of the date of grant of the licence such annual fees as may be prescribed.

(2) Any annual fee not paid within the period specified in subsection (1) may be recovered by the Registrar by civil proceedings as a debt due to the Registrar and the Registrar may require and the Court may order the payment of a penalty in an amount equal to the amount of the fee for late payment of the fee.

### **Revocation of licences**

**130i.** (1) The Registrar may revoke a licence—

- (a) at the request of the holder; or
- (b) where the holder—
  - (i) has ceased to carry on business in, from or through

Labuan;

- (ii) has contravened any provisions of this Part or any terms, conditions, restrictions or limitations specified in the licence; or
- (iii) has been convicted of an offence under this Act or of a criminal offence in any country or jurisdiction.

(2) The Registrar may publish in the Gazette, in such form as he thinks fit, notice of every revocation of a licence under this Part.

### **Access to information and records**

**130j.** For the purpose of discharging his duties under this Part, the Registrar may, at all reasonable times, in writing direct any officer of a management company to whom this Part applies—

- (a) to furnish information; or
- (b) to provide access to any records, books or other documents,

relating to the business of that management company being carried on under this Part which, in the opinion of the Registrar, are necessary to enable him to ascertain whether the company is complying with the provisions of this Part.

### **Immunity of and actions by the Registrar**

**130k.** (1) No liability shall be incurred by and no suit, action or proceeding shall be brought against the Registrar for any act done or omitted to be done in good faith—

- (a) in the performance or intended performance of any function or duty; or
- (b) in the exercise or intended exercise of any power,

under this Part.

(2) The Registrar may bring actions and institute proceedings for the enforcement of any provision of this Part or for the recovery of fees or other sums of money payable under this Part.

### **Offences and penalties**

**130l.** A person who—

- (a) wilfully makes any misrepresentation in any document

required to be filed, furnished or delivered under this Part;

- (b) wilfully makes any statement or gives any information required for the purposes of this Part that he knows to be false or misleading;
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Part; or
- (d) being in charge of or having possession of or control over any information, records, books or other documents referred to in section 165 refuses or wilfully neglects to comply with any lawful direction given under that section,

shall be guilty of an offence against this Act.

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

### **Transitional**

**130M.** Any offshore company or foreign offshore company which at the date of coming into force of this Part is carrying on any business or engaged in company management in, from or through Labuan shall within three months or such longer period as may be permitted by the Registrar from such date of coming into force, comply with the provisions of this Part.

## **PART IX**

### **MISCELLANEOUS**

#### **Receivership and winding up**

**131.** (1) The provisions of Part VIII and Part X (in so far as they relate to a company limited by shares) of the Companies Act 1965 shall apply to the receivership and winding up of an offshore company, subject to such modifications and adaptations as may be necessary, and in particular references to a “company” shall be taken as references to an offshore company.

(2) The Companies (Winding Up) Rules 1972 [P.U. (A) 289/1972] shall also apply to the winding up of an offshore company, subject to such modifications and adaptations as may be necessary, and in particular references to a ‘company’ shall be taken as references to an offshore company.

**Service of documents on companies**

**132.** Any document may be served on an offshore company or a foreign offshore company by leaving it at, or sending it by post to, the registered office of the company.

**Transfer from Labuan**

**133.** (1) An offshore company may, upon obtaining the approval of the Registrar and within two months from the date on which the approval is obtained, apply to the proper officer of another country or of a jurisdiction within such a country, by the laws of which such transfer is authorized, for an instrument transferring a company as if it had been incorporated under the laws of that other country or jurisdiction, and on the date of the instrument of transfer, the company shall, subject to the provisions of this section, become a company under the laws of that country or jurisdiction and be domiciled therein.

(2) An offshore company shall not apply to the Registrar for approval under subsection (1) unless—

(a) the application is authorized—

(i) where the company has a share capital, by the holders of not less than three-fourths of the shares of each class;

(ii) by the holders of not less than three-fourths of the company's debentures (if any) of each class; and

(iii) by all the directors of the company; and

(b) the company, not less than thirty days before applying to the Registrar for such approval, has published a notice in a newspaper circulating generally in Labuan of its intention to make the application,

and an application shall not be accepted unless it is accompanied with an affidavit sworn by a director of the company in which are set out—

(c) the names and addresses of its creditors and the total amount of its indebtedness to creditors; and

(d) a statement to the effect that the proposed transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the company's members, debenture holders or creditors.

(3) The Registrar shall not give his approval to an offshore company applying for transfer to another country or jurisdiction unless he is satisfied that—

- (a) the requirements of subsection (2) have been complied with; and
- (b) the company has complied with any provision of this Act which it should have complied with,

and he may grant his approval on such conditions as he thinks necessary to safeguard the rights and proper interests of any member, debenture holder or creditor of the company or any class of such members, debenture holders or creditors and upon the company taking such steps as he considers necessary to remedy any failure to comply with any provision of this Act.

(4) Upon an instrument transferring the company to another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the company shall forthwith notify the Registrar the details and the company shall be deemed to have ceased to be a company incorporated in Labuan from the date of its transfer to that other country or jurisdiction takes effect and the Registrar shall remove its name from the register:

Provided that nothing in this subsection shall take away or affect the jurisdiction of any Court (whether the High Court or otherwise) to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company incorporated in Labuan.

(5) Where an offshore company notifies the Registrar under subsection (4) that an instrument transferring the company to another country or jurisdiction has been executed by the proper officer of that other country or jurisdiction and that notification is false, then, notwithstanding that the Registrar has removed the name of the company from the register in pursuance of that subsection—

- (a) the liability (if any) of any officer or member of the company shall continue and may be enforced as if the company were still registered under this Act; and
- (b) the company shall be liable to be wound up pursuant to the provisions of this Act as if it were still registered under this Act.

### **Costs of proceedings before the Court**

**134.** In respect of any proceedings before the Court under this Act, the Court may, at its own discretion, direct that the costs of one party be paid in such amount and by such other party as it thinks just.

### **Security for costs**

**135.** Where an offshore company is a plaintiff in any Court action or other legal proceedings, the Court may, at any time, require sufficient security to be given for costs and stay all proceedings until the security is given.

### **Disposal of shares of shareholder whose whereabouts are unknown**

**136.** (1) Where after exercising reasonable diligence an offshore company is unable to discover the whereabouts of a registered shareholder for a period of not less than ten years, the company may cause a notice to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the shares, after the expiration of one month from the date of the notice, will be liable to be forfeited to the Registrar.

(2) If after the expiration of one month from the date of a notice under subsection (1) the whereabouts of a shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Registrar and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Registrar; and the person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such moneys in respect of the shares.

### **Power to grant relief**

**137.** (1) In any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, if it appears to the Court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with

his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court shall have the same power to relieve him under this section as it would have had if it had been a Court before which proceedings against him for the negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are—

- (a) officers of an offshore company;
- (b) persons employed by an offshore company as auditors, whether or not they are officers of the company;
- (c) experts within the meaning of this Act; and
- (d) all persons, including receivers and managers or liquidators, who are appointed or directed by the Court or the Registrar to carry out any duty under this Act in relation to an offshore company.

### **Irregularities in proceedings**

**138.** (1) No proceedings under this Act shall be invalidated by any omission, defect, error, irregularity or deficiency of notice or time unless the Court is of the opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court and the Court may, if it thinks fit, make an order or direction declaring that such proceedings are valid notwithstanding any such omission, defect, error, irregularity or deficiency.

(2) Without affecting the generality of subsection (1) or of any other provisions of this Act, where any omission, defect, error, irregularity or deficiency, including the absence of a quorum at any meeting of the offshore company, has occurred in the management or administration of an offshore company whereby any breach of the provisions of this Act has occurred, or whereby there has been default in the observance of the memorandum or articles of the company or whereby any proceedings at or in connection with any meeting or purported meeting have been rendered ineffective, including the failure to make or lodge any declaration of solvency, the Court—

- (a) may, either of its own motion or on an application lodged by any interested person, make such order or direction as it thinks fit to rectify or cause to be rectified or to negative or modify or cause to be negated or modified the consequences in law of any such omission, defect, error, irregularity or deficiency, or to validate any act, matter or thing rendered invalid by or as a result of any such omission, defect, error, irregularity or deficiency;
  - (b) shall, before making any such order or direction, satisfy itself that such an order or direction would not do injustice to the company or to any member or creditor thereof, or any other person;
  - (c) where any such order or direction is made, may give such ancillary or consequential directions as it thinks fit; and
  - (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order or direction and whether it should be advertised in any newspaper.
- (3) For the purposes of subsection (2), “meeting”, in relation to an offshore company, includes—
- (a) a meeting of the company;
  - (b) a meeting of any class of members of the company;
  - (c) a meeting of the debenture holders or any class of debenture holders of the company;
  - (d) a meeting of the directors of the company or of any committee of the directors; and
  - (e) a meeting of the creditors or any class of the creditors of the company.
- (4) The Court, whether the company is in the process of being wound up or not, may extend or shorten any time for doing any act or taking any proceedings allowed or limited by this Act or the regulations on such terms, if any, as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the time originally allowed or limited.

### **Translation of instruments**

**139.** (1) Where under this Act an offshore company or a foreign

offshore company or a foreign company is required to lodge with the Registrar an instrument, certificate, contract or document or a certified copy thereof and the same is not written in the national language or in the English language, the company shall lodge at the same time with the Registrar a certified translation thereof in the national language or in the English language.

(2) Where under this Act an offshore company or a foreign offshore company is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the national language or in the English language, the company shall keep at its registered office in Labuan a certified translation thereof in the national language or in the English language.

(3) Where any accounts, minute books or other records of an offshore company or a foreign offshore company required to be kept by this Act are not kept in the national language or in the English language, the directors of the company shall cause a true translation in the national language or in the English language of such accounts, minute books and other records to be made from time to time at intervals of not more than seven days and shall cause such translations to be kept with the original accounts, minute books and other records for so long as the original accounts, minute books and other records are required to be kept by this Act.

### **Dividends payable from profits only**

**140.** No dividend shall be payable to any shareholder of any offshore company except out of profits.

### **Use of word “Corporation”, etc.**

**141.** Every person who carries on business in Labuan under any name or title which incorporates the word or words “Berhad”, “Corporation”, “Incorporated”, “Limited”, “Societe Anonyme”, “Sociedad Anonima”, “Aktiengesellschaft”, “Naamloze Vennootschap” or “Perseroan Terbatas” or any other word or words in the national language of any country which connotes a joint stock company limited by shares, or any abbreviation of those words, unless it is an offshore company or foreign offshore company duly created, incorporated or registered under this Act, or a domestic company or incorporated body, shall be guilty of an offence against this Act.

### **General penalty**

**142.** (1) A person who—

- (a) does that which by or under this Act he is forbidden to do;
- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a penalty not exceeding five thousand ringgit.

(3) The penalty or punishment, pecuniary or otherwise, set out in, or at the foot of, any section or part of a section of this Act, shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out, and where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

### **Default penalties**

**143.** (1) Where in, or at the foot of, any section or part of a section of this Act there appears the expression “Default penalty”, it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty or, if an amount is not so expressed, of not more than two hundred ringgit.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

(3) For the purposes of any provision of this Act which provides that an officer of an offshore company, a foreign offshore company or a guarantor company who is in default is guilty of an offence against this Act or is liable to a penalty or punishment, the expression “officer who is in default” or any like phrase means any officer of the company who knowingly and wilfully—

- (a) is guilty of the offence; or
- (b) authorizes or permits the commission of the offence.

### **Compounding of offences**

**144.** (1) The Registrar may, in a case where he deems it fit to do so, compound any offence committed by any person under this Act, by making a written offer to such person to compound the offence by paying to the Registrar within such time as may be specified in the offer such sum of money as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Registrar may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

### **Procedure where none laid down**

**145.** In the event that any act or step is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down either in this Act or the regulations, application may be made to the Registrar for directions as to the manner in which the same may be done or taken, and any act or step done or taken in accordance with his directions shall be a valid performance of such act or step.

### **Regulations**

**146.** The Minister may from time to time make regulations prescribing all matters and things required or authorized by this Act to be prescribed or provided, or which are necessary or convenient to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act and for its due administration, including all or any of the following particular purposes:

- (a) prescribing forms to be used for the purposes of this Act and the matters to be specified in such forms;
- (b) prescribing forms of applications and other notices under this Act;
- (c) fixing the fees and charges to be paid under this Act and the penalties for late payment, or delegating the power of fixing such fees, charges and penalties to prescribed persons or bodies; and
- (d) prescribing the manner in which accounting and other records required to be made or kept under this Act are to be made or kept, and the declarations, reports, annexures, schedules or details which are to accompany or to be attached to such accounts or other records.

### **Investment in domestic company**

**147.** (1) An offshore company or a foreign offshore company may hold shares, debt obligations or other securities in a domestic company except a trust company so long as such holding does not amount to a controlling interest in the domestic company and is approved by the Registrar.

(2) Notwithstanding subsection (1), where a resident holds shares, debt obligations or other securities in an offshore company, that offshore company may not hold shares, debt obligations or other securities in a domestic company.

(3) For the purposes of this section—

“controlling interest” in relation to a domestic company listed on the Kuala Lumpur Stock Exchange means—

- (a) an offshore company or a foreign offshore company which controls—
  - (i) the composition of the board of directors of the domestic company; or
  - (ii) more than half of the voting power of the domestic company; or

- (b) an offshore company or a foreign offshore company which holds more than half of the issued share capital of the domestic company (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) where the domestic company is a subsidiary of any corporation which is the subsidiary of the offshore company or foreign offshore company, that offshore company or foreign offshore company;

“securities” has the same meaning as is assigned thereto by section 2 of the Securities Industry Act 1983 [Act 280].

(4) For the purposes of paragraphs (3)(a) and (b), the composition of the domestic company’s board of directors shall be deemed to be controlled by an offshore company or a foreign offshore company if that offshore company or foreign offshore company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors; and for the purposes of this provision that offshore company or foreign offshore company shall be deemed to have power to make an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that offshore company or foreign offshore company of such a power; or
- (b) a person’s appointment as a director follows necessarily from his being a director or other officer of the offshore company or foreign offshore company.

### **Prohibition by Minister**

**148.** (1) The Minister may, without assigning reasons therefor, issue, by notification in the Gazette, a Minister direction—

- (a) prohibiting the initial incorporation of any offshore company or class of companies;
- (b) prohibiting the initial registration of a foreign offshore company; or
- (c) directing any offshore company or foreign offshore company to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.

(2) A direction made under this section may be revoked or varied by the Minister.

**Secrecy**

**149.** (1) All proceedings (other than criminal proceedings) relating to any offshore company or foreign offshore company commenced in any Court, either under the provisions of this Act or for the purpose solely of determining the rights or obligations of officers, members or holders of debentures, and any appeal therefrom, shall, unless the Court otherwise orders, be heard in camera and no details of the proceedings shall be published by any person without leave of the Court.

(2) Where—

- (a) in any proceedings for the winding up of an offshore company the Court is satisfied that the company or any officer thereof has failed to comply with any provisions of this Act; or
- (b) an offshore company or any officer thereof is convicted by the Court of any offence under this Act,

the Court may, if it thinks fit, order that the records, books and registers of that company and the entries in the Registrar's registers and records relating to that company be opened to the public for inspection.

(3) A person who, with respect to any offshore company or foreign offshore company, otherwise than for the purpose of the administration of this Act or the carrying on of the business of the company, in Labuan or elsewhere—

- (a) divulges;
- (b) attempts, offers or threatens to divulge; and
- (c) induces or attempts to induce other persons to divulge,

any information concerning or touching upon—

- (d) the shareholding in, or beneficial ownership of, any share or shares in such company;
- (e) the management of such company; and
- (f) any of the business, financial or other affairs or transactions of the company,

shall be guilty of an offence against this Act.

(4) Nothing in this section shall prevent any Court from exercising its discretion to require any person to produce any document or to give any evidence in any proceedings before the

Court which is relevant to those proceedings.

### **Power of exemption**

**150.** The Minister may, on the recommendation of the Registrar, on an application in writing, exempt any offshore company or foreign offshore company or any person or class of persons or class of offshore companies or foreign offshore companies from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

### **Fees, penalties and striking off**

**151.** (1) An offshore company shall pay to the Registrar the annual fee due on the annual fee payment date.

(2) If an offshore company fails to pay the annual fee referred to in subsection (1) on or before the expiration of a period of six months from the annual fee payment date then there shall be payable in addition to the annual fee an amount equivalent to fifty per cent of the annual fee.

(3) If an offshore company fails to pay the annual fee and the additional amount specified in subsection (2) on or before the expiration of a period of one month from the date of expiration of the period of six months specified in subsection (2), the Registrar may after the expiration of the period of one month send to the company secretary of the offshore company a written notice that the name of the offshore company shall be struck off the register if the annual fee and the amount specified in subsection (2) are not paid within one month from the date of the notice or such extended period as may be allowed by the Registrar.

(4) If the offshore company fails to pay the annual fee and the additional amount specified in subsection (2) within one month from the date of the notice or the extended period as may be allowed by the Registrar under subsection (3), the Registrar may strike the name of the offshore company off the register.

(5) Notwithstanding that the name of an offshore company has been struck off the register under this section, the offshore company shall remain liable for all claims, debts, liabilities and obligations of the offshore company, and the striking off shall not affect the liability of any of its members, directors, officers or agents under this Act or any other law.

(6) The striking off of the name of an offshore company from the register under this section shall not be affected by any failure on the part of the Registrar to serve a notice on the company secretary or to publish a notice in the Gazette.

(7) Subsections (2) to (5) do not apply to an offshore company in the process of being wound up and dissolved.

### **Company struck off liable for fees, etc.**

**151A.** An offshore company incorporated under this Act shall continue to be liable for all fees, licence fees and penalties payable under this Act, including the additional amount specified in subsection 151(2), notwithstanding that the name of the offshore company has been struck off the register; and such fees, licence fees and penalties shall have priority over all other claims against the assets of the offshore company.

### **Fees payable to Registrar**

**151B.** The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

### **Effect of striking off**

**151C.** (1) Where the name of an offshore company has been struck off the register, the offshore company, and the directors, members, liquidators and receivers thereof, shall not—

- (a) commence any legal proceedings, carry on any business or in any way deal with the assets of the offshore company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the offshore company; or
- (c) act in any way with respect to the affairs of the offshore company.

(2) Notwithstanding subsection (1), where the name of the offshore company has been struck off the register, the offshore company, or a director, member, liquidator or receiver thereof, may—

- (a) apply to the Registrar for the offshore company to be registered afresh;
  - (b) continue to defend proceedings that were commenced against the offshore company prior to the date of the striking off; and
  - (c) continue to carry on legal proceedings that were instituted on behalf of the offshore company prior to the date of striking off.
- (3) The fact that the name of an offshore company has been struck off the register does not prevent—
- (a) the offshore company from incurring liabilities;
  - (b) any creditor from making a claim against the offshore company and pursuing the claim through to judgment or execution; or
  - (c) the appointment by the Court of an official liquidator for the offshore company under Part VIII and Part X (in so far as they relate to an offshore company limited by shares) of the Companies Act 1965.

### **Non-application of specified written laws**

**152.** (1) The Yang di-Pertuan Agong may, by order published in the Gazette, provide that any written law, or part thereof, specified in the order, shall not apply in relation to an offshore company, a foreign offshore company, a trust company, or a person who holds a valid licence granted under either subsection 6(2) of the Offshore Banking Act 1990 or subsection 9(1) of the Offshore Insurance Act 1990, or shall apply thereto with such modifications as may be set out in the order.

(2) The modifications made to a written law by an order made under subsection (1) shall be deemed to be an integral part of such written law for the purposes of the order.

(3) An order under subsection (1) may be made to have retrospective effect from such date as may be specified in the order.

(4) In this section “modification” includes amendment, adaptation, alteration, variation, addition, deletion, substitution, or exclusion.

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## SCHEDULE

## [Section 19]

## Powers of an Offshore Company

1. To carry on any business, other than a business which is prohibited by this Act or the regulations from being carried on, which may seem to the company capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.
2. To enter into or be a party to any transaction or document.
3. To acquire, hold, dispose of or deal with any information or rights or property of any kind.
4. To acquire, hold, dispose of or deal with the whole or any part of the undertaking of any other company, association or business.
5. To dispose of or otherwise deal with the whole or any part of its undertaking or business.
6. To assume any duties, obligations or liabilities.
7. To acquire any rights or interests.
8. To provide or procure provision of any services.
9. To lend and borrow.
10. To procure its registration or recognition in any place outside Labuan.
11. To create and extinguish liabilities and rights and interests.
12. To issue shares, debentures and options, and to take shares, debentures and options and to redeem and forfeit the same.
13. To employ or retain persons in and about its business or the business of any other company or person.
14. To give indemnities and guarantees and obtain indemnities and guarantees.
15. To take out insurance of all kinds whether over the property or rights of the company or not.
16. To promote any other company.
17. To make gifts, donations and wages which may lawfully be made, whether the same may, or may not, be for the purpose of advancing its business.

- 18.** By way of settlement or other dealing or disposition, to give the right to a person not a member of the company to share in the whole or any part of its gains or profits to the exclusion of its members, provided that in exercising such power no distribution of gains or profits shall be made pursuant to such settlement, disposition or other dealing which would exceed the amount properly distributable as a dividend or properly capable of being returned as capital surplus were such distribution a distribution to some or to all of the members of the company.
  - 19.** To do any of the things which it may do in association with any other person and as principal or agents or as trustee or for its own benefit.
  - 20.** To promote any other business.
  - 21.** To do all such things as are incidental or conducive to the exercise of the powers of the Company.
  - 22.** To do all other things which are not prohibited by or under this Act or the regulations or otherwise by any written law of Malaysia.
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**LAWS OF MALAYSIA****Act 441****OFFSHORE COMPANIES ACT 1990**

## LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A817	Offshore Companies (Amendment) Act 1992	21-02-1992
P.U. (A) 72/1996	Labuan Offshore Financial Services Authority (Modification of Offshore Companies Act 1990, Labuan Trust Companies Act 1990, Offshore Banking Act 1990 and Offshore Insurance Act 1990) Order 1996	15-02-1996
Act A988	Offshore Companies (Amendment) Act 1997	20-03-1997
Act A1090	Offshore Companies (Amendment) Act 2000	21-09-2000

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**LAWS OF MALAYSIA**  
**Act 441**  
**OFFSHORE COMPANIES ACT 1990**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	P.U. (A) 72/1996 Act A988	15-02-1996 20-03-1997
6	Act A817 Act A988	21-02-1992 20-03-1997
7	Act A988	20-03-1997
9	Act A1090 Act A988	21-09-2000 20-03-1997
9A-9c	Act A1090	21-09-2000
21	Act A988	20-03-1997
29	Act A817 Act A988	21-02-1992 20-03-1997
31	Act A817	21-02-1992
51	Act A988	20-03-1997
55	Act A988	20-03-1997
83	Act A988	20-03-1997
84	Act A988	20-03-1997
85	Act A988	20-03-1997
86	Act A988	20-03-1997
87	Act A988 Act A817	20-03-1997 21-02-1992
93	Act A988	20-03-1997
94	Act A988	20-03-1997

Section	Amending authority	In force from
94A	Act A988	20-03-1997
106	Act A988	20-03-1997
109	Act A817	21-02-1992
111	Act A817	21-02-1992
112	Act A817	21-02-1992
113A	Act A817	21-02-1992
121	Act A988	20-03-1997
126	Act A988	20-03-1997
Part VIII A	Act A988	20-03-1997
141	Act A988	20-03-1997
147	Act A988	20-03-1997
150	Act A988 Act A817	20-03-1997 21-02-1992
151	Act A817 Act A988	21-02-1992 20-03-1997
151A	Act A988	20-03-1997
152	Act A817	21-02-1992

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