

(2) Notwithstanding subsection (1) the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and the rules the provisions of Subdivision (3) of Division 2 relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section.

### **Property and proceedings**

**263.** (1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up shall be void.

(2) After the commencement of the winding up no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

#### *Subdivision (4)—Provisions applicable to every Voluntary Winding Up*

### **Distribution of property of company**

**264.** Subject to the provisions of this Act as to preferential payments the property of a company shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities, and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

### **Appointment of liquidator**

**265.** If from any cause there is no liquidator acting, the Court may appoint a liquidator.

**Removal of liquidator**

**266.** The Court may, on cause shown, remove a liquidator and appoint another liquidator.

**Review of liquidator's remuneration**

**267.** (1) Any member or creditor or the liquidator may, at any time before the dissolution of the company, apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court shall be final and conclusive.

(2) Notwithstanding subsection 232(3), in the case of a company which is an insurer, no person, other than Bank Negara Malaysia, may apply to the Court to review the remuneration of the liquidator and the Court shall determine the remuneration of the liquidator on the recommendation of Bank Negara Malaysia.

**Act of liquidator valid, etc.**

**268.** (1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, be valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to such person.

(4) For the purposes of this section a disposition of property shall be taken as including a payment of money.

**Powers and duties of liquidator**

**269.** (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the approval of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given by paragraphs 236(1) (b), (c), (d) and (e) to a liquidator in a winding up by the Court;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls; or
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than two.

**Power of liquidator to accept shares, etc., as consideration for sale of property of company**

**270.** (1) Where it is proposed that the whole or part of the business or property of a company (in this section called the "company") be transferred or sold to another corporation (in this section called the "corporation"), the liquidator of the company, may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part

compensation for the transfer or sale shares, debentures, policies or other like interests in the corporation for distribution among the members of the company, or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation, and any such transfer sale or arrangement shall be binding on the members of the company.

(2) If any member of the company expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the liquidator within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section the Arbitration Act 1952 [*Act 93*], shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators; and the Court may give any directions necessary for the initiation and conduct of the arbitration and any such directions shall be binding on the parties.

(6) In the case of a creditors' voluntary winding up the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

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*\*NOTE*—The Arbitration Act 1952 [*Act 93*] has been repealed by the Arbitration Act 2005 [*Act 646*] with effect from 01-03-2006.

**Annual meeting of members and creditors**

**271.** (1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company in the case of a members' voluntary winding up, and of the company and the creditors in the case of a creditors' voluntary winding up, at the end of the first year from the commencement of the winding up and of each succeeding year or not more than three months thereafter, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3) Every liquidator who fails to comply with this section shall be guilty of an offence against this Act.

Penalty: \*Two thousand ringgit. Default penalty.

**Final meeting and dissolution**

**272.** (1) As soon as the affairs of the company are fully wound up the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company, or in the case of a creditor's voluntary winding up a meeting of the company and the creditors, for the purpose of laying before it the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement published in a newspaper circulating generally throughout Malaysia, which advertisement shall specify the time, place and object of the meeting and shall be published one month at least before the meeting.

(3) The liquidator shall, within seven days after the meeting, lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return, and if the return or copy of the account is not so lodged the liquidator shall be guilty of an offence against this Act.

Penalty: †One thousand ringgit. Default penalty.

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

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

(4) The quorum at a meeting of the company shall be two and at a meeting of the company and the creditors shall be two members and two creditors and if a quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3) lodge a return (with account attached) that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being lodged the provisions of subsection (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of three months after the lodging of the return with the Registrar and with the Official Receiver the company shall be dissolved.

(6) Notwithstanding subsection (5) the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made shall, within fourteen days after the making of the order, lodge with the Registrar and with the Official Receiver an office copy of the order, and if he fails so to do he shall be guilty of an offence against this Act.

Penalty: \*One thousand ringgit. Default penalty.

(8) If the liquidator fails to call a meeting as required by this section he shall be guilty of an offence against this Act.

Penalty: †Two thousand ringgit. Default penalty.

### **Arrangement when binding on creditors**

**273.** (1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in value and one-half in number of the creditors, every creditor for under fifty ringgit being reckoned in value only.

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

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

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the company, the liquidator, or the creditor.

(4) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon as it thinks just amend, vary or confirm the arrangement.

### **Application to Court to have questions determined or powers exercised**

**274.** (1) The liquidator or any contributory or creditor may apply to the Court—

(a) to determine any question arising in the winding up of a company; or

(b) to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

### **Costs**

**275.** All proper costs, charges and expenses of and incidental to the winding up including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

**Limitation on right to wind up voluntarily**

**276.** Where a petition has been presented to the Court to wind up a company on the ground that it is unable to pay its debts the company shall not without the leave of the Court resolve that it be wound up voluntarily.

## DIVISION 4

PROVISIONS APPLICABLE TO EVERY MODE OF  
WINDING UP*Subdivision (1)—General***Books to be kept by liquidator**

**277.** (1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect them.

**Control of Court over liquidators**

(2) The Court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

(4) The Court may at any time require any liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

### **Delivery of property to liquidator**

(5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the company is *prima facie* entitled.

### **Powers of Official Receiver where no committee of inspection**

**278.** (1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorized or required to be done or given by the Committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by the Committee.

### **Appeal against decision of liquidator**

**279.** Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

### **Notice of appointment and address of liquidator or provisional liquidator**

**280.** (1) A liquidator or provisional liquidator shall, within fourteen days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his appointment and of the situation of his office and in the event of any change in the situation of his office shall, within fourteen days after the change, lodge with the Registrar and with the Official Receiver notice in the prescribed form of the change.

(2) Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator or provisional liquidator given in any such notice lodged with the

Registrar shall be deemed to be good service upon the liquidator or provisional liquidator and upon the company.

(3) A liquidator or provisional liquidator shall, within fourteen days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in the prescribed form.

(4) If a liquidator or provisional liquidator fails to comply with this section he shall be guilty of an offence against this Act.

Penalty: \*One thousand ringgit. Default penalty.

### **Liquidator's accounts**

**281.** (1) Every liquidator shall, within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and in any case within one month after he ceases to act as liquidator and forthwith after obtaining an order of release, lodge with the Registrar and the Official Receiver, and in the case of a company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, Bank Negara Malaysia, in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding up.

Penalty: \*One thousand ringgit. Default penalty.

(2) The Official Receiver may cause the account of any liquidation to be audited by an approved company auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(4) The liquidator shall—

- (a) give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend; and

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

(b) in the notice inform creditors and contributories at what address and between what hours the account may be inspected.

(5) The costs of an audit under this section shall be fixed by the Official Receiver and be part of the expenses of winding up.

### **Liquidator to make good defaults**

**282.** (1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law required to lodge, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in subsection (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default.

### **Notification that a company is in liquidation**

**283.** (1) Where a company is being wound up every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words “in liquidation” added after the name of the company where it first appears therein.

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

Penalty: \*Five hundred ringgit.

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

### Books of company

**284.** (1) Where a company is being wound up all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

(2) When a company has been wound up the liquidator shall retain the books and papers referred to in subsection (1) for a period of five years from the date of dissolution of the company and at the expiration of that period may destroy them.

Penalty: \*Two thousand ringgit.

(3) Notwithstanding subsection (2), when a company has been wound up the books and papers referred to in subsection (1) may be destroyed within a period of five years after the dissolution of the company—

- (a) in the case of a winding up by the Court, in accordance with the directions of the Court;
- (b) in the case of a members' voluntary winding up, as the company by resolution directs; and
- (c) in the case of a creditors' voluntary winding up, as the committee of inspection, or, if there is no such committee, as the creditors of the company direct.

(4) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if the book or paper has been destroyed in accordance with this section.

### Investment of surplus funds on general account

**285.** (1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless

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

the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities issued by the Government of Malaysia or of any State of Malaysia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realization of such part of the said securities as is necessary.

### **Unclaimed assets to be paid to receiver of revenue**

**286.** (1) Where a liquidator has in his hands or under his control—

- (a) any unclaimed dividend or other moneys which have remained unclaimed for more than six months from the date when the dividend or other moneys became payable; or
- (b) after making final distribution, any unclaimed or undistributed moneys arising from the property of the company,

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) The interest arising from the investment of the moneys standing to the credit of the Companies Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section the Court may exercise all the powers conferred by this Act with respect to the discovery and realization of the property of the company and the provisions of this Act with respect thereto shall, with such adaptations as are prescribed, apply to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the Official Receiver upon being satisfied that the claimant is the owner of the money shall authorize payment thereof to be made to him out of the Account or, if it has been paid into the Consolidated Fund, may authorize payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of subsection (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Account of the Fund, but may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the Companies Liquidation Account to the extent to which the said moneys have not been under this section paid out of the Account shall, on the lapse of six years from the date of the payment of the moneys to the credit of the Account, be paid into the Consolidated Fund.

### **Expenses of winding up where assets insufficient**

**287.** (1) Unless expressly directed to do so by the Official Receiver, a liquidator shall not be liable to incur any expense in relation to

the winding up of a company unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and if the Official Receiver so directs gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

### **Resolutions passed at adjourned meetings of creditors and contributories**

**288.** Subject to subsection 260(9) where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### **Meetings to ascertain wishes of creditors or contributories**

**289.** (1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors regard shall be had to the value of each creditor's debt.

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

### **Special commission for receiving evidence**

**290.** (1) The Sessions Court Judges shall be commissioners for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a Sessions Court Judge, have in the matter so referred to him the same powers as the Court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

*Subdivision (2)—Proof and Ranking of Claims*

**Proof of debts**

**291.** (1) In every winding up, subject in the case of insolvent companies to the application in accordance with this Act of the law relating to bankruptcy, all debts payable on a contingency and all claims against the company present or future, certain or contingent, ascertained or sounding only in damages shall be admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(2) Subject to section 292, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

**Priorities**

**292.** (1) Subject to this Act, in a winding up there shall be paid in priority to all other unsecured debts—

- (a) firstly, the costs and expenses of the winding up including the taxed costs of a petitioner payable under section 220, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 281;
- (b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding one thousand five hundred ringgit or such other amount as may be prescribed from time to time whether for time or piecework in respect of services rendered by him to the company within a period of four months before the commencement of the winding up;
- (c) thirdly, all amounts due in respect of worker's compensation under any written law relating to worker's compensation accrued before the commencement of the winding up;
- (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before the commencement of the winding up;
- (e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the company as the employer of any person under any written law relating to employees superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the federal law relating to income tax; and
- (f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The debts in each class specified in subsection (1) shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(4) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in paragraphs (1)(b), (d) and (e) and any amount payable in priority by virtue of subsection (3), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(5) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the company (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in the amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(6) If the liability of the insurer to the company is less than the liability of the company to the third party nothing in subsection (5) shall limit the rights of the third party in respect of the balance.

(7) Subsections (5) and (6) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(8) Notwithstanding anything in subsection (1)—

(a) paragraph (c) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workers compensation; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (f) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realized from such security.

(9) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator, have been recovered the Court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

*Subdivision (3)—Effect on other Transactions*

**Undue preference**

**293.** (1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy under the law of bankruptcy be void or voidable shall, in the event of the company being wound up, be void or voidable in like manner.

(2) For the purposes of this section the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be—

(a) in the case of a winding up by the Court—

- (i) the date of the presentation of the petition; or
- (ii) where before the presentation of the petition a resolution has been passed by the company for voluntary winding up the date upon which the resolution to wind up the company voluntarily, is passed,

whichever is the earlier; and

(b) in the case of a voluntary winding up the date upon which the winding up is deemed by this Act to have commenced.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

### **Effect of floating charge**

**294.** A floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of five per centum per annum.

### **Liquidator's right to recover in respect of certain sales to or by company**

**295.** (1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of two years before the commencement of the winding up of the company—

(a) from a person who was at the time of the acquisition a director of the company; or

- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of two years before the commencement of the winding up of the company—

- (a) to a person who was at the time of the sale a director of the company; or
- (b) to a company of which at the time of the sale a person was a director who was also a director of the company first mentioned in this subsection,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section the value of the property business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this section “cash consideration” in relation to an acquisition or sale by a company, means consideration for the acquisition or sale payable otherwise than by the issue of shares in the company.

### **Disclaimer of onerous property**

**296.** (1) Where any part of the property of a company consists of—

- (a) any estate or interest in land which is burdened with onerous covenants;
- (b) shares in corporations;
- (c) unprofitable contracts; or

- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and subject to this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within twelve months after he has become aware thereof or such extended period as is allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court or committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and an office copy thereof being lodged with the Registrar and with the Official Receiver and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land (as the case requires) the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon those terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon those terms, the

Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interest created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

### **Interpretation**

**297.** For the purposes of sections 298 and 299—

“bailiff” includes any officer charged with the execution of a writ or other process;

“goods” includes all movable property.

### **Restriction of rights of creditor as to execution or attachment**

**298.** (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of this section be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

- (2) For the purposes of this section—
- (a) an execution against goods is completed by seizure and sale;
  - (b) an attachment of a debt is completed by receipt of the debt; and
  - (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

### **Duties of bailiff as to goods taken in execution**

**299.** (1) Subject to subsection (3) where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3) where under an execution in respect of a judgement for a sum exceeding one hundred ringgit the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days; and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

*Subdivision (4)—Offences***Offences by officers of companies in liquidation**

**300.** (1) Every person who, being a past or present officer or a contributory of a company which is being wound up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property movable and immovable of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator, or as he directs—
  - (i) all the movable and immovable property of the company in his custody or under his control and which he is required by law to deliver up; or
  - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within twelve months next before the commencement of the winding up or at any time thereafter—
  - (i) has concealed any part of the property of the company to the value of fifty ringgit or upwards, or has concealed any debt due to or from the company;
  - (ii) has fraudulently removed any part of the property of the company to the value of fifty ringgit or upwards;
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
  - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

- (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
  - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
  - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or
  - (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary way of the business of the company;
- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within twelve months next before the commencement of the winding up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within twelve months next before the commencement of the winding up or at any time thereafter has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall be guilty of an offence against this Act.

Penalty: Imprisonment for two years or five thousand ringgit.

(2) It shall be a good defence to a charge under paragraph (1)(a), (b) or subparagraph (c)(i), (vii) or (viii) or paragraph (d) if the accused proves that he had no intent to defraud, and to a charge under subparagraph (1)(c)(iii) or (iv) or paragraph (f) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (1)(c)(viii) every person who takes in pawns or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence against this Act.

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

### **Inducement to be appointed liquidator**

**301.** Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence against this Act.

Penalty: Imprisonment for †one year or one thousand ringgit.

### **Penalty for falsification of books**

**302.** Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence against this Act.

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

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

†NOTE—Previously “six months or five hundred ringgit”—see Companies (Amendment) Act 1986 [Act A657].

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

**Liability where proper accounts not kept**

**303.** (1) If, on an investigation under any other Part or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or winding up or the period between the incorporation of the company and the commencement of the investigation or winding up (whichever is the lesser) every officer who is in default shall, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence against this Act.

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

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if the books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3) If in the course of the winding up of a company or in any proceedings against a company it appears that an officer of the company who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, the officer shall be guilty of an offence against this Act.

Penalty: Imprisonment for †one year or five thousand ringgit.

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

†NOTE—Previously “three months or five hundred ringgit”—see Companies (Amendment) Act 1986 [Act A657].

**Responsibility for fraudulent trading**

**304.** (1) If in the course of the winding up of a company or in any proceedings against a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2) Where a person has been convicted of an offence under subsection 303(3) in relation to the contracting of such a debt as is referred to in that section the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) When the Court makes any declaration pursuant to subsection (1) or (2), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3) “assignee” includes any person to whom or in whose favour by the directions of the person liable the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1) every person who was knowingly a party to the carrying on the business with that intent or purpose shall be guilty of an offence against this Act.

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

(6) This section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(7) On the hearing of an application under subsection (1) or (2) the liquidator may himself give evidence or call witnesses.

**Power of Court to assess damages against delinquent officers, etc.**

**305.** (1) If in the course of winding up it appears that any person who has taken part in the formation or promotion of the company or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of the liquidator or of any creditor or contributory examine into the conduct of that person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the two years preceding the commencement of the winding up whether by way of salary or otherwise appearing to the Court to be unfair or unjust to other members of the company.

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

**Prosecution of delinquent officers and members of company**

**306.** (1) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Minister.

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

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.

(3) If it appears to the liquidator, in the course of any winding up that the company which is being wound up will be unable to pay its unsecured creditors more than fifty sen in the ringgit, the liquidator shall forthwith report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any documents as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3) the Minister may, if he thinks fit, investigate the matter and may, if he thinks expedient, apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, this section shall have effect as though the report has been made in pursuance of subsection (2).

(6) If, where any matter is reported or referred to the Minister or Official Receiver under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Minister or Official

Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purpose of subsection (6) “agent” in relation to a company includes any banker or advocate of the company and any person employed by the company as auditor, whether or not an officer of the company.

(8) If any person fails or neglects to give assistance in manner required by subsection (6) the Court may, on the application of the Minister or Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this section shall be defrayed out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up.

#### *Subdivision (5)—Dissolution*

### **Power of Court to declare dissolution of company void**

**307.** (1) Where a company has been dissolved the Court may, at any time within two years after the date of dissolution, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made, shall, within seven days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver an office copy of the order and if he fails so to do shall be guilty of an offence against this Act.

Penalty: \*One thousand ringgit.

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

**Power of Registrar to strike defunct company off register**

**308.** (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(3) If in any case where a company is being wound up the Registrar has reasonable cause to believe that—

- (a) no liquidator is acting;
- (b) the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him; or
- (c) the affairs of the company have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved; but

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

- (b) nothing in this subsection shall affect the power of the Court to wind up a company, the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court on an application made by the person at any time within fifteen years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being lodged with the Registrar the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum of the company, addressed to him at the address mentioned in the memorandum.

### **Registrar to act as representative of defunct company in certain events**

**309.** (1) Where after company has been dissolved, it is proved to the satisfaction of the Registrar—

- (a) that the company if still existing would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
- (b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing,

the Registrar may, as representing the company or its liquidator under this section, do or cause to be done any such act.

(2) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and the execution or signature shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document.

### **Outstanding assets of defunct company to vest in Registrar**

**310.** (1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether within or outside Malaysia which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator, the property except called and uncalled capital shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may, under this Act, be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself of that claim, right or remedy without that approval or concurrence.

### **Outstanding interests in property how disposed of**

**311.** (1) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of section 310 or by operation of any corresponding previous written law or of a law of a designated country corresponding with section 318 any estate or interest in property, whether solely or together with any other person, of a

beneficial nature and not merely held in trust, the Registrar may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

(2) The Registrar may sell or otherwise dispose of or deal with the property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Registrar shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by subsection (1).

(4) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorized by this Subdivision and the surplus, if any, shall be dealt with as if they were unclaimed moneys under the law relating to unclaimed moneys.

### **Liability of Registrar and Government as to property vested in Registrar**

**312.** Property vested in the Registrar by operation of this Subdivision or by operation of any corresponding previous written law shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting the property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Registrar or the Government any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Registrar properly available for and applicable to the payment.

**Accounts and audit**

**313.** (1) The Registrar shall—

- (a) record in the register of companies a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings therewith;
- (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to the property and moneys.

(2) The Auditor General shall have all the powers in respect of those accounts as are conferred upon him by any Act relating to audit of public accounts.

**DIVISION 5****WINDING UP OF UNREGISTERED COMPANIES****“Unregistered company”**

**314.** (1) For the purposes of this Division “unregistered company” includes a foreign company and any partnership, association or company consisting of more than five members but does not include a company incorporated under this Act or under any corresponding previous written law.

**Provisions of Division cumulative**

(2) The provisions of this Division shall be in addition to and not in restriction of any provisions contained in this or any other Act with respect to winding up companies by the Court and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies.

**Winding up of unregistered companies**

**315.** (1) Subject to this Division any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:

- (a) the principal place of business of the company in Malaysia shall for all the purposes of the winding up be the registered office of the company;
- (b) no such company shall be wound up voluntarily; and
- (c) the circumstances in which the company may be wound up are—
  - (i) if the company is dissolved or has ceased to have a place of business in Malaysia or has a place of business in Malaysia only for the purpose of winding up its affairs or has ceased to carry on business in Malaysia;
  - (ii) if the company is unable to pay its debts; and
  - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up.

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

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred ringgit then due has served on the company, by leaving at its principal place of business in Malaysia or by delivering to the secretary or some director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
- (b) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in Malaysia

or by delivering it to the secretary or some director, manager or principal officer of the company or by otherwise serving it in such manner as the Court approves or directs, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;

- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company or any member thereof as such or any person authorized to be sued as nominal defendant on behalf of the company is returned unsatisfied; or
- (d) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(3) A company incorporated outside Malaysia may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

(4) In this section “to carry on business” has the same meaning as it has in section 330.

### **Contributories in winding up of unregistered company**

**316.** (1) On an unregistered company being wound up every person shall be a contributory—

- (a) who is liable to pay or contribute to the payment of—
  - (i) any debt or liability of the company;
  - (ii) any sum for the adjustment of the rights of the members among themselves; or
  - (iii) the costs and expenses of winding up; or
- (b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories respectively shall apply.

### **Power of Court to stay or restrain proceedings**

**317.** (1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(2) Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court imposes.

### **Outstanding assets of defunct unregistered company**

**318.** (1) Where an unregistered company, the place of incorporation or origin of which is in a designated country, has been dissolved and there remains in Malaysia any outstanding property, movable or immovable, including things in action which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall, by the operation of this section, be and become vested, for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Malaysia, sections 309 to 313 shall, with such adaptations as may be necessary, apply in respect of that company.

(3) Where it appears to the Minister that any law in force in any other country contains provisions similar to the provisions of this section, he may, by notice published in the *Gazette*, declare that other country to be a designated country for the purposes of this section.

## PART XI

### VARIOUS TYPES OF COMPANIES, *ETC.*

#### DIVISION 1

##### INVESTMENT COMPANIES

### **Interpretation**

**319.** (1) In this Division, unless inconsistent with the context or subject matter—

“investment company” means a corporation (not being a private company) for the time being declared by order of the Minister to be an investment company;

“net tangible assets” means tangible assets at book values less total liabilities at book values and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

### **Order of investment companies**

(2) The Minister may, by order published in the *Gazette*, declare to be an investment company any corporation which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control, and the Minister may by like order revoke any order declaring a corporation to be an investment company.

**Restriction on borrowing by investment companies**

**320.** An investment company shall not borrow an amount if that amount or the sum of that amount and any amounts previously borrowed by it and not repaid exceeds an amount equivalent to twice its net tangible assets.

**Restriction on investments of investment companies**

**321.** (1) An investment company shall not invest an amount in a corporation if that amount, or the sum of that amount and amounts previously invested by it in that corporation and still so invested exceeds an amount equivalent to ten per centum of the net tangible assets of the investment company.

(2) An investment company shall not invest an amount in the ordinary shares of a corporation if that amount, or the sum of that amount and amounts previously invested by it in the ordinary shares of that corporation and still so invested exceeds an amount equivalent to ten per centum of the subscribed ordinary share capital of the corporation.

(3) Subsection (2) shall not apply in respect of a wholly-owned subsidiary of an investment company for the purpose of carrying out nominee, underwriting, dealing or other functions incidental to the business of an investment company.

**Restriction on underwriting by investment companies**

**322.** (1) An investment company shall not underwrite any issue of authorized securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to forty per centum of its net tangible assets.

(2) An investment company shall not underwrite any issue of non-authorized securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other non-authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to twenty per centum of its net tangible assets.

**Provisions for unloading securities underwritten and not taken up**

(3) Where—

- (a) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened subsection (1) or (2); and
- (b) the investment company, as a result of the underwriting, invests in a corporation, being an investment contrary to section 321,

the investment company shall be deemed not to have contravened that section by reason of so investing in the corporation if, at the expiration of twelve months after so investing—

- (c) the amount invested by it in the corporation does not exceed an amount equivalent to ten per centum of the net tangible assets of the investment company; and
- (d) it does not hold more than five per centum of the subscribed ordinary share capital of the corporation.

(4) This section extends to and in relation to sub-underwriting as if the sub-underwriting were underwriting.

**Interpretation**

(5) In this section—

“authorized securities” means securities in which, by any written law trustees are authorized to invest trust funds in their hands;

“non-authorized securities” means securities other than authorized securities.

**Special requirements as to articles and prospectus**

**323.** An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus specifies—

- (a) the type of security in which it is among the objects of the company to invest; and

- (b) whether it is among the objects of the company to invest within Malaysia or outside Malaysia or both.

**Not to hold shares in other investment companies**

**324.** No investment company shall purchase or after the expiration of three years after it is declared to be an investment company hold any shares in or debentures of—

- (a) any other investment company; or
- (b) any corporation incorporated outside Malaysia which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control and which is specified by order of the Minister.

**Not to speculate in commodities**

**325.** (1) No investment company shall for the purpose of profit buy or sell or deal in any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in those materials or goods.

(2) Subsection (1) shall not apply to or in relation to—

- (a) any buying, selling or dealing by an investment company in pursuance of a contract entered into by the investment company before it was declared to be an investment company; or
- (b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company before it was so declared.

**Balance sheets and accounts**

**326.** (1) An investment company shall attach to its balance sheet a complete list of all the investments of the company as at the date of the balance sheet showing the descriptions and quantities of those investments.

(2) An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown therein, income from underwriting (including sub-underwriting).

### **Investment fluctuation reserve**

**327.** The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called the “investment fluctuation reserve”.

### **Penalties**

**328.** (1) If default is made by an investment company in complying with this Division the investment company and every officer of the investment company who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for \*five years or thirty thousand ringgit.  
Default penalty: Five hundred ringgit.

(2) No transaction entered into by the company shall be invalid by reason only of the default.

## DIVISION 2

### FOREIGN COMPANIES

#### **Foreign companies to which this Division applies**

**329.** This Division applies to a foreign company only if it has a place of business or is carrying on business within Malaysia.

#### **Interpretation**

**330.** (1) In this Division, unless the contrary intention appears—

“agent” means the person named in a memorandum of appointment or power of attorney lodged under paragraph 332(1)(e) or subsection 333(6) or under any corresponding previous written law;

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

“carrying on business” includes establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Malaysia as an agent, legal personal representative, or trustee, whether by servants or agents or otherwise, and “to carry on business” has a corresponding meaning.

(2) Notwithstanding subsection (1), a foreign company shall not be regarded as carrying on business within Malaysia for the reason only that within Malaysia it—

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if the order is accepted outside Malaysia.
- (f) creates evidence of any debt, or creates a charge on movable or immovable property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to those debts;
- (h) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time;
- (i) invests any of its funds or holds any property; or
- (j) import goods only temporarily pursuant to the Customs Act 1967 [*Act 235*] for the purpose of display, exhibition, demonstration or as trade samples with a view to subsequent re-exportation within a period of three months or within such further period as the Director General of Customs and Excise may in his discretion allow.

**Power of foreign companies to hold immovable property**

**331.** Subject to and in accordance with any written law a foreign company registered under this Division shall have power to hold immovable property in Malaysia.

**Documents, etc., to be lodged by foreign companies having place of business in Malaysia**

**332.** (1) Every foreign company desiring to establish a place of business or to carry on business within Malaysia shall 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 containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;
- (d) where the list includes directors resident in Malaysia who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign 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 and address of one or more persons resident in Malaysia, not including a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company; and
- (f) *(Deleted by Act A616).*
- (g) a statutory declaration in the prescribed form made by the agent of the company,

and the Registrar may on the payment of the appropriate fees and subject to this Act and any condition which he may impose register the company under this Division by registration of the documents.

(1A) The Registrar shall issue a certificate in the prescribed form of every registration of a foreign company and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of paragraph (1)(e) is executed by a person on behalf of the 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.

(3) Subsection (1) shall apply to a foreign company which was not registered under the repealed Act but which, immediately before the date of commencement of this Act, had a place of business or was carrying on business within Malaysia and, on that date, has a place of business or is carrying on business within Malaysia, as if it established that place of business or commenced to carry on that business on that date.

### **Annual return**

**332A.** (1) A foreign company shall lodge with the Registrar once in every calendar year a return in the form prescribed by regulations made up to the date of its annual general meeting.

(2) The return shall be lodged within a period of one month after the date to which it is made up or within such further period as the Registrar, in special circumstances, allows.

### **As to registered office and agents of foreign companies**

**333.** (1) A foreign company shall have a registered office within Malaysia to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than five hours between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, weekly and public holidays excepted.

(1A) Every foreign company shall, within one month after it establishes a place of business or commences to carry on business within Malaysia, lodge with the Registrar for registration notice in the prescribed form, of the situation of its registered office in Malaysia and, unless the office is open and accessible to the public during ordinary business hours on each day (weekly and public holidays excepted), the days and hours during which it is open and accessible to the public.

(2) An agent, until he ceases to be an agent in accordance with subsection (4), shall—

- (a) continue to be the agent of the company;
- (b) be answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Act; or
- (c) be personally liable to all penalties imposed on the company for any contravention of this Act unless he satisfies the court hearing the matter that he should be not so liable.

(3) A foreign company or its agent may lodge with the Registrar a notice in writing stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(4) The agent in respect of whom the notice has been lodged shall cease to be an agent on the expiration of a period of twenty-one days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (6), whichever is the earlier, but if the notice states a date on which he is to so cease and the date is later than the expiration of that period, on that date.

(5) Where an agent ceases to be the agent and the company is then without an agent in Malaysia, if the company continues to carry on business or has a place of business in Malaysia it shall, within twenty-one days after the agent ceases to be an agent, appoint an agents.

(6) On the appointment of a new agent the company shall lodge a memorandum of the appointment or power of attorney and a statutory declaration in accordance with subsection 332(1) and, if not