

## **COMPANIES ACT 1965 (ACT 125)**

### **PART VIII RECEIVERS AND MANAGERS**

#### **Disqualification for appointment as receiver**

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

- (a) a corporation;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any property of the company, an auditor of the company or an officer of the company or of any corporation which is a mortgagee of the property of the company; and
- (d) any person who is not an approved liquidator or the Official Receiver.

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

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

#### **Liability of receiver**

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

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

#### **Application for directions**

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

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

#### **Power of Court to fix remuneration of receivers or managers**

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

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

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor;
  - (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
  - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.
- (3) The power conferred by subsection (2) (c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.
- (4) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this section.

### **Appointment of liquidator as receiver**

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

### **Notification of appointment of receiver**

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

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

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

Penalty: One thousand ringgit. Default penalty.

### **Statement that receiver appointed**

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

(2) If default is made in complying with this section, the corporation and every officer and every liquidator of the corporation and every receiver or manager

who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

### **Provisions as to information where receiver or manager appointed**

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

- (a) the receiver shall forthwith send notice to the company of his appointment;
- (b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 189 a statement in the prescribed form as to the affairs of the company; and
- (c) the receiver shall within one month after receipt of the statement —
  - (i) lodge with the Registrar, a copy of the statement and of any comments he sees fit to make thereon;
  - (ii) send to the company, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and
  - (iii) where the receiver is appointed by or on behalf of the holders of debentures of the company send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

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

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

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

Penalty: Two thousand ringgit. Default penalty.

### **Special provisions as to statement submitted to receiver**

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

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

- (a) persons who are or have been officers;

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

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

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

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

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

Penalty: One thousand ringgit. Default penalty.

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

### **Lodging of accounts of receivers and managers**

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

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

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

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

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

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

(2) The Registrar may of his own motion or on the application of the company or other corporation or a creditor cause the accounts to be audited by a public accountant appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the

production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

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

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

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

Penalty: One thousand ringgit. Default penalty.

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

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

(2) For the purposes of subsection (1), the references in section 291 (1) (b), (c), (d) and (e) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid (as the case requires).

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

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

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

(2) If it appears that any receiver or manager of the property of a company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of any creditor or contributory or of the liquidator examine into the conduct of such receiver or manager and compel him to repay or restore the money or

property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

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

## **PART X WINDING UP**

### **DIVISION 1 — PRELIMINARY**

#### **Modes of winding up**

**211.** The winding up of a company may be either —  
(a) by the Court; or  
(b) voluntary.

#### **Application of winding up provisions**

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

#### **Government bound by certain provisions**

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

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

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

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e) in the case of a company limited by guarantee, no contribution shall, subject to subsection (4), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

### **Unlimited liability of directors**

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

(3) Notwithstanding anything in subsection (2) —

(a) a past director shall not be liable to make a further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;

(b) a past director shall not be liable to make a further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and

(c) subject to the articles of the company, a director shall not be liable to make a further contribution, unless the Court considers it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

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

### **Nature of liability of contributory**

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

### **Contributories in case of death of member**

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

## **Contributories in case of bankruptcy of member**

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

(a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and

(b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

## **DIVISION 2 — WINDING UP BY COURT**

### *Subdivision (1) — General*

#### **Application of winding up**

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

(a) the company;

(b) any creditor, including a contingent or prospective creditor, of the company;

(c) a contributory or any person who is the personal representative of a deceased contributory or the trustee in bankruptcy or the Official Assignee of the estate of a bankrupt contributory;

(d) the liquidator;

(e) of the Minister pursuant to section 205 or on the ground specified in section 218 (1) (d);

(f) in the case of a company which is a licensed institution, or a scheduled institution in respect of which the Minister charged with the responsibility for finance has made an order under section 24 (1) of the Banking and Financial Institutions Act 1989, or a non-scheduled institution in respect of which such Minister has made an order under section 93 (1) of that Act, Bank Negara Malaysia;

(g) in the case of a company which is licensed under the Insurance Act 1996, Bank Negara Malaysia;

(h) the Registrar on the ground specified in section 218 (1) (m) or (n), or of any two or more of those parties.

(2) Notwithstanding anything in subsection (1) —

(a) a person referred to in subsection (1) (c) may not present a petition on any of the grounds specified in section 218 (1) (a), (b), (c), (e) or (i), unless —

(i) the number of members of the company (not being a company the whole of the issued shares of which is held by a holding company) is reduced below two; or

(ii) the shares in respect of which the contributor was a contributory or some of them were originally allotted to the contributor, or have been held by him and registered in his name for at least six months during the eighteen months before the presentation of the petition or have devolved on him through the death or bankruptcy of a former holder;

(b) a petition shall not, if the ground of the petition is default in lodging the statutory report or in holding the statutory meeting, be presented by any person except a contributory or the Minister nor before the expiration of

fourteen days after the last day on which the meeting ought to have been held;

(c) the Court shall not hear the petition if presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court; and

(d) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

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

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

(a) the company has by special resolution resolved that it be wound up by the Court;

(b) default is made by the company in lodging the statutory report or in holding the statutory meeting;

(c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;

(d) the number of members of the company (not being a company the whole of the issued shares of which is held by a holding company) is reduced below two;

(e) the company is unable to pay its debts;

(f) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members;

(g) an inspector appointed under Part IX has reported that he is of opinion —

(i) that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;

(h) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved;

(i) the Court is of opinion that it is just and equitable that the company be wound up;

(j) the company has held a licence under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983 any written law relating to banking, and that licence has been revoked or surrendered;

(k) the company has carried on Islamic banking business, licensed business, or scheduled business, or it has accepted, received or taken deposits in Malaysia in contravention of the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989, as the case may be;

(l) the company has held a license under the Insurance Act 1996 and —

(i) that licence has been revoked;

(ii) Bank Negara Malaysia has petitioned for its winding up under subsection 58 (4) of the Insurance Act 1996; or

(iii) an order under section 59 (4) (b) of the Insurance Act 1996 has been made in respect of it.

- (m) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with public peace, welfare, security, public order, good order or morality in Malaysia; or
- (n) the company is being used for any purpose prejudicial to national security or public interest.

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

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

### **Commencement of winding up by the Court**

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

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

- 220.** —(1) The persons, other than the company itself or the liquidator thereof, on whose petition any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.
- (2) The liquidator shall, unless the Court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.
- (3) Where the company has no assets or not sufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the

Minister, to an extent specified by the Minister but not in any case exceeding seven hundred and fifty ringgit, be reimbursed to the applicant out of moneys provided by Parliament for the purpose.

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

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

### **Powers of Court on hearing petition**

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

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

(a) direct that any notices be given or any steps taken before or after the hearing of the petition;

(b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court;

(c) direct that oral evidence be taken on the petition or any matter relating thereto;

(d) direct a speedy hearing or trial of the petition or any issue or matter;

(e) allow the petition to be amended or withdrawn; and

(f) give such directions as to the proceedings as the Court thinks fit.

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

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

**222.** At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

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

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

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

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

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

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

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

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

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

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

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

### **Actions stayed on winding up order**

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

- (a) by leave of the Court; and
- (b) in accordance with such terms as the Court imposes.

### **Effect of order**

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

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

Penalty: One thousand ringgit. Default penalty.

*Subdivision (2) — Liquidators*

**Appointment, style, etc., of liquidators**

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

(1) if an approved liquidator other than the Official Receiver is not appointed to be the liquidator of the company, the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(2) if there is no liquidator appointed, the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

(3) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;

(4) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;

(5) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;

(6) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;

(7) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of “the liquidator”, and, where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”, of the particular company in respect of which he is appointed, and not by his individual name.

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

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

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be required for enabling that officer to perform his duties under this Act.

**Control of unofficial liquidators by Official Receiver**

**229.** —(1) Where in the winding up of a company by the Court, a person, other than the Official Receiver, is the liquidator the Official Receiver shall

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

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

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

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

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

### **Provisional liquidator**

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

### **General provisions as to liquidators**

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

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

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

(a) by agreement between the liquidator and the committee of inspection (if any);

(b) failing such agreement or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in

person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

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

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

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

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

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

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

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

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

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

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

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

and every liquidator who makes default in complying with this section shall be guilty of an offence against this Act.

Penalty: Two thousand ringgit. Default penalty.

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum thereof is made by or with the appropriate authority.

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

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

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

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

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

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

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

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

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

### **Report by liquidator**

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

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

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

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

### **Powers of liquidator**

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

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

(2) The liquidator may —

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;

(b) compromise any debt due to the company other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds one thousand five hundred ringgit;

(c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(d) do all acts and execute in the name and on behalf of the company all deeds receipts and other documents and for that purpose use when necessary the company's seal;

(e) prove rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors;

(f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(g) raise on the security of the assets of the company any money requisite;

(h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself;

(i) appoint an agent to do any business which the liquidator is unable to do himself; and

(j) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

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

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

**237.** —(1) Subject to this Part, the liquidator shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall, in case of conflict, override any directions given by the committee of inspection.

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

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

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

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

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

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

(a) to disallowance of all or such part of his remuneration as the Court thinks just;

(b) to be removed from his office by the Court; and

(c) to pay any expenses occasioned by reason of his default.

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

### **Release of liquidators and dissolution of company**

**239.** When the liquidator —

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

(b) has resigned or has been removed from his office, he may apply to the Court —

(c) for an order that he be released; or

(d) for an order that he be released and that the company be dissolved.

### **As to orders for release or dissolution**

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

(2) The Court —

(a) may cause a report on the accounts of a liquidator (not being the Official Receiver) to be prepared by the Official Receiver or by some approved company auditor appointed by the Court;

(b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the

Official Receiver auditor or any creditor or contributory or other person interested against the release of the liquidator; and

(c) shall either grant or withhold the release accordingly.

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

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

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

(6) Where the Court has made —

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

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

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

Penalty: Two thousand ringgit. Default penalty.

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

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

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

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

#### **Constitution and proceedings of committee of inspection**

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

(a) general powers of attorney from creditors or contributories; or

(b) special authorities from creditors or contributories authorising the persons named therein to act on such a committee, appointed by the meetings of creditors and contributories in such proportions as are agreed or in case of difference as are determined by the Court.

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

- (3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.
- (4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which meeting seven days' notice has been given stating the object of the meeting.
- (7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1).
- (8) The liquidator may at any time of his own motion and shall within seven days after the request in writing of a creditor or contributory summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1), as the case requires, in his stead.
- (9) The continuing members of the committee if not less than two may act notwithstanding any vacancy in the committee.

*Subdivision (4) — General Powers of Court*

**Power to stay winding up**

- 243.** —(1) At any time after an order for winding up has been made the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.
- (2) On any such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.
- (3) An office copy of every order made under this section shall be lodged by the company with the Registrar and with the Official Receiver within fourteen days after the making of the order.

Penalty: One thousand ringgit. Default penalty.

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

- 244.** —(1) As soon as may be after making a winding up order the Court shall settle a list of contributories and may rectify the register of members in all

cases where rectification is required in pursuance of this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

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

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

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

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

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

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

(b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance, and in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

### **Power of Court to make calls**

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

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

(b) make an order for payment of any calls so made, and in making a call may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

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

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

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

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

### **Appointment of special manager**

**246.** —(1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager —

(a) shall give such security and account in such manner as the Court directs;

(b) shall receive such remuneration as is fixed by the Court; and

(c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court.

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

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

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

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

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

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

### **Power to summon persons connected with company**

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

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

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

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

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

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

**250.** —(1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company, the Court may after consideration of the report direct that the person or officer, or any other person who was previously an officer of the company, including any banker advocate or auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

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

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

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

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

(6) Where a person directed to attend before the Court under subsection (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and if the Court, after hearing any evidence given or witnesses called

by the liquidator, grants the application the Court may allow the applicant such costs as the Court in its discretion thinks fit.

(7) Notes of the examination —

(a) shall be reduced to writing;

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

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

and

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

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

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

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

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

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

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls and the adjusting of the rights of contributories; and

(e) the fixing of a time within which debts and claims must be proved, to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not without the special leave of the Court rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

### **Powers of Court cumulative**

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

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

### **DIVISION 3 — VOLUNTARY WINDING UP**

#### *Subdivision (1) — Introductory*

#### **Circumstances in which company may be wound up voluntarily**

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

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

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

(2) A company shall —

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

(b) within ten days after the passing of the resolution give notice of the resolution in one or more newspapers circulating throughout Malaysia.

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

Penalty: One thousand ringgit. Default penalty.

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

#### **Provisional liquidators**

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

(a) that the company cannot by reason of its liabilities continue its business; and

(b) that meetings of the company and of its creditors have been summoned for a date within one month of the date of the declaration, the directors shall forthwith appoint an approved liquidator to be the provisional liquidator.

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

(3) The appointment of a provisional liquidator under this section shall continue for one month from the date of his appointment or for such further

period as the Official Receiver may allow in any particular case or until the appointment of a liquidator (whichever first occurs).

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

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

### **Date of commencement of winding up**

(6) A voluntary winding up shall commence —

(a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and

(b) in any other case, at the time of the passing of the resolution for voluntary winding up.

### **Effect of voluntary winding up**

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

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

### **Declaration of solvency**

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

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

(a) the assets of the company and the total amount expected to be realised therefrom;

(b) the liabilities of the company; and

(c) the estimated expenses of winding up, made up to the latest practicable date before the making of the declaration.

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

(a) made at the meeting of directors referred to in subsection (1);

(b) made within five weeks immediately preceding the passing of the resolution for voluntary winding up; and

(c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

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

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

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

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

## **Liquidators**

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

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

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

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

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

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

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

meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

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

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

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

Penalty: One thousand ringgit. Default penalty.

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

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

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

### **Meeting of creditors**

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

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

(a) give to the creditors at least seven clear days' notice by post of the meeting; and

(b) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

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

(4) The directors of the company shall—

- (a) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and
- (b) appoint one of their number to attend the meeting.
- (5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.
- (6) The creditors may appoint one of their number or the director appointed under subsection (4) to preside at the meeting.
- (7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.
- (8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.
- (9) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.
- (10) If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Two thousand ringgit.

### **Liquidators**

- 261.** —(1) The company shall and the creditors may at their respective meetings nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.
- (2) Notwithstanding subsection (1) where different persons are nominated, any director member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.
- (3) The committee of inspection or, if there is no such committee the creditors may fix the remuneration to be paid to the liquidator.
- (4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection, or, if there is no such committee the creditors, approve the continuance thereof.
- (5) If a liquidator, other than a liquidator appointed by or by the direction of the Court dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number.

### **Committee of inspection**

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

(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 made under this Act, 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 section 232 (3), in the case of a company which is an insurer, no person, other than the 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 the 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 that 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 section 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 the 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 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 such direction 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.

### **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 creditors' 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 at least one month 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.

(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 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, respectively, and if he fails to do so 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.

(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 made 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 authorised 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**

**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 a 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 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, the 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

(b) in such notice inform the 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 shall 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 authorises or permits the default, shall be guilty of an offence against this Act.

Penalty: Five hundred ringgit.

### **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 such 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 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 realisation of such part of those 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 realisation 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 authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise 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 or 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 unclaimed moneys have not been under this section paid out of that Account shall, on the lapse of six years from the date of the payment of the moneys to the credit of that 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 section 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 of 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 the provisions of 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 workmen'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 subsection (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 such 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 workmen's 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 realised 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 thinks 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 risks 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 such 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 the 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 such 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 such 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 interests 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 judgment 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 of 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 disclose 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 such 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 subsection (1) (a), (b), (c) (i), (vii) or (viii) or (d) if the accused proves that he had no intent to defraud, and to a charge under subsection (1) (c) (iii) or (iv) or (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 subsection (1) (c) (viii) every person who takes in pawns or pledges 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 to 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 intend to defraud or deceive any person shall be guilty of an offence against this Act.

Penalty: Imprisonment for five years or thirty thousand ringgit.

### **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 stocktakings 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 such 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 years or five thousand ringgit.

### **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 to do so, 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 section 303 (3) in relation to the contracting of such a debt as is referred to in that subsection, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, 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) Where 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 of 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 such 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 to prosecute the offender or to refer the matter to the Minister.

(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 document 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 confirming 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 purposes 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 the 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 to do so, 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 to do so shall be guilty of an offence against this Act.

Penalty: One thousand ringgit.

### **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 the 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 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 a 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 such 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, realised 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 such 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 such 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 authorised 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 such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such 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 such 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 such property and moneys.

(2) The Auditor-General shall have all the powers in respect of such 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) 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 the 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 such 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;
- (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 a 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 a 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 authorised 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 the laws of the place under which it was incorporated.

(4) In this section, “to carry on business” has the same meaning as 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, realised 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 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.