



# **LAWS OF MALAYSIA**

---

ONLINE VERSION OF UPDATED  
TEXT OF REPRINT

---

**Act 441**

## **LABUAN COMPANIES ACT 1990**

*As at 1 September 2012*

**LABUAN COMPANIES  
ACT 1990**

Date of Royal Assent	...	...	22 August 1990
Date of publication in the <i>Gazette</i>	...	...	30 August 1990
Latest amendment made by Act A1428 which came into operation on	...	...	1 August 2012

*PREVIOUS REPRINTS*

<i>First Reprint</i>	...	...	...	2001
<i>Second Reprint</i>	...	...	...	2006

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

---

**ARRANGEMENT OF SECTIONS**

---

**PART I****PRELIMINARY**

## Section

1. Short title
2. Interpretation
3. Definition of subsidiary and holding company
4. Related companies
5. *(Deleted)*
6. *(Deleted)*
7. Permitted purpose for incorporation

**PART II****ADMINISTRATION OF ACT**

8. Administration of Labuan companies
9. Lodging of documents
  - 9A. Electronic lodgement or filing of documents
  - 9B. Evidentiary value of electronically lodged or filed documents
  - 9C. Original copies to be kept at office of trust company
  - 9D. Issuing of document electronically
10. Approved auditors
11. Company auditors

## Section

12. Approved liquidator
13. Registers

## PART III

## CONSTITUTION OF COMPANIES

## DIVISION 1

## INCORPORATION

14. Formation of companies
15. Registration and incorporation
16. Application for registration of foreign company as being continued in Labuan
17. Prior approval in principle
18. Requirements as to memorandum

## DIVISION 2

## STATUS AND NAME

19. Powers of companies
20. *Ultra vires* transactions
21. Names of Labuan companies
22. Change of name
23. Articles of association
24. Alteration of memorandum or articles
25. Copies of memorandum and articles
26. Transactions and establishment of a branch
27. Prohibition against carrying on business when Labuan company has no members

## PART IV

## SHARES, DEBENTURES AND CHARGES

## DIVISION 1

## PROSPECTUSES

28. (*Deleted*)

Section

- 29. *(Deleted)*
- 30. *(Deleted)*
- 31. *(Deleted)*
- 32. *(Deleted)*
- 33. *(Deleted)*
- 34. *(Deleted)*
- 35. *(Deleted)*
- 36. *(Deleted)*
- 37. *(Deleted)*
- 38. *(Deleted)*
- 39. *(Deleted)*

DIVISION 2

RESTRICTIONS ON ALLOTMENT

- 40. *(Deleted)*
- 41. *(Deleted)*
- 42. *(Deleted)*

DIVISION 3

SHARES

- 43. Return of allotment
- 44. Calls
- 45. Reserve liability
- 46. No par or nominal value shares
- 47. Power to issue shares and voting rights
- 47A. Treasury shares
- 48. Dealing by a Labuan company in its own shares, etc.
- 48A. Purchase by a Labuan company of its own shares, etc.
- 49. *(Deleted)*
- 50. *(Deleted)*
- 51. Alteration of share capital

## Section

52. Validation of shares improperly issued
53. Special resolution for reduction of share capital
54. Rights of holders of preference shares to be set out in articles
55. Redeemable preference shares

## DIVISION 4

## DEBENTURES

56. *(Deleted)*
57. *(Deleted)*
58. Labuan company to maintain register of debentures holders
59. Perpetual debentures
60. Reissue of redeemed debentures
61. *(Deleted)*
62. *(Deleted)*
63. *(Deleted)*
64. *(Deleted)*
65. *(Deleted)*

## DIVISION 5

## INTERESTS OTHER THAN SHARES, DEBENTURE, ETC.

66. Interpretation
67. Approved deeds
68. Approval of deeds
69. Interests to be issued by a Labuan company or a foreign Labuan company only
70. Statement to be issued
71. No issue without approved deed
72. Register of interest holders
73. Penalty for contravention of Division, etc.
74. Winding up of schemes, etc.
75. Liability of trustees

DIVISION 6

TITLE AND TRANSFERS

Section

- 76. Nature of shares
- 77. Numbering of shares
- 78. Certificate to be evidence of title
- 79. A Labuan company may have share seal
- 80. Instruments of transfer and transfer by personal representative
- 81. Duties of Labuan company with respect to issue of certificate

DIVISION 7

REGISTER OF CHARGES

- 82. Non-application of Division
- 83. Register of charges
- 84. Notice of creation and satisfaction of charge

PART V

MANAGEMENT AND ADMINISTRATION

DIVISION 1

OFFICE AND NAME

- 85. Registered office of a Labuan company
- 86. Name to be displayed at all offices and to appear on seals, letters, etc.

DIVISION 2

DIRECTORS AND OFFICERS

- 87. Directors
- 88. Consent to act as director
- 89. Validity of acts of directors
- 90. Registrar's power to restrain persons from managing Labuan companies

## Section

91. Disclosure of interest in contracts, property, offices, etc.
92. Duty and liability of officers
93. Secretary
94. Register of directors and secretaries
- 94A. Offence against any provision of this Act committed by directors and secretaries
- 94B. Removal of director

## DIVISION 3

## MEETINGS AND PROCEEDINGS

95. Meetings of members
96. Notice of meetings of members
97. Quorum, chairman, voting, etc., at meetings
98. Voting by members
99. Action by consent of members in writing
100. Power of Court to direct meetings to be called
101. Special resolution
- 101A. Resolutions signed by all members deemed to be duly passed at meeting
102. Resolution requiring special notice
103. *(Deleted)*
104. Minutes of proceedings

## DIVISION 4

## REGISTER OF MEMBERS

105. Register of members
106. Where register to be kept
107. Consequences of default by agent
108. Power of Court to rectify register



DIVISION 5  
ANNUAL RETURN

Section

109. Annual return

PART VI  
ACCOUNTS AND AUDIT

DIVISION 1  
ACCOUNTS

110. Accounts to be kept  
111. Audited accounts to be laid before meeting  
112. Audited accounts to be sent to members

DIVISION 2  
AUDIT

113. Auditor to be appointed  
113A. *(Deleted)*  
114. Removal and resignation of auditors  
115. Remuneration of auditor  
116. Auditor may attend meetings  
117. Rights and duties of auditors

PART VII  
ARRANGEMENTS AND RECONSTRUCTIONS

118. Arrangements  
118A. Amalgamations  
118B. Amalgamation of a Labuan company, a foreign Labuan company or a corporation and continuation as a Labuan company  
118C. Short form amalgamation  
118D. Effect of amalgamation

## Section

119. Regulations in respect of takeover, merger and amalgamation

## PART VIII

## FOREIGN LABUAN COMPANIES

120. Interpretation
121. Registration of foreign Labuan companies
122. Prohibition and restriction on foreign Labuan company
123. Registered office of foreign Labuan companies
124. Return to be lodged where documents, etc., altered
125. Service on foreign Labuan companies
126. Cessation of business in Labuan
127. Liquidation or dissolution of company in place of incorporation, establishment or origin
128. Names of foreign Labuan companies
129. Returns by foreign Labuan companies
130. Application of this Part to certain foreign companies registered under Companies Act 1965

## PART VIII A

## COMPANY MANAGEMENT

- 130A. *(Deleted)*
- 130B. *(Deleted)*
- 130C. *(Deleted)*
- 130D. *(Deleted)*
- 130E. *(Deleted)*
- 130F. *(Deleted)*
- 130G. *(Deleted)*
- 130H. *(Deleted)*
- 130I. *(Deleted)*

Section

130J. *(Deleted)*

130K. *(Deleted)*

130L. *(Deleted)*

130M. *(Deleted)*

PART VIII<sub>B</sub>

LABUAN PROTECTED CELL COMPANIES

130N. Interpretation

130O. Labuan protected cell companies

130P. Approval of the Authority

130Q. Incorporation of, or conversion into, a Labuan protected cell company

130R. Name and memorandum or articles of a Labuan protected cell company

130S. Cell and general assets

130T. Cell shares and cell share capital

130U. Register of shareholders

130V. Reduction of cell capital

130W. Rights of creditors

130X. Liabilities

130Y. Disclosure

130Z. Dealings and transactions between cell assets

130ZA. Transfer of cell assets

130ZB. Receivership and winding up of Labuan protected cell company and cell liquidation

130ZC. Application of this Act

PART IX

RECEIVERSHIP AND WINDING UP

131. Receivership and winding up

## Section

- 131A. Alternative procedure for voluntary winding up of solvent Labuan companies

## PART X

## MISCELLANEOUS

132. Service of documents on companies
133. Transfer from Labuan
134. Costs of proceedings before the Court
135. Security for costs
136. Disposal of shares of shareholder whose whereabouts are unknown
137. Power to grant relief
- 137A. Injunctions
138. Irregularities in proceedings
139. Translation of instruments
140. Dividends payable from profits only
141. Use of word “Corporation”, etc.
142. Penalties
- 142A. Power to impose administrative penalties
143. *(Deleted)*
144. Compounding of offences
145. Procedure where none laid down
146. Power of the Minister to make regulations
147. *(Deleted)*
148. Prohibition by Minister
149. Secrecy
150. Power of the Minister to grant exemptions
151. Annual fee
- 151A. Company struck off liable for fees, etc.
- 151B. Fees payable to Registrar
- 151C. Effect of striking off
- 151D. Dissolution of a Labuan company

Section

- 151E. Letter of confirmation and letter of good standing
- 152. Non-application of specified written laws
- 153. Application of specified written laws

SCHEDULE (*Deleted*)



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

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

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

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

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

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

**Interpretation**

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

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

“annual fee payment date” means the date on which the annual fee of a Labuan company shall be payable pursuant to subsection 151(1);

“annual return” means the return required to be made by a Labuan company under section 109 and includes any document accompanying the return;

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

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

“Authority” means the Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [*Act 545*];

“authorized officer” means an officer duly authorized by the Authority;

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

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

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

“company limited by guarantee” means a company formed on the principle of having the liability of its members limited by its memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of it being wound up;

“company limited by shares” means a company formed on the principle of having the liability of its members limited by its memorandum to the amount, if any, unpaid on the shares respectively held by them;



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

“corporation” means a body corporate formed, incorporated or existing within Malaysia or outside Malaysia and includes a foreign Labuan company but does not include —

- (a) a corporation sole;
- (b) a trade union registered under any written law as a trade union; or
- (c) a society registered under any written law relating to co-operative societies;

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

“court” means a court of competent jurisdiction;

“debenture” includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

- (a) an instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract for hire in the ordinary course of business;
- (b) a cheque, banker’s draft or any other bill of exchange or letter of credit;
- (c) a banknote, guarantee or an insurance policy;

- (d) a statement, passbook or other document showing any balance in a current, deposit or savings account;
- (e) an agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any such promissory note issued under the terms of such an agreement; or
- (f) an instrument or product or class of instruments or products as the Minister may, on the recommendation of the Authority, prescribe by order published in the *Gazette*;

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

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

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

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

“foreign company” means —

- (a) a company, corporation, society, association or other body incorporated outside Malaysia; or
- (b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the society, association or body duly appointed for that

purpose, and which does not have its head office or principal place of business in Malaysia;

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

“Labuan” means the Federal Territory of Labuan;

“Labuan company” means a company incorporated or registered under this Act;

“Labuan protected cell company” means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of Part VIII B of this Act;

“Labuan trust company” means a corporation registered as a Labuan trust company under the Labuan Financial Services and Securities Act 201 [Act 704];

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

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

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

“month” means a period of thirty days;

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

- (a) any director, secretary or employee of the company;

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

but does not include —

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

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

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

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

“prescribed”, where no mode is mentioned, means prescribed from time to time by order published in the *Gazette*, and a power to prescribe includes the power to make different provisions in the order for different persons or different classes, categories or descriptions of persons;

“regulations” means regulations under this Act;

“resident” means —

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

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

“ringgit” means a ringgit in the currency of Malaysia;

“serious offence involving fraud or dishonesty” means an offence that is punishable by imprisonment for a term that is not less than two years or, where there is a loss of the value of assets derived or likely to be derived suffered by the company, member or debenture holder from the commission of such an offence, the loss exceeds two hundred and fifty thousand ringgit;

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

“solvency declaration” means a declaration of solvency by the directors of a Labuan company or foreign Labuan company, as and when required by the provisions of this Act, and is deemed to be a statutory declaration within the meaning and effect under the Statutory Declarations Act 1960 [*Act 60*] and the Penal Code [*Act 574*];

“specify”, where no mode is mentioned in this Act, means specify from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories and descriptions of persons;

“treasury share” means a share of a corporation that was previously issued but was repurchased, redeemed or otherwise acquired by the corporation and not cancelled;

“unlimited company” means a company formed on the principle of having no limit placed on the liability of its members.

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

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

on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the shares; or

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

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

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

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

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

- (a) that other corporation —
  - (i) controls the composition of the board of directors of the first-mentioned corporation;
  - (ii) controls more than half of the voting power of the first-mentioned corporation; or
  - (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part

thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

- (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purposes of subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if —

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

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

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

- (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a trustee or fiduciary capacity,

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

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

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

### **Related companies**

**4.** Where a corporation —

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



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

5. *(Deleted by Act A1367).*

6. *(Deleted by Act A1367).*

**Permitted purpose for incorporation**

7. (1) A Labuan company may be incorporated for any lawful purpose and, subject to any other written laws on financial services applicable to Labuan, shall carry out business only in, from or through Labuan.

(2) Subject to subsection (3), a Labuan company may carry on a business with a resident.

(3) No Labuan company shall —

(a) issue or offer to any resident for subscription or purchase;  
or

(b) invite any resident to subscribe or purchase,

any interest pursuant to Division 5 of Part IV of the Companies Act 1965 where such issue or offer or invitation is made in Malaysia, other than Labuan, unless the provisions of the Division are complied with.

(4) No Labuan company shall carry on business in ringgit—

(a) except for defraying its administrative expenses and statutory expenses;

(b) unless permitted under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010 [*Act 705*];

- (c) except in relation to the holding of investments in a domestic company;
- (d) except in relation to the holding of debt obligations by a Labuan company or a foreign Labuan company; or
- (e) except for payment in relation to its professional contact with persons specified in paragraph (6)(c).

(5) Where a Labuan company carries on a business with a resident, the Labuan company shall notify the Authority of any transactions between the Labuan company and the resident within ten working days of such transactions.

(6) Notwithstanding subsection (5), a Labuan company is not required to notify the Authority of transactions between the Labuan company and the resident where —

- (a) the Labuan company carries on any licensed activity with a resident under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010;
- (b) the Labuan company makes or maintains deposits with a person carrying on a business within Malaysia;
- (c) the Labuan company makes or maintains a professional contact with any counsel, attorney, accountant, book-keeper, Labuan trust company or a corporation wholly owned by a Labuan trust company made available by the Labuan trust company to act or be appointed as a resident director or a resident secretary of a Labuan company, management company, investment adviser or other similar person carrying on business within Malaysia;
- (d) the Labuan company prepares or maintains books and records within Malaysia;

- (e) the Labuan company holds, within Malaysia, meetings of its directors or members;
- (f) the Labuan company acquires or holds any lease of any property for the purposes of its operation or as accommodation for its officers or employees;
- (g) the Labuan company holds shares, debt obligations or other securities in a company incorporated under this Act or in a domestic company, or holds shares, debt obligations or other securities including shares and any property provided as collateral to secure any borrowing for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; or
- (h) a resident of Malaysia holds shares in that Labuan company.

## PART II

### ADMINISTRATION OF ACT

#### **Administration of Labuan companies**

**8.** (1) The Authority is responsible for the due administration of this Act, and subject to the general direction and control of the Authority and to such restrictions and limitations as may be prescribed, anything which is required by this Act to be appointed, authorized, done or signed by the Authority may be appointed, authorized, done or signed by an authorized officer of the Authority and shall be as valid and effectual as if appointed, authorized, done or signed by the Authority.

(2) No person dealing with any authorized officer of the Authority shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of the authorized officer, so far as the act or omission affects any such

person, shall be as valid and effectual as if done or omitted by the Authority.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority.

(4) For the purpose of ascertaining whether a Labuan company or a foreign Labuan company is complying with this Act, the Authority or any authorized officer may require the Labuan company or the foreign Labuan company or any officer of the Labuan company or the foreign Labuan company to produce any book, minute book, register or record required to be kept by the company under or by this Act for the Authority's or the authorized officer's inspection.

(5) A Labuan company, foreign Labuan company or any officer of the company shall, on being required by the Authority or any authorized officer to do so under subsection (4), produce such book, minute book, register or record.

(6) The Labuan company, foreign Labuan company or any officer of the company shall not obstruct or hinder the Authority or any authorized officer of the Authority while exercising any of the powers referred in subsection (4).

(7) A Labuan company or a foreign Labuan company shall pay to the Authority such fees as may be prescribed.

### **Lodging of documents**

**9.** (1) Every document required or permitted to be lodged or filed with the Authority under the provisions of this Act shall be lodged or filed through a Labuan trust company or any other entity which may be approved by the Authority.

(2) Every application to the Authority for any certificate to be issued under this Act or for any extract or copy of any certificate issued under this Act or of any document lodged or filed with the

Authority shall be made through a Labuan trust company or any other entity which may be approved by the Authority:

Provided that this subsection shall not apply —

- (a) where an application is made in respect of a Labuan company or a foreign Labuan company by a member of that company and the document, certificate, extract or copy is for his own personal use; or
- (b) where an application is made by a Labuan company or a foreign Labuan company for a licence for the purpose of undertaking or offering to undertake the business of a management company under Part VIII of the Labuan Financial Services and Securities Act 2010 or an approved liquidator where a Labuan company or foreign Labuan company is under liquidation.

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

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

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

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

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

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

(5A) Notwithstanding subsection (5), a document which is signed electronically may not be required to be certified or authenticated as required under that subsection.

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

(7) Where a document is electronically lodged or filed in place of a statutory declaration, there must be lodged or filed electronically with the Authority a declaration in the manner prescribed by the Authority, and such declaration shall be deemed to be a declaration under sections 199 and 200 of the Penal Code.

(8) Where a document electronically lodged or filed does not comply with the provisions relating to electronic filing under this Act, the Authority has the right to serve a notice on the Labuan trust company for the non-compliance, and if a replacement document is lodged or filed within the prescribed time, the replacement document shall be deemed to be lodged or filed in accordance to the requirement of this Act, and no penalty shall be imposed during this prescribed period.

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

**9B.** (1) A copy of or an extract from any document electronically lodged or filed with the Authority under section 9A duly certified by the Authority as a true copy of or extract from that document shall be admissible in evidence in any proceedings as of equal validity as the original document.

(2) Nothing in subsection (1) shall be deemed to be inconsistent with sections 90A, 90B and 90C of the Evidence Act 1950, and the “person responsible for the management of the operation of the computer” shall for the purposes of this section be deemed to be the Authority.

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

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

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

Penalty: Ten thousand ringgit. Default penalty.

**Issuing of document electronically**

**9D.** (1) The Authority may, by electronic means, issue any document required to be issued by it.

(2) A copy of or an extract from any document electronically issued by the Authority under subsection (1), duly certified by the Authority as a true copy of or an extract from such document, shall be admissible in evidence in any proceedings as of equal validity as the original document.

(3) Nothing in subsection (2) shall be deemed to be inconsistent with sections 90A, 90B and 90C of the Evidence Act 1950, and the “person responsible for the management of the operation of the computer” shall for the purposes of this section be deemed to be the Authority.

### **Approved auditors**

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

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

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

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

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

(6) An approved auditor shall lodge or file any document required to be lodged or filed under this Act within the stipulated period.

(7) An approved auditor who fails to pay the annual fee as required under subsection (5) or fails to lodge or file any documents as required under subsection (6) shall be guilty of an offence under this Act.

### **Company auditors**

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



- (a) if he is not an approved auditor;
- (b) if he is indebted to the company or to a company which is deemed to be related to that company by virtue of section 4 in an amount exceeding twenty thousand ringgit or an equivalent amount in any other currency;
- (c) if he is —
  - (i) an officer of the company;
  - (ii) a partner, employer or employee of an officer of the company;
  - (iii) a partner, or employee of an employee of an officer of the company;
  - (iv) a spouse of an officer of the company;
  - (v) a spouse of an employee of an officer of the company; or
  - (vi) a shareholder, or the spouse of a shareholder, of a corporation whose employee is an officer of the company; or
- (d) if he is responsible for, or if he is the partner, employer or employee of a person responsible for, the keeping of the register of members or the register of holders of debentures of the company.

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

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

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

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

### **Approved liquidator**

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

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

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

(4) No person shall be appointed or shall act as liquidator of a Labuan company —

- (a) if he is not an approved liquidator;
- (b) if he is indebted to the company in liquidation or to a company which is deemed to be related to that company in liquidation by virtue of section 4 in an amount exceeding twenty thousand ringgit or an equivalent amount in any other currency; or
- (c) if he has not consented in writing to such appointment.

(5) Where an approved liquidator is appointed to be a liquidator of a Labuan company, whether by the Court or in a voluntary winding up, he shall forthwith notify the Authority in writing of any interest

which he has in the Labuan company as an officer, employer or employee of the Labuan company or as a partner, employer or employee of an officer of the Labuan company, and any interest which any company related to him has in the Labuan company.

(6) An approved liquidator shall lodge or file any document required to be lodged or filed under this Act within the stipulated period.

(7) An approved liquidator who fails to comply with subsection (6) shall be guilty of an offence under this Act.

### **Registers**

**13.** (1) The Authority shall keep such registers as it considers necessary in any form as it deems fit.

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

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

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

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

(4) In any legal proceedings —

- (a) a certificate under the hand and seal of the Authority that, at a date or during a period specified in the certificate, no company was registered under this Act by a name specified in the certificate shall be received as *prima facie* evidence that at the date or during that period, as the case may be, no company was registered by that name under this Act; and
- (b) a certificate under the hand and seal of the Authority that a requirement of this Act specified in the certificate —
  - (i) had or had not been complied with at a date or within a period specified in the certificate; or
  - (ii) had been complied with at a date specified in the certificate but not before that date,

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

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

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

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

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

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

(6A) The registration or receiving of a document, or the refusal to register or receive a document, by the Authority shall not —

- (a) affect the validity of the document; or
- (b) create a presumption as to the correctness of the information contained in the document.

(6B) Subject to subsections (6C) and (7), the Authority may remove a document already lodged with it if the Authority has reasonable grounds to believe that the document is contrary to law or does not comply with the material requirements of this Act.

(6C) The Authority shall provide the person who lodged the document referred to in subsection (6B) an opportunity to show cause as to why the document should not be removed.

(7) Any person aggrieved by the refusal of the Authority to register a Labuan company or a foreign Labuan company or to register or receive any document, or by any act or decision of the Authority, may appeal within thirty days of the decision of the Authority to the Minister, who may confirm the refusal, act or decision or give such directions in the matter as he deems proper or

otherwise determine the matter but this subsection shall not apply to any act or decision of the Authority —

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

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

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

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

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

- (a) in the case of a Labuan company or a foreign Labuan company —
  - (i) any return of allotment of shares for cash which has been lodged or filed for not less than six years;
  - (ii) any annual return or balance sheet that has been lodged or filed for not less than seven years or any document creating or evidencing a charge or the

complete or partial satisfaction of a charge where a memorandum of satisfaction of the charge has been registered for not less than seven years; or

- (iii) any other document (other than the memorandum and articles or any other document affecting them) which has been lodged, filed or registered for not less than fifteen years;
- (b) in the case of a Labuan company or a foreign Labuan company that has been dissolved or has ceased to be registered for not less than fifteen years, any document lodged, filed or registered; or
- (c) any document a transparency of which has been incorporated with a register kept by the Authority.

### PART III

## CONSTITUTION OF COMPANIES

### DIVISION I

## INCORPORATION

### **Formation of companies**

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

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

(3) A Labuan company may be —

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company.

### **Registration and incorporation**

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

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

(3) On the registration of the memorandum, the Authority shall certify under its seal that the company is, on and from the date specified in the certificate, incorporated as a Labuan company limited by shares or guarantee or is an unlimited company.

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

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



(6) *(Deleted by Act A1367).*

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

(8) The Authority may, from time to time, issue directions, guidelines or requests as it considers necessary in respect of the registration and incorporation of a Labuan company, including —

- (a) the form of notices required to be given to the Authority under this Act; and
- (b) the procedure to be followed in the registration of documents under this Act.

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

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

(2) Upon application under subsection (1), supported by such material as it considers adequate and satisfactory, the Authority may, if it is satisfied that the consent of such number or proportion of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of that country or jurisdiction, and the consent of the proper officer of that country or jurisdiction, to such registration has been obtained by the company, register such company as being so continued and, if so registered, the

company shall be deemed thereafter to be a Labuan company incorporated under this Act and domiciled in Labuan:

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

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

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

- (a) to create a new legal entity;
- (b) to prejudice or affect the continuity of the company;
- (c) to affect the property of the company;
- (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the company or any other person; or
- (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person.

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

- (a) so much of its constitution as would, if it had been incorporated under this Act, have been required by this Act to be included in its memorandum of association, shall be deemed to be the memorandum of association of the company; and

- (b) so much of its constitution as does not, by virtue of paragraph (a), comprise its memorandum of association, shall be deemed to be the articles of association of the company,

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

### **Prior approval in principle**

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

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

### **Requirements as to memorandum**

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

- (a) the name of the company;
- (b) the objects of the company;
- (c) the amount and the denomination of the currencies of the share capital with which it is proposed to be registered;
- (d) the full name and address of each subscriber thereto;

- (e) that the subscriber or subscribers to the memorandum are desirous of being formed into a Labuan company in pursuance of the memorandum and respectively agree to take the number of shares in the capital of the company set out opposite their respective names; and
- (f) if the Labuan company is a company limited by guarantee —
  - (i) that the liability of the members is limited;
  - (ii) that each member undertakes to contribute to the assets of the Labuan company; and
  - (iii) that each member undertakes to contribute to the assets of the Labuan company, in such amount as may be required not exceeding the amount specified in the guarantee, in the event of the company being wound up while he is a member or within one year after he ceases to be a member for payment of the debts and liabilities of the Labuan company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves.

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

(3) Any provision or part thereof then subsisting in the memorandum of any company which states —

- (a) the amount of the share capital with which the company proposes to be or is registered; or
- (b) the division of the share capital of the company into shares of a fixed amount,

shall, in so far as it relates to the matters referred to in either or both of paragraphs (a) and (b), be deemed to be deleted.

(4) The memorandum of a Labuan company may be registered in any character, alphabet or language, provided that it is accompanied by an accurate and certified translation of the English language thereof.

## DIVISION 2

### STATUS AND NAME

#### **Powers of companies**

**19.** (1) Subject to this Act and any written law in Labuan on financial services, a Labuan company shall have full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

(2) The memorandum and articles of a Labuan company may contain a provision relating to the limited capacity, rights, powers or privileges of the company.

#### ***Ultra vires* transactions**

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

(2) Any such lack of capacity or power may be asserted or relied upon only in —

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

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

### **Names of Labuan companies**

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

(2) A Labuan company shall have —

- (a) the word “Corporation” or the word “Incorporated” or the abbreviation “Corp.” or “Inc.”;

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

as part of its name.

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

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

(2C) Subsection (2) shall not apply to a Labuan company that is incorporated for non-profitable purposes including social, charitable or educational.

(2D) Where a Labuan company has a non-romanized character or alphabet as part of its name, an accurate and certified rendition of the

name in the English language shall be employed and be clearly stated in —

- (a) every written communication sent by, or on behalf of, the company; and
- (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

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

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

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

(5) If the Authority considers that the application is made *bona fide* and is satisfied that the proposed name is a name by which the intended Labuan company or the Labuan company could be registered without contravention of subsection (1), the Authority shall reserve the proposed name for a period of three months from the date of the lodging of the application.

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



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

### **Change of name**

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

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

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

Penalty: Ten thousand ringgit.

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

**Articles of association**

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

(2) Articles shall be —

(a) printed;

(b) divided into numbered paragraphs; and

(c) signed by each subscriber to the memorandum or, if any subscriber is a company, sealed with its company seal or signed on its behalf.

(3) Articles may be lodged in any foreign character, alphabet or language, provided that it is accompanied by an accurate and certified translation in the English language thereof, and in the event of conflict, the meaning of words in the original foreign character, alphabet or language shall prevail.

**Alteration of memorandum or articles**

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

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

**Copies of memorandum and articles**

**25.** (1) A Labuan company shall, on being so required by any member, furnish to him a copy of the memorandum and of the articles (if any) on payment by the member of such amount as the

directors may determine to be reasonably necessary to defray the cost of preparing and furnishing it.

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

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

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

Penalty: Ten thousand ringgit.

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

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

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

the company by any person acting under its authority, express or implied,

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

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

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

(4) A Labuan company may, if authorized by its articles, establish a branch or an office in any part of the world, but it shall not establish a branch or an office in any part of Malaysia outside Labuan except as approved by the Authority.

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

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

the directors of the company, a branch shall have power to bind the company and to issue shares or debentures of the company.

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

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

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

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

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

## PART IV

## SHARES, DEBENTURES AND CHARGES

## DIVISION I

## PROSPECTUSES

**28.** *(Deleted by Act A1367).*

**29.** *(Deleted by Act A1367).*

**30.** *(Deleted by Act A1367).*

**31.** *(Deleted by Act A1367).*

**32.** *(Deleted by Act A1367).*

**33.** *(Deleted by Act A1367).*

**34.** *(Deleted by Act A1367).*

**35.** *(Deleted by Act A1367).*

**36.** *(Deleted by Act A1367).*

**37.** *(Deleted by Act A1367).*

**38.** *(Deleted by Act A1367).*

**39.** *(Deleted by Act A1367).*

## DIVISION 2

## RESTRICTIONS ON ALLOTMENT

**40.** *(Deleted by Act A1367).*

**41.** *(Deleted by Act A1367).*

**42.** *(Deleted by Act A1367).*

DIVISION 3

SHARES

**Return of allotment**

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

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

(1A) The Authority may request for additional information or documents from a Labuan company in respect of its return of allotment under this section.

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

Penalty: Ten thousand ringgit. Default penalty.

**Calls**

**44.** A Labuan company may —

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

**Reserve liability**

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

**No par or nominal value shares**

**46.** (1) Shares of a Labuan company shall have no par or nominal value.

(2) In relation to a share issued by a Labuan company before the effective date —

- (a) the amount paid on the share shall be the sum of all amounts paid to the Labuan company at any time for the share (but not including any premium); and



- (b) the amount unpaid on the share shall be the difference between the price of issue of the share (but not including any premium) and the amount paid on the share.

(3) Any amount standing to the credit of a Labuan company's share premium account and any amount standing to the credit of a Labuan company's capital redemption reserve before the effective date shall become part of the company's share capital.

(4) Notwithstanding subsection (3), a Labuan company may use the amount standing to the credit of its share premium account to —

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before the effective date;
- (b) write off —
  - (i) the preliminary expenses of the Labuan company incurred before the effective date; or
  - (ii) any expenses incurred, or commissions or brokerages paid, or discounts allowed, on or before the effective date, for or on any duty, fee or tax payable on or in connection with any issue of shares of the company;
- (c) pay up, pursuant to an agreement made before the effective date, shares which were unissued before that date and which are to be issued on or after that date to the members of the Labuan company as fully paid bonus shares;
- (d) pay up in whole or in part the balance unpaid on shares issued before that date to the members of the Labuan company; or
- (e) pay dividends declared before the effective date, if such dividends are satisfied by the issue of shares to members of the Labuan company.

(5) Notwithstanding subsection (3), if the Labuan company carries on an insurance business or a takaful business in Labuan, it may also apply the amount standing to the credit of its share premium account immediately before the effective date by appropriation or transfer to any fund established and maintained pursuant to the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010, as the case may be.

(6) Notwithstanding subsection (2), the liability of a shareholder for calls in respect of money unpaid on shares issued before the effective date (whether on account of the par value of the shares or by way of premium) shall not be affected by the shares ceasing to have a par value.

(7) A Labuan company may at any time before —

- (a) the date it is required under section 109 to lodge its first annual return after the effective date; or
- (b) the expiry of six months from the effective date,

whichever is the earlier, or within such longer period as may be allowed by the Authority, lodge with the Authority a notice of its share capital in the prescribed form.

(8) Unless a Labuan company has lodged a notice of its share capital under subsection (7), the Authority may, for the purposes of the records maintained by the Authority, adopt, as the share capital of the Labuan company, the aggregate nominal value of the shares issued by the Labuan company as that value appears in the Authority's records immediately before the effective date.

(9) For the purposes of this section —

- (a) “effective date” means the date of commencement of the Offshore Companies (Amendment) Act 2010 [*Act A1367*];

- (b) in relation to a contract (including the memorandum and articles of the company) entered into, or a trust deed or other document executed before the effective date —
  - (i) a reference to the par or nominal value of a share, shall be a reference to —
    - (A) if the share is issued before the effective date, the par or nominal value of the share immediately before the effective date;
    - (B) if the share is issued on or after the effective date but shares of the same class were on issue immediately before the effective date, the par or nominal value that the share would have had if it had been issued then; or
    - (C) if the share is issued on or after the effective date and shares of the same class were not on issue immediately before the effective date, the par or nominal value determined by the directors;
  - (ii) a reference to any share premium shall be taken to be a reference to any residual share capital in relation to the share;
  - (iii) a reference to a right to a return of capital on a share shall be taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value; and
  - (iv) a reference to the aggregate par or nominal value of the Labuan company's issued share capital shall be taken to be a reference to that aggregate as it existed immediately before the effective date as —
    - (A) increased to take account of the par or nominal value as referred to in subparagraph (i) of any shares issued on or after the effective date; and

- (B) reduced to take account of the par or nominal value as referred to in subparagraph (i) of any shares cancelled on or after the effective date.

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

**47.** (1) A Labuan company shall have power —

- (a) to issue shares which may be divided into one or more classes, with such designations, preferences, limitations and relative rights as shall be stated or provided for in the articles, and all prices and values given in respect of the shares shall be expressed in a currency other than ringgit; and
- (b) subject to its articles, to issue fractions of its shares, and such fractional shares shall have the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.

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

### **Treasury shares**

**47A.** (1) A Labuan company may hold its own shares that are purchased or otherwise acquired pursuant to section 48A as treasury shares where —

- (a) the articles of the Labuan company so permits; and
- (b) the number of shares purchased or acquired, when aggregated with shares of the same class held by the Labuan company at the time of the purchase or

acquisition, does not exceed fifteen percent of the shares of that class previously issued by the Labuan company.

(2) The Labuan company whilst holding its own shares as treasury shares —

- (a) shall not exercise any right in respect of the treasury shares and any purported exercise of such a right is void and the treasury shares shall be treated as having no voting rights;
- (b) may not make or receive any dividend or distribution of the Labuan company's asset, including any distribution of assets to members on a winding up, in respect of the shares;
- (c) may at any time sell the treasury shares for cash or transfer the shares as consideration for the purchase or acquisition of shares in or assets of another company or assets of a person;
- (d) may at any time cancel the treasury shares and the directors may take such steps as are requisite to enable the company to cancel its shares without complying with section 53; and
- (e) may distribute the treasury shares as dividends to the shareholders (such dividends to be known as "share dividends"), provided that the costs of the shares on the original purchases shall be applied in the reduction of the funds otherwise available for distribution as dividends.

**Dealing by a Labuan company in its own shares, etc.**

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

- (a) in the ordinary course of its business, if the lending of money is part of the ordinary business of the Labuan company;
  - (b) where the transaction has been approved by a special resolution of the company, and the directors have certified to the meeting, in writing, to the effect that there are no reasonable grounds for believing that —
    - (i) the company is, or would after giving the financial assistance be, insolvent; or
    - (ii) the realizable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance or loan, be less than the aggregate of the company's liabilities and stated capital; or
  - (c) to employees (other than an employee who is also a director) of the company or of any of its subsidiaries or of its holding company.
- (2) *(Deleted by Act A1367).*
- (3) *(Deleted by Act A1367).*

**Purchase by a Labuan company of its own shares, etc.**

**48A.** (1) Subject to subsections (2) and (3), a Labuan company may purchase its own shares —

- (a) where its memorandum or articles so provide; and
- (b) by special resolution,

provided that the purchases thereof, whether direct or indirect, shall be made to the extent of any solvent surplus available.

(2) A payment made by the Labuan company in consideration of the purchase of its own shares in accordance with subsection (1) may be made out of the Labuan company's capital or profits so long as the directors declare by way of a solvency declaration that —

- (a) the Labuan company is able to pay its debts in full at the time of such payment and will be able to pay its debts as they fall due in the normal course of business during the period of twelve months immediately following the date of the payment; and
- (b) the value of the Labuan company's assets is not less than the value of its liabilities (including contingent liabilities) and will not after the proposed purchase become less than the value of its liabilities (including contingent liabilities).

(3) A Labuan company may not purchase any of its own shares unless —

- (a) they are fully paid; and
- (b) a minimum of one shareholder, other than the Labuan company itself, would remain after the purchase.

(4) Subject to section 47A, a Labuan company may at any time, by resolution of its directors, cancel any or part of the shares of the Labuan company of any class purchased by it, and in such event a statement of cancellation shall be lodged with the Authority within thirty days from the date of cancellation.

(5) Where the directors resolve to cancel the shares so purchased, the issued share capital of the company shall be diminished by the shares so cancelled.

(6) The purchase of shares pursuant to subsection (1) and the cancellation of shares made pursuant to subsection (4) shall not be deemed to be a reduction of share capital of the Labuan company.

**49.** *(Deleted by Act A1367).*

**50.** *(Deleted by Act A1367).*

### **Alteration of share capital**

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

- (a) *(Deleted by Act A1367);*
- (b) consolidating and dividing all or any of its share capital;
- (c) subdividing its shares or any of them, so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (d) converting all or any of its paid-up shares into stock and reconverting that stock into paid-up shares;
- (e) cancelling shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any persons, and diminishing the amount of the share capital by the amount of the shares so cancelled;
- (f) redenominating the currency of any shares by the conversion of shares denominated in one currency to the same number of shares of another currency with the prior written consent of the creditor, if any.



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

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

(3) *(Deleted by Act A1367).*

(4) *(Deleted by Act A1367).*

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

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

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

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

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

and may, so far as necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

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

- (a) every creditor of the Labuan company who, at the time fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the Court, unless satisfied by statutory declaration by the directors that there are no such creditors, shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the Labuan company securing

payment of his debt or claim by appropriating, as the Court directs —

- (i) if the company admits the full amount of the debt or claim or, although not admitting it, is willing to provide for it, the full amount of the debt or claim; or
- (ii) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

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

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

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

(6) On the lodging of an office copy of the order with the Authority, the resolution for reducing share capital as confirmed by the order shall take effect, and the Authority shall issue a certificate of such lodgment.

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

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

(9) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference between the amount of the share as fixed by the order and the amount paid, or the reduced amount which is to be deemed to have been paid on the share, as the case may be, but where any creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect upon his claim, not entered on the list of creditors, and after the reduction the Labuan company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim —

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

the contributories settled on the list, as if they were ordinary contributories in a winding up,

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

(9A) Notwithstanding subsection (1), an alteration of the memorandum by reducing the amount of its share capital and of its shares pursuant to a special resolution passed in accordance with subsection (1), may be made without confirmation by the Court, so long as the directors declare by way of a solvency declaration —

- (a) that in their opinion, as regards the Labuan company's situation at the date of the solvency declaration, there is no ground on which the Labuan company could then be found to be unable to pay its debts;
- (b) that in their opinion —
  - (i) if there is an intention to commence winding up of the Labuan company within the period of twelve months immediately following the date of the solvency declaration, that the Labuan company will be able to pay its debts in full within the period of twelve months beginning with the commencement of the winding up; or
  - (ii) if there is no intention to commence winding up, that the Labuan company will be able to pay its debts as they fall due during the period of twelve months immediately following the date of the solvency declaration; and
- (c) that they have formed the opinion that the value of the Labuan company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed reduction, become less than the value of its liabilities (including contingent liabilities),

and every creditor of the Labuan company entitled to any debt or claim admissible in proof against the Labuan company at the date of the solvency declaration shall be entitled to object to the reduction.

(9B) The directors shall lodge a certified copy of the solvency declaration within thirty days with the Authority, and on such lodgment the Authority shall issue a certificate confirming the lodgment of the solvency declaration.

(9C) The Labuan company shall, for a period of six weeks beginning with the resolution date, make available the solvency declaration or a copy of it at the Labuan company's registered office for inspection free of charge by any creditor of the company.

(9D) A creditor of the Labuan company may, at any time during the period of six weeks referred to in subsection (9C), apply to the Court for the resolution to be cancelled.

(9E) Subsections (9C) and (9D) shall apply to a creditor of the Labuan company who, at the date of his application to the Court, is entitled to any debt or claim which, if that date was the commencement date of the winding up of the Labuan company, would be admissible in proof against the Labuan company.

(9F) Where an application is made by a creditor to the Court under subsection (9D) —

- (a) the creditor shall as soon as possible serve the application on the Labuan company; and
- (b) the Labuan company shall as soon as possible give a notice of the application to the Authority.

(10) Any officer of a Labuan company who —

- (a) wilfully conceals the name of any creditor entitled to object to the reduction;

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

shall be guilty of an offence against this Act.

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

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

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

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

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

### **Redeemable preference shares**

**55.** (1) Subject to this section, a Labuan company having a share capital may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be, liable to be

redeemed, and the redemption shall be effected only on such terms and in such manner as are provided by the articles.

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

(3) The shares shall not be redeemed unless they are fully paid up.

(3A) The shares may be redeemed out of the profits or, subject to subsection (3B), out of the capital of the Labuan company.

(3B) The shares shall not be redeemed out of the capital of the Labuan company unless the directors declare by way of a solvency declaration —

- (a) that in their opinion, as regards the Labuan company's situation at the date of the solvency declaration, there is no ground on which the Labuan company could then be found to be unable to pay its debts;
- (b) that in their opinion —
  - (i) if there is an intention to commence winding up of the Labuan company within the period of twelve months immediately following the date of the solvency declaration, that the Labuan company will be able to pay its debts in full within the period of twelve months beginning with the commencement of the winding up; or
  - (ii) if there is no intention to commence winding up, that the Labuan company will be able to pay its debts as they fall due during the period of twelve months immediately following the date of the solvency declaration; and
- (c) that they have formed the opinion that the value of the Labuan company's assets is not less than the value of its liabilities (including contingent liabilities) and will not,



after the proposed redemption, become less than the value of its liabilities (including contingent liabilities).

(3c) The directors shall lodge a certified copy of the solvency declaration within thirty days with the Authority, and on such lodgment the Authority shall issue a certificate confirming the lodgment of the solvency declaration.

(4) *(Deleted by Act A1367).*

(5) *(Deleted by Act A1367).*

(6) *(Deleted by Act A1367).*

(7) *(Deleted by Act A1367).*

(8) *(Deleted by Act A1367).*

#### DIVISION 4

#### DEBENTURES

#### **Interpretation**

**56.** *(Deleted by Act A1367).*

**57.** *(Deleted by Act A1367).*

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

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

(a) a register of holders of the debentures;

(b) a copy of all the terms of debentures so issued;

- (c) a statement of account of the status of the debentures; and
- (d) a register of all cancelled or redeemed debentures.

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

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

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

(5) A copy of any trust deed relating to or for securing any issue of debentures by a Labuan company shall be forwarded by the company to a holder of those debentures at his request, on payment of such amount, not exceeding twenty ringgit or the equivalent in any currency, as the company may require.

(6) If inspection is refused, or a copy is refused or not forwarded, within a reasonable time (but not more than one month) after a request has been made pursuant to this section, the Labuan company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Ten thousand ringgit. Default penalty.

(7) *(Deleted by Act A1367).*

### **Perpetual debentures**

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

### **Reissue of redeemed debentures**

**60.** (1) Where a Labuan company has redeemed any debentures —

- (a) unless any provision to the contrary, whether express or implied, is contained in any contract entered into by the company; or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

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

(3) Where a Labuan company has deposited any of its debentures to secure advances on current accounts or otherwise, the debentures

shall not be deemed to have been redeemed by reason only of the company's account having ceased to be in debit while the debentures remain so deposited.

61. *(Deleted by Act A1367).*

62. *(Deleted by Act A1367).*

63. *(Deleted by Act A1367).*

64. *(Deleted by Act A1367).*

65. *(Deleted by Act A1367).*

#### DIVISION 5

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

#### **Interpretation**

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

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

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

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

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

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

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

**Approved deeds**

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

- (a) the Authority has granted its approval to the deed under this Division; and
- (b) the Authority has granted its approval under this Division to the Labuan trust company appointed for the purposes of the deed acting as a trustee or representative, and that approval has not been revoked and the trustee or representative has not ceased to hold office.

**Approval of deeds**

**68.** (1) Where a deed makes a provision for the appointment of a trustee for, or a representative of, the holders of the interests issued or proposed to be issued by a Labuan company or a foreign Labuan company, the Authority may, subject to this section, grant its approval to the deed.

(2) The Authority shall not grant its approval to a deed unless the deed —

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

- (ii) that the price at which the interests to which the deed relates are to be sold or purchased by the management company are consistent with the regulations relating to those prices.

**Interests to be issued by a Labuan company or a foreign Labuan company only**

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

**Statement to be issued**

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

**No issue without approved deed**

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

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

### **Register of interest holders**

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

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

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

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

**73.** (1) A person shall not —

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

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



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

**Winding up of schemes, etc.**

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

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

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

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

(4) On an application by the trustee or representative the Court may, if it is satisfied that it is in the interest of the holders of the interests, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

**Liability of trustees**

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

(2) Subsection (1) shall not invalidate —

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

## DIVISION 6

## TITLE AND TRANSFERS

**Nature of shares**

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

### Numbering of shares

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

(2) Notwithstanding subsection (1) —

- (a) if at any time all the issued shares in a Labuan company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up; or
- (b) if all the issued shares in a Labuan company are evidenced by certificates in accordance with section 78 and each certificate is distinguished by its appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

### Certificate to be evidence of title

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

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

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

(d) the class of the shares.

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

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

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

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

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

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

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

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

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

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

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

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

Penalty: Ten thousand ringgit. Default penalty.

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

## DIVISION 7

## REGISTER OF CHARGES

**Non-application of Division**

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

**Register of charges**

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

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

Penalty: Ten thousand ringgit.

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

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

(5) If default is made in complying with subsection (3) or (4), the Labuan company or foreign Labuan company and every officer of

the company who is in default shall be guilty of an offence against this Act.

Penalty: Ten thousand ringgit. Default penalty.

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

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

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

Penalty: Ten thousand ringgit. Default penalty.

## **PART V**

### **MANAGEMENT AND ADMINISTRATION**

#### **DIVISION 1**

#### **OFFICE AND NAME**

### **Registered office of a Labuan company**

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

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

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

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

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

Penalty: Ten thousand ringgit. Default penalty.

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

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

Penalty: Ten thousand ringgit. Default penalty.

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

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

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



(2A) The name of a Labuan company or a foreign Labuan company shall (whether or not it is carrying on business under a business name) appear in legible romanized letters and the company number of the Labuan company or the foreign Labuan company shall appear on its memorandum and articles of association and such other documents as may be prescribed and if default is made in complying with this subsection, the company shall be guilty of an offence against this Act.

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

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

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

Authority when the name and the company number of the Labuan company or the foreign Labuan company are not so mentioned,

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

Penalty: Ten thousand ringgit. Default penalty.

## DIVISION 2

### DIRECTORS AND OFFICERS

#### **Directors**

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

(2) No person, other than —

- (a) an officer of a Labuan trust company approved by the Authority under the Labuan Financial Services and Securities Act 2010;
- (b) a domestic company or a Labuan company wholly owned by a Labuan trust company; or
- (c) an officer of a domestic company granted a licence or registered under the Insurance Act 1963 [*Act 89*], Islamic Banking Act 1983 [*Act 276*], Takaful Act 1984 [*Act 312*] or the Banking and Financial Institutions Act 1989 [*Act 372*] which holds shares in a Labuan company,

made available for the appointment by the Labuan trust company or the domestic company under this subsection shall act as a resident director of a Labuan company.

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

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

(5) A resident director of a Labuan company may retire or resign subject to the terms of the agreement between the Labuan trust company which made him available for the appointment or the Labuan company or domestic company, as the case may be, and the Labuan company of which he was appointed resident director.

(5A) The resident director referred to in subsection (5) may be replaced by another officer of the Labuan trust company or the Labuan company or the domestic company wholly owned by the Labuan trust company, as the case may be, made available for the appointment by the Labuan trust company.

(6) A resident director of a Labuan company shall be entitled to vote upon the resolution of the board of directors without disclosing his interests as a director of any other Labuan company.

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

(8) A director of a Labuan company shall not disclose to any person, or use for any purpose, any information obtained by reason of his office except in accordance with his duty as a director of the

company and so far as he may be compelled by law so to do, but a director may disclose to an appropriate public officer in Malaysia, or otherwise use within Malaysia, any information within his knowledge which he honestly believes suggests that a fraud is being or is likely to be practised by the company or by any of its members or directors or upon the company or any of its members.

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

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

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

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

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

### **Validity of acts of directors**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) For the purposes of this section, an interest of a director shall be treated as including an interest of a member of the director's family and the words "member of the director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

**Duty and liability of officers**

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

(2) A director of a Labuan company shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the Labuan company.

(3) A director of a Labuan company shall exercise reasonable care, skill and diligence with —

- (a) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and
- (b) any additional knowledge, skill and experience which the director in fact has.

(4) A director who makes a business judgment is deemed to meet the requirements of the duty under subsection (3) and the equivalent duties under the common law and in equity if the director —

- (a) makes the business judgment in good faith for a proper purpose;
- (b) does not have a material personal interest in the subject matter of the business judgment;
- (c) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
- (d) reasonably believes that the business judgment is in the best interest of the Labuan company,



and for the purpose of this subsection, “business judgment” means any decision on whether or not to take action in respect of a matter relevant to the business of the company.

(5) A director may rely on information, professional or expert advice, opinions, reports or statements including financial statements and other financial data, prepared, presented or made by—

- (a) any officer of the Labuan company whom the director believes on reasonable grounds to be reliable and competent in relation to matters concerned;
- (b) any other person retained by the Labuan company as to matters involving skills or expertise in relation to matters that the director believes on reasonable grounds to be within the person’s professional or expert competence;
- (c) another director in relation to matters within the director’s authority; or
- (d) any committee to the board of directors on which the director did not serve in relation to matters within the committee’s authority.

(6) The director’s reliance made under subsection (5) is deemed to be made on reasonable grounds if it was made —

- (a) in good faith; and
- (b) after making an independent assessment of the information or advice, opinions, reports or statements, including financial statements and other financial data, having regard to the director’s knowledge of the Labuan company and the complexity of the structure and operation of the Labuan company.

(7) Except as otherwise provided by this Act, the memorandum or articles of association of the Labuan company or any resolution of the board of directors or shareholders of the Labuan company, the

directors may delegate any power of the board of directors to any director, committee to the board of directors, officer, employee, expert or any other person.

(8) Where the directors have delegated any power as referred to in subsection (7), the directors are responsible for the exercise of such power by the delegatee as if such power had been exercised by the directors themselves.

(9) The directors are not responsible under subsection (8) if—

- (a) the directors believed on reasonable grounds at all times that the delegatee would exercise the power in conformity with the duties imposed on the directors under this Act and the memorandum and articles of association of the company (if any); and
- (b) the directors believed on reasonable grounds, in good faith and after making a proper inquiry if the circumstances indicated the need for the inquiry, that the delegatee was reliable and competent in relation to the power delegated.

(10) An officer of a Labuan company shall not make improper use of any information acquired by reason of his office to gain, whether directly or indirectly, an advantage for himself or any other person or to cause detriment to the company.

(11) An officer of a Labuan company who contravenes this section shall be —

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

(12) A director of a Labuan company who makes a solvency declaration, pursuant to the provisions of this Act, without having

reasonable grounds for the opinions expressed in it shall be criminally liable for any monies or gains received.

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

### **Secretary**

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

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

(2) No person, other than an officer of a Labuan trust company approved by the Authority under the Labuan Financial Services Authority Act 1996, or a Labuan company, or a domestic company wholly owned by the Labuan trust company, made available for the appointment by the Labuan trust company shall act or be appointed as a resident secretary.

(2A) A resident secretary of a Labuan company may resign subject to the terms of the agreement between the Labuan trust company which made the person available for the appointment and the Labuan company concerned and such Labuan company shall appoint a replacement resident secretary not later than thirty days from the effective date of the resignation.

(2B) The Labuan trust company shall lodge with the Authority a notice of the resignation pursuant to subsection (2A).

(2C) Where the Labuan company fails to appoint a replacement resident secretary within thirty days from the effective date of

resignation pursuant to subsection (2A), the provisions of section 151 shall apply.

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

(4) Notwithstanding any other provision in this Act to the contrary, the resident secretary shall not be liable as an officer of the company to any penalty provided for in this Act save for anything done or omitted to be done by him in carrying out the duties of his office, nor shall he be liable for any damage caused to or suffered by any person how so ever arising otherwise than by reason of his wilful misconduct, wilful default or wilful neglect.

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

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

(7) Every secretary of a Labuan company shall be appointed by the directors of the company.

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

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

(2) The register shall contain with respect to each director, in the case of an individual, his present full name and any former name, his usual business or residential address and identification (if any) and

the name of the Labuan trust company of which he is an officer and the address of its registered office, or in the case of a corporation, the corporation's full name, the address of its registered office and the names of its authorized nominees and representatives in Labuan.

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

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

(5) A Labuan company shall lodge with the Authority —

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

- (d) within one month of any change in the prescribed particulars of directors and secretaries, a notice in the prescribed form notifying the Authority of the change.

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

Penalty: Ten thousand ringgit. Default penalty.

- (7) In this section, “identification” means —
- (a) in the case of a person issued with an identity card, the number of the identity card;
  - (b) in the case of a person not issued with an identity card, particulars of his passport;
  - (c) in the case of a corporation, the incorporation or registration number; or
  - (d) such other similar evidence of identification as is available.

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

**94A.** Where any offence against any provision of this Act has been committed by any domestic company or Labuan made available by a Labuan trust company to act or be appointed as resident director or resident secretary of a Labuan company, any person who at the time of the commission of the offence was a director or an officer of the Labuan trust company or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such Labuan trust company, shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he

ought to have exercised, having regard to the nature of his function in that capacity and all the circumstances.

### **Removal of director**

**94B.** (1) Notwithstanding anything in the constituent documents of a Labuan company or in any agreement between a Labuan company and a director, a director of the Labuan company may be removed from office by its shareholder's resolution, in accordance to its memorandum or articles, which is passed at a meeting called for the purpose that include the removal of a director.

(2) The notice of the meeting shall state that the purpose of the meeting is the removal of the director.

(3) Where permitted by the memorandum or articles of a Labuan company, a director of the Labuan company may be removed from office by the directors of the Labuan company.

## DIVISION 3

### MEETINGS AND PROCEEDINGS

#### **Meetings of members**

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

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

(3) Subject to any limitations in its memorandum and articles, a Labuan company may hold all meetings of its members within Malaysia, or elsewhere, at more than one venue using any technology that allows all members a reasonable opportunity to participate in the meetings.

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

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

- (a) if two or more persons hold shares jointly, each of them may be present in person or by proxy at a meeting of members and may speak as a member;
- (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
- (c) if two or more of them are present in person or by proxy, they shall vote as one.

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

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

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

- (a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or



- (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

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

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

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

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

- (a) any member elected by those members may be chairman thereof; and
- (b) every member shall have one vote in respect of each share held by him.

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

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

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

act as its representative either at a particular meeting of members or at all meetings of any creditors of the company,

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

(4) Where —

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

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

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

(6) Where —

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

and a minute is signed by a representative of the holding company authorized pursuant to subsection (3) or signed by the sole member stating that any act, matter or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an annual

general meeting or an extraordinary general meeting of the subsidiary or the Labuan company has been made, performed, or passed, that act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by or at an annual general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

### **Voting by members**

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

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

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

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

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

**100.** (1) If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and the Court may give such ancillary or consequential directions as it thinks expedient.

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

### **Special resolution**

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

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

### **Resolutions signed by all members deemed to be duly passed at meeting**

**101A.** (1) Notwithstanding anything to the contrary in this Act or the articles of the Labuan company, a resolution in writing signed by or on behalf of all persons for the time being entitled to receive notice of, and to attend and vote at, general meetings of a Labuan company, shall for the purposes of this Act, be treated as a resolution duly passed at a general meeting of the Labuan company and, where relevant, as a special resolution so passed.

(2) Any such resolution shall be deemed to have been passed at a meeting held at the registered office on the date on which it was signed by the last member.

(3) This section shall not be construed as requiring that the persons signing a resolution under this section shall sign the same document

containing the resolution; but where two or more documents are used for the purpose of obtaining signatures under this section in respect of any resolution, each such document shall be certified in advance by the Labuan trust company as containing the true and correct version of the proposed resolution.

### **Resolution requiring special notice**

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

**103.** *(Deleted by Act A1367).*

### **Minutes of proceedings**

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

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

## DIVISION 4

## REGISTER OF MEMBERS

**Register of members**

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

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

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

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

Penalty: Ten thousand ringgit. Default penalty.

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

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

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

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

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

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

**108.** (1) If, in relation to a Labuan company —

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

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

by the company of any damages sustained by any party to the application.

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

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

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

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

#### DIVISION 5

#### ANNUAL RETURN

#### **Annual return**

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

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



(3) The annual return signed by a director or secretary of the company shall be lodged with the Authority, once in each calendar year, not later than thirty days prior to the anniversary of the date of its incorporation.

(4) A Labuan company not having a share capital shall lodge with the Authority a return in the prescribed form containing the particulars referred to in subsection (5) and made up in accordance with subsection (3).

(5) The return of a Labuan company not having a share capital shall contain the following particulars:

- (a) the address of the registered office of the Labuan company;
- (b) where the register of members is kept elsewhere than at that the registered office of the Labuan company, the address of the place where the register is kept;
- (c) particulars of the total amount of indebtedness of the Labuan company in respect of all charges, whether required to be registered with the Authority or not;
- (d) all such particulars with respect to the persons who on the day to which the return is made up are the directors, managers or secretaries of the Labuan company as are required to be contained in the register of directors, managers and secretaries;
- (e) the name and address of the auditor of the Labuan company; and
- (f) such other matters relating to the accounts of the Labuan company.

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

Penalty: Ten thousand ringgit. Default penalty.

## PART VI

### ACCOUNTS AND AUDIT

#### DIVISION 1

#### ACCOUNTS

#### **Accounts to be kept**

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

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

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

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

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

**Audited accounts to be laid before meeting**

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

(1A) A Labuan company shall lodge with the Authority an annual certificate from a director within thirty days of the accounts being laid before the company at a meeting of members stating that he has considered the audited or unaudited accounts mentioned in subsection (1) and certifying, with or without qualifications —

- (a) that those accounts show that the company was solvent at the date they were made up;
- (b) that he is unaware of any circumstances which may render those accounts untrue; and
- (c) that no circumstances have occurred since the date to which those accounts were made up which would render the company insolvent, and if such a certificate cannot be given without qualification, the aspects in which it is qualified shall be set out.

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

(2A) Subject to section 113A, a Labuan company shall lodge with the Authority a certificate from an approved auditor within thirty days of the accounts being laid before the company at a meeting of members stating that —

- (a) the proper accounts of the company for the financial period ending on the date specified have been kept and a balance sheet and profit and loss account for that period have been prepared and audited by that auditor; and
- (b) the director giving the certificate under subsection (1A) has been furnished with a copy of those accounts.

(2B) The approved auditor shall retain for seven years a copy of the accounts to which his certificate relates.

(2C) Notwithstanding the time periods imposed in subsections (1) and (2), the Authority may, on the application of the Labuan company, if for any special reason the Authority thinks fit to do so, extend the time periods notwithstanding that the periods so extended are beyond the calendar year.

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

Penalty: Ten thousand ringgit. Default penalty.

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

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

DIVISION 2

AUDIT

**Auditor to be appointed**

**113.** (1) A Labuan company or a foreign Labuan company shall not be required to appoint a person or persons to be the auditor or auditors of the company unless —

- (a) it is required to do so under any other written laws in Labuan in respect of financial services;
- (b) its articles so provide; or
- (c) it makes an offer for subscription or purchase, or issues an invitation to subscribe for or purchase, securities pursuant to subsection 8(1) of the Labuan Financial Services and Securities Act 2010 and such offer or invitation is not excluded under subsection 8(5) of that Act, or subsection 13(1) of the Labuan Islamic Financial Services and Securities Act 2010 and such offer or invitation is not excluded under subsection 13(5) of that Act.

(1A) Notwithstanding subsection (1), the Authority may, if it is satisfied that there has been a breach of section 110 or 111 or that it is otherwise in the public interest to do so, by notice in writing to a company exempt under either of those sections, require that company to lodge with the Authority, within such time as may be specified in that notice —

- (a) its accounts duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and
- (b) an auditor's report referred to in section 117 in relation to those accounts prepared by the auditor or auditors of the company.

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

**113A.** (*Deleted by Act A1367*).

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

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

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

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

(4) (*Deleted by Act A1367*).

### **Remuneration of auditor**

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

**Auditor may attend meetings**

**116.** An auditor of a Labuan company may attend and address all meetings of members of the company.

**Rights and duties of auditors**

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

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

(3) If an auditor in the course of performance of his duties as an auditor of a Labuan company is of the opinion that a serious offence involving fraud or dishonesty is being or has been committed against the Labuan company or this Act by the officers of the Labuan company, he shall forthwith report the matter in writing to the Authority.

(4) No duty to which an auditor of a Labuan company may be subjected to shall be regarded as having been contravened by reason of his reporting the matter referred to in this section in good faith to the Authority.

PART VII

ARRANGEMENTS AND RECONSTRUCTIONS

**Arrangements**

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

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

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

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

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

- (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
- (c) determine whether any holder of shares, debt obligations other securities in the company may dissent from the



proposed arrangement and receive payment of the value of his shares, debt obligations or other securities;

- (d) conduct a hearing and permit any interested persons to appear; and
- (e) approve or reject the plan of arrangement as proposed or approve it with such amendments as it may direct:

Provided that the Court is satisfied that the requirements of the laws of the jurisdictions in which the corporation was incorporated, registered or established in order to allow it to proceed with the arrangement have been complied with.

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

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

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

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

- (a) the plan of arrangement;
- (b) the order of the Court approving the plan of arrangement; and

(c) the manner in which the plan of arrangement was approved, if approval is required by the order of the Court.

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

(9) Upon registration of the articles of arrangement, the Authority shall issue a certificate under its seal certifying that the articles of arrangement have been registered.

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

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

### **Amalgamations**

**118A.** (1) Notwithstanding section 118, two or more Labuan companies (each to be referred to as an “amalgamating Labuan company”) may amalgamate and continue as a new Labuan company:

Provided that an amalgamating Labuan company shall not be a licensed entity under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.

(2) An amalgamation proposal shall contain the terms of an amalgamation under subsection (1) and, in particular —

(a) the name of the amalgamated Labuan company;

(b) the registered office of the amalgamated Labuan company;

- (c) the full name and residential address of every director of the amalgamated company;
- (d) the share structure of the amalgamated Labuan company, specifying —
  - (i) the number of shares of the amalgamated Labuan company;
  - (ii) the rights, privileges, limitations and conditions attached to each share of the amalgamated Labuan company; and
  - (iii) whether the shares are transferable or nontransferable and, if transferable, whether their transfer is subject to any condition or limitation;
- (e) a copy of the memorandum and articles of the amalgamated Labuan company;
- (f) the manner in which the shares of each amalgamating Labuan company are to be converted into shares of the amalgamated Labuan company;
- (g) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of the shares of the amalgamated company;
- (h) any payment to be made to any member or director of an amalgamating Labuan company, other than a payment of the kind described in paragraph (g); and
- (i) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated Labuan company.

(3) An amalgamation proposal shall specify the date on which the amalgamation is intended to become effective.

(4) If the shares of one of the amalgamating Labuan companies are held by or on behalf of another of the amalgamating Labuan companies, the amalgamation proposal —

- (a) shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and
- (b) shall not provide for the conversion of those shares into shares of the amalgamated Labuan company.

(5) A cancellation of the shares under this section shall not be deemed to be a reduction of the share capital within the meaning of this Act.

(6) An amalgamation proposal shall be approved by the members of each amalgamating Labuan company by special resolution in the manner provided in the articles of each amalgamating Labuan company.

(7) The board of directors of each amalgamating Labuan company shall, prior to the passing of the special resolution referred to in subsection (6) —

- (a) resolve that the amalgamation is in the best interest of the amalgamating Labuan company;
- (b) make a solvency declaration in relation to the amalgamating Labuan company that —
  - (i) the amalgamating Labuan company will be able to pay its debts as they fall due during the period of twelve months immediately after the date on which the amalgamation is to become effective; and

- (ii) at the date of the declaration, the value of the amalgamating Labuan company's assets is not less than the value of its liabilities (including contingent liabilities).

(8) The board of directors of each amalgamating Labuan company shall send to every member of the amalgamating Labuan company, not less than twenty-one days before the date referred to in subsection (3) —

- (a) a copy of the amalgamation proposal (which shall include the proposed memorandum and articles of association of the amalgamated Labuan company);
- (b) a copy of the solvency declaration given by the directors under paragraph (7)(b);
- (c) a statement of any material interests of the directors, whether in that capacity or otherwise; and
- (d) such further information and explanation as may be necessary to enable a reasonable member of the amalgamating Labuan company to understand the nature and implications for the amalgamating Labuan company and its members of the proposed amalgamation.

(9) The directors of each amalgamating Labuan company shall not less than twenty-one days before the date referred to in subsection (3) —

- (a) send a copy of the amalgamation proposal to every secured creditor of the amalgamating Labuan company; and
- (b) cause to be published in at least one newspaper widely circulated in Malaysia and one international financial newspaper a notice of the proposed amalgamation, including a statement that —

- (i) the copies of the amalgamation proposal are available for inspection by any member or creditor of an amalgamating Labuan company at the registered offices of the amalgamating Labuan companies and at such other places as may be specified in the notice during ordinary business hours; and
- (ii) a member or creditor of an amalgamating Labuan company is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating Labuan company.

(10) After the proposal for amalgamation has been approved in accordance with subsection (6), the memorandum and articles of association of the amalgamated Labuan company shall be executed by each amalgamating Labuan company which shall contain —

- (a) the proposal for amalgamation;
- (b) a copy of the declarations given by the directors under paragraph (7)(b); and
- (c) a copy of the special resolution of each amalgamating Labuan company approving the proposal for amalgamation under subsection (6).

(11) The amalgamation of two Labuan companies under this section shall create a new legal entity which shall —

- (a) consistent with its articles established by the amalgamation, possess all the rights, privileges, immunities, powers and purposes as may be agreed by the amalgamating Labuan companies;
- (b) without further act or deed, be vested with all the property, real and personal, including subscriptions to the shares, causes of action and every other asset of each of the amalgamating Labuan company; and

- (c) assume and be liable for all the liabilities, obligations and penalties of each of the amalgamating Labuan company, and no liability or obligation due or to become due, claim or demand for any cause existing against any such company or any shareholder, officer or director thereof, shall be released or impaired by the such amalgamation, and every action or proceeding, whether civil or criminal, then pending by or against each of the amalgamating Labuan company shall not abate or discontinue but may be enforced, prosecuted or settled as if the amalgamation had not occurred or may be continued in the name of the new legal entity formed by virtue of the amalgamation.

(12) The memorandum and articles of association of the amalgamated Labuan company shall, together with the prescribed fees, be lodged with the Authority, who shall retain and register them in the register, and the amalgamation shall be effective from the date of registration of the memorandum and articles.

(13) Upon registration of the memorandum and articles of association of the amalgamated Labuan company, the Authority shall issue a certificate under its seal certifying the amalgamation and that the amalgamated Labuan company is, from the date specified in the certificate, incorporated as a Labuan company.

**Amalgamation of a Labuan company, a foreign Labuan company or a corporation and continuation as a Labuan company**

**118B.** (1) A Labuan company, a foreign Labuan company or a corporation may amalgamate and continue as a Labuan company registered in Labuan to which the provisions of this Act and any other law applicable to Labuan companies shall apply:

Provided that the Labuan company, the foreign Labuan company or the corporation, as the case may be, shall not be a licensed entity under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.

(2) A foreign Labuan company or corporation shall obtain all the necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to amalgamate and continue as a Labuan company registered in Labuan, and shall file with the Authority documentary proof of such authorizations.

(3) The provisions of section 118A shall apply, *mutatis mutandis*, to an amalgamation under this section in the same way as they apply to an amalgamation under section 118A.

### Short form amalgamation

**118c.** (1) Subject to subsection 118B (2), a Labuan company (referred to as the “amalgamating holding company”) and one or more of its wholly-owned subsidiaries (referred to as the “amalgamating subsidiary company”) may amalgamate and continue as one Labuan company, being the amalgamated holding company, without complying with subsections 118A (2) to (13) if the members of each amalgamating company, by special resolution, resolve to approve an amalgamation of the amalgamating companies on the terms that —

- (a) the shares of each amalgamating subsidiary company will be cancelled without any payment or any other consideration;
- (b) the memorandum of the amalgamated Labuan company will be the same as the memorandum of the amalgamating holding company;
- (c) the directors of the amalgamating holding company and every amalgamating subsidiary company are satisfied that the amalgamated Labuan company will be able to pay its debts as they fall due during the period of twelve months immediately after the date on which the amalgamation is to become effective; and



- (d) the person or persons named in the resolution will be the director or directors of the amalgamated Labuan company:

Provided that the amalgamating holding company and the amalgamating subsidiary company shall not be a licensed entity under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.

(2) Two or more wholly-owned subsidiary companies of the same corporation may amalgamate and continue as one Labuan company without complying with subsections 118A(2) to (13) if the members of each amalgamating company, by special resolution, resolve to approve an amalgamation of the amalgamating companies on the terms that —

- (a) the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration;
- (b) the memorandum of the amalgamated Labuan company will be the same as the memorandum of the amalgamating company whose shares are not cancelled;
- (c) the directors of every amalgamating company are satisfied that the amalgamated Labuan company will be able to pay its debts as they fall due during the period of twelve months immediately after the date on which the amalgamation is to become effective; and
- (d) the person or persons named in the resolution will be the director or directors of the amalgamated Labuan company:

Provided that none of the wholly-owned subsidiary companies shall be a licensed entity under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010.

(3) The directors of each amalgamating company shall, not less than twenty-one days before the date referred to in subsection (1) or (2), as the case may be, give written notice of the proposed

amalgamation to every secured creditor of the amalgamating company.

(4) The resolution referred to in subsection (1) or (2), as the case may be, shall be deemed to be an amalgamation proposal that has been approved.

(5) The board of directors of each amalgamating company shall, before the date referred to in subsection (1) or (2), as the case may be, make a solvency declaration in relation to the amalgamated Labuan company in accordance with paragraph 118A(7)(b).

(6) A cancellation of the shares under this section shall not be deemed to be a reduction of the share capital within the meaning of this Act.

### **Effect of amalgamation**

**118d.** (1) A certificate of amalgamation issued by the Authority under subsection 118A (13) shall be conclusive evidence that the assets of the Labuan companies being amalgamated are vested in the amalgamated Labuan company as at the date of registration.

(2) The Authority shall, as soon as practicable after the effective date of an amalgamation, remove each of the amalgamating Labuan companies previous names from the register.

(3) A certificate of amalgamation and incorporation issued by the Authority shall be proof of compliance with all the requirements of this Act in respect of the amalgamation and incorporation.

(4) The amalgamated Labuan company shall lodge, within thirty days from the issue of the certificate in subsection 118A (13), an authenticated copy of the certificate and an authenticated copy of the amalgamation proposal with the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property or an interest in movable property transferred pursuant to the amalgamation.

(5) Where the amalgamation proposal requires the vesting of any alienated land, or any share or interest in any alienated land in the proposed amalgamated Labuan company—

- (a) the Authority shall, where such alienated land is in Peninsular Malaysia, pursuant to subsection 420(2) of the National Land Code [*Act 56/1965*], cause an authenticated copy of the certificate together with an authenticated copy of the amalgamation proposal to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the issue of the certificate so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to subsections 420 (2), (3) and (4) of the National Land Code;
- (b) where such alienated land is in Sabah, the amalgamated Labuan company shall, as soon as practicable after the certificate has been issued, present an authenticated copy of such certificate to the Registrar for the registration of the vesting of the alienated land or of the share or interest in the alienated land as provided under the Land Ordinance of Sabah [*Sabah Cap. 68*]; or
- (c) where such alienated land is in Sarawak, the amalgamated Labuan company shall, as soon as practicable after the order has been made, produce an authenticated copy of such certificate to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land, in the amalgamated Labuan company, as provided under section 171 of the Land Code of Sarawak [*Sarawak Cap. 81*].

(6) An amalgamation proposal approved pursuant to this section may relate to any property or business of any of the amalgamating Labuan companies outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgements that may exist between Malaysia and the country, territory or place outside Malaysia in which such property or business is located, or where there are no such

arrangements, in accordance with the law applicable in such country, territory or place.

### **Regulations in respect of takeover, merger and amalgamation**

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

## PART VIII

### FOREIGN LABUAN COMPANIES

#### **Interpretation**

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

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

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

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

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

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

### **Registration of foreign Labuan companies**

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

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

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin, or a document of similar effect;
- (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;
- (c) a list of its directors and officers containing similar particulars with respect to its directors as are required to be contained in the register of the directors and secretaries a Labuan company under section 94;
- (d) where the list referred to in paragraph (c) includes directors resident in Labuan who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign Labuan company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name of a Labuan trust company that is authorized to accept on its behalf service of process and any notice required to be served on the company; and
- (f) a statutory declaration in the prescribed form made by an officer of the Labuan trust company,

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

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

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

(5) A foreign Labuan company shall pay an annual fee in accordance with section 151.

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

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

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

### **Registered office of foreign Labuan companies**

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

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

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

Penalty: Ten thousand ringgit. Default penalty.

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

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

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

the foreign Labuan company shall, within one month after the change or alteration, lodge with the Authority particulars of the change or alteration and such documents as the regulations may require.

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

(3) On the lodging with the Authority of particulars of any change or alteration of the name of a foreign Labuan company referred to in



paragraph (1)(d), the Authority shall issue a certificate in the prescribed form under its seal, and that certificate shall be *prima facie* evidence in all courts as to the change or alteration of the name of the company.

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

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

### **Service on foreign Labuan companies**

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

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

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

**Cessation of business in Labuan**

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

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

**127.** (1) If a foreign company goes into liquidation or is dissolved in its place of incorporation, establishment or origin, the foreign Labuan company shall, within one month after the commencement of the liquidation or dissolution or within such further time as the Authority in special circumstances allows, lodge or cause to be lodged with the Authority —

- (a) a notice of such liquidation or dissolution; and
- (b) where a liquidator is appointed to such foreign Labuan company in its place of incorporation, establishment or origin (“foreign liquidator”), a notice of such appointment.

(2) Upon receipt of the notice in paragraph (1)(a), the Authority shall forthwith appoint an approved liquidator, and until such time that an approved liquidator is appointed to the foreign Labuan company, the foreign liquidator shall have the powers and functions of an approved liquidator.

(3) If the foreign Labuan company fails to lodge the notice under paragraph (1)(a), the Authority may, at any time after the expiry of one month after the commencement of the liquidation or the dissolution of the foreign Labuan company, appoint an approved liquidator to the foreign Labuan company.

(4) Upon the appointment of an approved liquidator under subsection (2) or (3), the Court shall be deemed to have ordered that the foreign Labuan company be wound up.

(5) The approved liquidator shall get in all the assets of the foreign Labuan company situate or recoverable in Labuan and shall, in so doing, have all the powers of an approved liquidator of a Labuan company.

(6) Before paying or transferring to the foreign liquidator any of the assets got in within Labuan, the approved liquidator shall —

- (a) pay to the Authority all penalties, costs, fees and charges due and owing;
- (b) pay the amount of all taxes payable under the Labuan Business Activity Tax Act 1990 [Act 445]; and
- (c) pay to any resident to whom, at the time of the appointment of the approved liquidator in Labuan, any debt incurred *bona fide* by a foreign Labuan company in respect of supply of services to or for the foreign Labuan company is due, the amount of such debt,

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

(7) Until the winding up of its affairs in Labuan is completed, the foreign Labuan company shall be deemed to continue to exist in Labuan.

(8) The provisions of Part XI of this Act relating to the striking-off from the register of the names of defunct companies shall apply *mutatis mutandis* to a foreign Labuan company.

**Names of foreign Labuan companies**

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

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

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

**Returns by foreign Labuan companies**

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

(2) The Minister may make regulations —

- (a) prescribing the registers and returns to be kept and made by a foreign Labuan company and fixing the times within which the same must be kept and made; and
- (b) prescribing the fees and charges to be paid for the lodging of any annual return.

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

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

PART VIII

COMPANY MANAGEMENT

**130A.** *(Deleted by Act A1367).*

**130B.** *(Deleted by Act A1367).*

**130C.** *(Deleted by Act A1367).*

**130D.** *(Deleted by Act A1367).*

**130E.** *(Deleted by Act A1367).*

**130F.** *(Deleted by Act A1367).*

**130G.** *(Deleted by Act A1367).*

**130H.** *(Deleted by Act A1367).*

**130I.** *(Deleted by Act A1367).*

**130J.** *(Deleted by Act A1367).*

**130K.** *(Deleted by Act A1367).*

**130L.** *(Deleted by Act A1367).*

**130m.** (*Deleted by Act A1367*).

## PART VIIIB

### LABUAN PROTECTED CELL COMPANIES

#### **Interpretation**

**130n.** (1) In this Part, unless the context otherwise requires —

“cell” means a cell created by a Labuan protected cell company for the purpose of segregating and protecting cell assets in the manner provided under this Part;

“cell assets” means the assets of a Labuan protected cell company attributable to the Labuan protected cell company’s cells;

“cell capital” means the proceeds of the issue of cell shares;

“cell dividend” means the dividend paid by a Labuan protected cell company in respect of cell shares;

“cell shares” means shares created and issued by a cell in a Labuan protected cell company;

“Labuan protected cell company” means a Labuan company incorporated as, or converted into, a protected cell company in accordance with the provisions of this Part.

#### **Labuan protected cell companies**

**130o.** (1) Subject to the provisions of this Act —

- (a) a Labuan company may be incorporated as a Labuan protected cell company; and

- (b) an existing Labuan company may, if authorized by its articles and by special resolution, be converted into a Labuan protected cell company.

(2) A Labuan protected cell company may establish one or more cells for the purpose of segregating and protecting cell assets in the manner provided by this Part.

(3) For the purposes of this Act, notwithstanding that a Labuan protected cell company may create one or more cells pursuant to the provisions of this Part, the Labuan protected cell company shall be a single legal person, and the creation by the Labuan protected cell company of a cell does not create, in respect of the cell, a legal person separate from the Labuan protected cell company.

(4) No Labuan company or foreign Labuan company shall be incorporated as, or converted into, or operate as a Labuan protected cell company unless it is formed, and will operate for the sole purpose of —

- (a) conducting Labuan insurance business or Labuan captive insurance business on such terms as provided under the Labuan Financial Services and Securities Act 2010 and Labuan takaful business or Labuan captive takaful business on such terms as provided under the Labuan Islamic Financial Services and Securities Act 2010; or
- (b) conducting the business of a mutual fund under the Labuan Financial Services and Securities Act 2010 and the business of an Islamic mutual fund under the Labuan Islamic Financial Services and Securities Act 2010.

### **Approval of the Authority**

**130p.** (1) A Labuan company shall not be incorporated as, or operate as, or be converted into, a Labuan protected cell company except in accordance with the terms and conditions of the written approval of the Authority, which may prescribe classes or

descriptions of companies which may be Labuan protected cell companies.

(2) The Authority may at any time and in such manner as it thinks fit —

- (a) vary or revoke any term or condition subject to which an approval under subsection (1) was granted; and
- (b) impose any new term or condition to any such approval.

(3) An application for approval of the Authority as required in subsection (1) shall be —

- (a) made in such form and shall be accompanied by such documents and information, verified in such manner, as the Authority may require; and
- (b) accompanied by the prescribed fee.

(4) The Authority may require an applicant under subsection (3) to furnish it with such other documentation and information as it considers necessary to determine the application.

**Incorporation of, or conversion into, a Labuan protected cell company**

**130q.** (1) The incorporation or conversion of a Labuan company or a foreign Labuan company as a Labuan protected cell company shall be made by filing the company's memorandum and articles or amended memorandum or articles under this Part, accompanied by—

- (a) a certified copy of the approval of the Authority granted under section 130p;
- (b) all such documents and information as are required for the registration or conversion of the memorandum and articles of a Labuan company or foreign Labuan company as a



Labuan protected cell company required under this Act;  
and

- (c) the prescribed fee.

**Name and memorandum or articles of a Labuan protected cell company**

**130r.** (1) The name of a Labuan protected cell company shall, without prejudice to the provisions of section 21 of this Act, include the expressions “Protected Cell Company” or “PCC”.

(2) Each cell of a Labuan protected cell company shall have its own distinct name or designation.

(3) The memorandum or articles of a Labuan protected cell company shall state that it is a Labuan protected cell company.

(4) A Labuan protected cell company may, in order to comply with subsection (3), alter its memorandum or articles by a special resolution, and the provisions of this Act relating to alteration of the memorandum or articles shall apply.

(5) Unless and until a Labuan protected cell company has complied with the provisions of this section, it shall not be deemed to be a Labuan protected cell company for the purposes of this Part.

**Cell and general assets**

**130s.** (1) The assets of a Labuan protected cell company shall be either —

- (a) cell assets which comprise the assets of the Labuan protected cell company held within or on behalf of the protected cells of the company; or
- (b) general assets which comprise the assets of the Labuan protected cell company which are not cell assets.

- (2) The assets of a protected cell comprise —
- (a) assets representing the consideration paid or payable for the issue of the protected cell shares and reserves attributable to the protected cell; and
  - (b) all other assets attributable or held within the protected cell.
- (3) A Labuan protected cell company shall —
- (a) maintain separate records for cell assets and keep the cell assets held for each cell separate from cell assets held for other such cells and from general assets; and
  - (b) arrange proper protection of cell assets, both as between cells and in respect of general assets, by way of segregation and clear identification.
- (4) The duty imposed by subsection (3) is not breached by reason only that the directors of a Labuan protected cell company—
- (a) included the directors who are appointed to manage the affairs of a particular cell or cells;
  - (b) has appointed a committee to undertake its duties in relation to a particular cell or cells;
  - (c) has caused or permitted the cell assets or general assets, or a combination of both, to be collectively invested or collectively managed by an investment manager; or
  - (d) has caused or permitted the cell assets and general assets to be held by or through a nominee or trustee:

Provided that the assets in question remain separately identifiable according to subsection (3).

- (5) In the event of a contravention of subsection (3) —

- (a) each director and officer in contravention, as the case may be, shall incur personal liability for any loss or damage as consequence of the contravention; and
- (b) each such director and officer shall severally have a right of indemnity against the general assets of the Labuan protected cell company, unless he was fraudulent, reckless, or acted in bad faith.

### **Cell shares and cell share capital**

**130r.** (1) A Labuan protected cell company may, in respect of any of its cells, create and issue cell shares and the cell capital of which shall be comprised in the cell assets attributable to the cell in respect of which the shares were issued.

(2) The proceeds of the issue of shares other than cell shares created and issued by a Labuan protected cell company shall be comprised in the general assets of the Labuan protected cell company.

(3) Cell dividend may be paid by a Labuan protected cell company in respect of cell shares by reference only to the cell assets and liabilities attributable to the cell in respect of which the cell shares were issued.

(4) In determining the cell dividend, no account need to be taken care of—

- (a) the profit and losses, or the assets and liabilities, attributable to any other cells of the Labuan protected cell company; or
- (b) the non-cell profit and losses, or the assets and liabilities, of the Labuan protected cell company.

(5) A Labuan protected cell company shall prepare a certificate of title to cell shares, in respect of any new cell shares issued by,

transferred to or registered by it or to be replaced by it as a result of being lost, stolen or damaged, and each certificate must state—

- (a) the cell to which the cell shares relate;
- (b) the number of cell shares, the title of which is evidenced by the certificate;
- (c) where the Labuan protected cell company has more than one class of cell shares, the class of cell shares, the title to which is evidenced by the certificate; and
- (d) the name of the holder.

### **Register of shareholders**

**130u.** (1) Subject to section 105, every Labuan protected cell company shall keep an index of the names of its shareholders, which shall —

- (a) contain, in relation to each shareholder, a sufficient indication to enable the account of that shareholder to be readily found;
- (b) specify the particular cell or cells to which an account or accounts of that shareholder relate;
- (c) be readily searchable by reference to the account of the shareholder or by reference to a cell;
- (d) be kept at all times at the same place as the register of shareholders; and
- (e) be altered when any alteration is made to the register of shareholders.

(2) The provisions of section 106 in respect of inspection of register of shareholders shall apply to this Part.

### **Reduction of cell capital**

**130v.** (1) The provisions of section 53 in respect of the reduction of share capital of a Labuan company shall apply *mutatis mutandis* in respect of the reduction of share capital of the general assets of a Labuan protected cell company and the cell capital of the respective cell assets of a Labuan protected cell company.

(2) A Labuan protected cell company shall not reduce the share capital of its general assets to less than the cell capital of any cell assets of the Labuan protected cell company.

### **Rights of creditors**

**130w.** (1) The rights of the creditors of a Labuan protected cell company shall correspond with the liabilities provided for in this Part and no such creditor of a Labuan protected cell company shall have any rights other than the rights referred to in this Part.

(2) The following terms shall be implied in every transaction entered into by a Labuan protected cell company:

- (a) that no party shall, whether in any proceeding or by any other means, use any cell assets attributable to any cell of the Labuan protected cell company to satisfy a liability not attributable to that cell;
- (b) that if any party shall succeed by any means in using any cell assets attributable to any cell of the Labuan protected cell company to satisfy a liability not attributable to that cell, that party shall be liable to the Labuan protected cell company to pay a sum equal to the value of the benefit thereby obtained by him; and
- (c) that if any party shall succeed in seizing or attaching or otherwise levying execution against any cell assets attributable to any cell of the Labuan protected cell company to satisfy a liability not attributable to that cell, that party shall hold those assets or their proceeds in a

fiduciary capacity for the Labuan protected cell company and shall keep those assets or proceeds separate and identifiable for that purpose.

(3) All sums recovered by a Labuan protected cell company as a result of any such obligation as is described in paragraph (2)(c) shall be credited against any concurrent liability imposed under the implied term set out in paragraph (2)(b).

(4) Any asset or sum recovered by a Labuan protected cell company pursuant to the implied term set out in paragraph (2)(b) or (c) or by any other means in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied by the Labuan protected cell company so as to compensate the cell affected.

(5) In the event of any cell assets attributable to a cell of a Labuan protected cell company being seized, attached, levied or otherwise taken in execution in respect of a liability not attributable to that cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected, the Labuan protected cell company shall —

- (a) cause or procure its auditor, acting as an expert and not as an arbitrator, to certify the value of the assets lost to the cell affected; and
- (b) transfer or pay to the cell affected, from the cell assets or general assets to which the liability was attributable, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(6) Where a Labuan protected cell company is obliged to make a transfer or payment from cell assets attributable to a cell of the Labuan protected cell company under paragraph (2)(b), and those assets are insufficient, the protected cell company shall so far as possible make up the deficiency from its general assets.

**Liabilities**

**130x.** (1) Where a liability arises which is attributable to a particular cell of a Labuan protected cell company —

- (a) the cell assets attributable to that cell shall be used to satisfy the liability; and
- (b) a creditor in respect of that cell shall not be entitled to have recourse against the cell assets of any other cell or the general assets of the Labuan protected cell company.

(2) Where a liability arises which is not attributable to a particular cell of a Labuan protected cell company —

- (a) the liability shall be satisfied solely from the Labuan protected cell company's general assets; and
- (b) a creditor in respect of that liability shall not be entitled to have recourse to the cell assets of any cell of the Labuan protected cell company.

(3) Without prejudice to the foregoing provisions —

- (a) cell assets attributable to a particular cell of a Labuan protected cell company —
  - (i) are available only to the creditors of the Labuan protected cell company who are creditors in respect of that cell and who are thereby entitled to have recourse to the cell assets attributable to that cell; and
  - (ii) shall be absolutely protected from the shareholders of the Labuan protected cell company and from the creditors of the Labuan protected cell company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cell assets attributable to that cell; and

(b) cell assets not attributable to a particular cell of a Labuan protected cell company shall not be used to satisfy any liability attributable to that cell.

(4) In the event of any dispute as to —

- (a) whether any right is or is not in respect of a particular cell;
- (b) whether a creditor is or is not a creditor in respect of a particular cell;
- (c) whether a liability is or is not attributable to a particular cell; or
- (d) the amount to which any liability is limited,

the Court, on the application of the Labuan protected cell company or of the creditor in dispute with the Labuan protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

### **Disclosure**

**130y.** (1) A Labuan protected cell company shall —

- (a) inform any person with whom it transacts that it is a Labuan protected cell company;
- (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell; and
- (c) where the transaction is in respect of a particular cell, inform the person that the cell assets of that cell, and only those assets, are available to pay the obligations and liabilities of that cell.



(2) If, in contravention of subsection (1), a Labuan protected cell company —

- (a) fails to inform a person that he is transacting with a Labuan protected cell company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a Labuan protected cell company;
- (b) fails to identify or specify the cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell he is transacting with; or
- (c) fails to inform a person that the cell assets of that cell, and only those assets, are available to pay the obligations and liabilities of that cell,

then, in any such case, the directors shall incur personal liability to that person in respect of the transaction, and each director shall severally have a right of indemnity against the general assets of the Labuan protected cell company unless he was fraudulent, reckless or negligent, or acted in bad faith.

(3) Notwithstanding the foregoing subsections, the Court may relieve a director or officer, as the case may be, of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because —

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as such a director or officer, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Where the Court relieves a director or officer of all or part of his personal liability under subsection (3), the Court may order that the liability in question shall instead be met from —

- (a) the assets of the relevant cell in respect of which the person was dealing or transacting; or
- (b) the general assets of the Labuan protected cell company,

as may be specified in the order.

(5) Any provision in the articles of a Labuan protected cell company or any other contractual provision under which the Labuan protected cell company may be liable which purports to —

- (a) avoid the incurring of personal liability upon a director or officer in the circumstances described in this section; or
- (b) indemnify directors or officers in respect of conduct which would otherwise disentitle them to an indemnity against non-cell assets by virtue of this section,

shall be void.

### **Dealings and transactions between cell assets**

**130z.** A Labuan protected cell company may—

- (a) transfer a cell asset attributable to a cell of the Labuan protected cell company to another cell of the Labuan protected cell company; or
- (b) amalgamate or consolidate a cell of the Labuan protected cell company with, or into, one or more other cells of the Labuan protected cell company:

Provided that the Authority has given its written consent when it is satisfied that —

- (i) the creditors of the Labuan protected cell company entitled to have recourse to the cell assets attributable to the cell have consented to the transfer, amalgamation or consolidation, as the case may be, or otherwise would not be unfairly prejudiced; and
- (ii) the shareholders of the Labuan protected cell company and of each relevant cell consent to the transfer, amalgamation or consolidation, as the case may be, or otherwise would not be unfairly prejudiced.

### **Transfer of cell assets**

**130ZA.** (1) Subject to the provisions of this section, a Labuan protected cell company may transfer cell assets attributable to any cell of the Labuan protected cell company, but not the general assets of the Labuan protected cell company, to another person, whether resident or incorporated, and whether or not a Labuan protected cell company.

(2) No transfer in subsection (1) may be made except where it was made under the authority of a special resolution of the shareholders made on the recommendation of a directors' resolution:

Provided that the directors shall not make a recommendation in relation to a cell in a Labuan protected cell company unless they are satisfied that —

- (a) the creditors of the Labuan protected cell company entitled to have recourse to the cell assets attributable to the cell have consented to the transfer; or
- (b) those creditors would not be unfairly prejudiced by the transfer; and
- (c) the Authority has given its prior consent to the transfer.

(3) The Authority may attach such conditions as it thinks fit to a consent given under paragraph (2)(c), including conditions as to the discharging of claims of creditors entitled to have recourse to the cell assets attributable to the cell in relation to which the consent is sought.

(4) The Authority may consent to a transfer of cell assets notwithstanding that —

- (a) an approved liquidator has been appointed to act in respect of the Labuan protected cell company or the Labuan protected cell company has passed a resolution for voluntary winding up;
- (b) a receivership order has been made in respect of the cell, the Labuan protected cell company or any other cell of the Labuan protected cell company; or
- (c) an administration order has been made in respect of the cell, the Labuan protected cell company or any other cell thereof.

(5) The provisions of this section are without prejudice to the power of a Labuan protected cell company lawfully to make payments or transfers from the cell assets attributable to any cell of the Labuan protected cell company to a person entitled, in conformity with the provisions of this Part, to have recourse to those cell assets.

(6) This section shall not apply to the transfer of cell assets attributable to any cell of a Labuan protected cell company in the ordinary course of business of the Labuan protected cell company through payments, investments or otherwise.

### **Receivership and winding up of Labuan protected cell company and cell liquidation**

**130ZB.** (1) Notwithstanding any written law or rule of law to the contrary, in the receivership and winding up of a Labuan protected

cell company or any cell of a Labuan protected cell company, the approved liquidator —

- (a) shall be bound to deal with the general assets of the Labuan protected cell company or the cell assets of each cell of the Labuan protected cell company in accordance with the requirements set out in subsection 130s(3); and
- (b) in the discharge of the claims of creditors of the Labuan protected cell company or of each cell of the Labuan protected cell company, shall apply the assets of the protected cell company to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) The provisions relating to the distribution of property on receivership and winding up shall apply to the protected cell company, subject to such modifications as may be necessary to bring them in conformity with this Part.

### **Application of this Act**

**130zc.** For the avoidance of doubt, all the provisions of this Act relating to a Labuan company shall apply to a Labuan protected cell company, and where the context permits or requires, shall apply with the necessary modifications to a cell of a Labuan protected cell company.

## PART IX

### RECEIVERSHIP AND WINDING UP

#### **Receivership and winding up**

**131.** (1) The provisions of Part VIII and Part X of the Companies Act 1965 shall apply to the receivership and winding up of a Labuan company, subject to such modifications and adaptations as may be necessary, and in particular references to a “company” shall be taken as references to a Labuan company.

(2) The Companies (Winding Up) Rules 1972 [*P.U. (A) 289/1972*] shall also apply to the winding up of a Labuan company, subject to such modifications and adaptations as may be necessary, and in particular references to a ‘company’ shall be taken as references to a Labuan company.

(3) A liquidator appointed under the provisions of this Part shall be an approved liquidator as required by subsection 12(1).

### **Alternative procedure for voluntary winding up of solvent Labuan companies**

**131A.** (1) Where a Labuan company has ceased to operate and has discharged all its debts and liabilities, any officer or member of the Labuan company may, after giving notice in accordance with subsection (3), apply to the Authority for a declaration of dissolution of the Labuan company.

(2) An application for a declaration of dissolution under subsection (1) shall be in writing and shall be accompanied by —

- (a) a statutory declaration made by a director or member of the Labuan company stating —
  - (i) that the Labuan company has ceased to operate and has discharged all its debts and liabilities (other than those owed to its members); and
  - (ii) that the notice required by subsection (3) has been given in accordance with that subsection and the date the last of such notice was published or posted, as the case may be;
- (b) a copy of the notice given under subsection (3); and
- (c) a written notice from the Inland Revenue Board that it has no objection to the Authority making a declaration of dissolution of the Labuan company.

(3) Before making an application to the Authority under this section, the applicant shall ensure that a notice to the effect that the applicant proposes to apply to the Authority for a declaration of dissolution of the Labuan company and that the Authority may dissolve the Labuan company unless written objection is made to the Authority within thirty days from the date the notice was posted—

- (a) has been published in at least one newspaper widely circulated in Malaysia and one international financial newspaper in an advertisement; and
- (b) has been sent by registered post to each director and to each member of the Labuan company at the last known address of which the Labuan company has notice.

(4) The Authority shall not make a declaration of dissolution of a Labuan company earlier than thirty days after the date of publication or posting, as the case may be, of the last notice published or posted for the purposes of subsection (3).

(5) On receipt of any written objection to the dissolution of the Labuan company, the Authority shall forthwith notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector.

(6) Where a director, member or creditor of a Labuan company has objected to the dissolution of the Labuan company, the Authority shall not declare the dissolution of the Labuan company unless—

- (a) the director, member or creditor, as the case may be, withdraws the objection; or
- (b) the Authority decides that the objection is completely without justification and the objector has not appealed to the Court against the Authority's decision within twenty-one days of the date on which he is notified of the decision, and the Court has upheld the Authority's decision.

(7) If the Authority is not prohibited from declaring the dissolution of a Labuan company pursuant to this section and agrees to the dissolution, it shall notify the Labuan company that, subject to the Labuan company's memorandum and articles of association, it is entitled to distribute its surplus assets among its members according to their respective rights and interests.

(8) The Labuan company shall notify the Authority that its surplus assets have been distributed in accordance with subsection (7).

(9) On receipt of notification from a Labuan company that its surplus assets have been distributed in accordance with subsection (7), the Authority may, by publication in one newspaper widely circulated in Malaysia and one international financial newspaper, declare that the Labuan company is dissolved and, on the publication in the *Gazette* of the notice, the Labuan company shall be dissolved:

Provided that the liability, if any, of every officer and member of the Labuan company shall continue and may be enforced as if the Labuan company had not been dissolved.

(10) Where a Labuan company has been dissolved pursuant to this section, the Court, on an application made by the Authority or of any other person who appears to the Court to be interested, before the expiration of six years from the publication of the notice of dissolution, may, if satisfied that at the time of dissolution of the Labuan company it was in operation or had not discharged all its debts and liabilities or otherwise that it is just that the dissolution of the Labuan company be revoked, order that the dissolution of the Labuan company be revoked and upon a sealed copy of the order being delivered to the Authority for registration, the Labuan company shall be deemed to have continued in existence as if it had not been dissolved; and the Court may by the order give such directions and make such provision as it deems just.



PART X

MISCELLANEOUS

**Service of documents on companies**

**132.** Any document may be served on a Labuan company or a foreign Labuan company by leaving it at, or sending it by post to, the registered office of the company.

**Transfer from Labuan**

**133.** (1) A Labuan company may, upon obtaining the approval of the Authority and within two months from the date on which the approval is obtained, apply to the proper officer of another country or of a jurisdiction within such a country, by the laws of which such transfer is authorized, for an instrument transferring a company as if it had been incorporated under the laws of that other country or jurisdiction, and on the date of the instrument of transfer, the company shall, subject to the provisions of this section, become a company under the laws of that country or jurisdiction and be domiciled therein.

(2) A Labuan company shall not apply to the Authority for approval under subsection (1) unless —

- (a) the application is authorized —
  - (i) where the company has a share capital, by the holders of not less than three-fourths of the shares of each class;
  - (ii) by the holders of not less than three-fourths of the company's debentures (if any) of each class; and
  - (iii) by all the directors of the company; and
- (b) the company, not less than thirty days before applying to the Authority for such approval, has published a notice in

a newspaper circulating generally in Labuan of its intention to make the application,

and an application shall not be accepted unless it is accompanied with an affidavit sworn by a director of the company in which are set out —

- (c) the names and addresses of its creditors and the total amount of its indebtedness to creditors; and
- (d) a statement to the effect that the proposed transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the company's members, debenture holders or creditors.

(3) The Authority shall not give its approval to a Labuan company applying for transfer to another country or jurisdiction unless the Authority is satisfied that —

- (a) the requirements of subsection (2) have been complied with; and
- (b) the company has complied with the provisions of this Act which it should have complied with,

and the Authority may grant its approval on such conditions as it thinks necessary to safeguard the rights and proper interests of a member, debenture holder or creditor of the company or a class of such members, debenture holders or creditors and upon the company taking such steps as the Authority considers necessary to remedy any failure to comply with any provision of this Act.

(4) Upon an instrument transferring the company to another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the company shall forthwith notify the Authority the details and the company shall be deemed to have ceased to be a company incorporated in Labuan from the date of its transfer to that other country or jurisdiction takes effect and the Authority shall remove its name from the register:

Provided that nothing in this subsection shall take away or affect the jurisdiction of any court to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company incorporated in Labuan.

(5) Where a Labuan company notifies the Authority under subsection (4) that an instrument transferring the company to another country or jurisdiction has been executed by the proper officer of that other country or jurisdiction and that notification is false, then, notwithstanding that the Authority has removed the name of the company from the register in pursuance of that subsection —

- (a) the liability (if any) of any officer or member of the company shall continue and may be enforced as if the company were still registered under this Act; and
- (b) the company shall be liable to be wound up pursuant to the provisions of this Act as if it were still registered under this Act.

### **Costs of proceedings before the Court**

**134.** In respect of any proceedings before the court under this Act, the court may, at its own discretion, direct that the costs of one party be paid in such amount and by such other party as it thinks just.

### **Security for costs**

**135.** Where a Labuan company is a plaintiff in any court action or other legal proceedings, the court may, at any time, require sufficient security to be given for costs and stay all proceedings until the security is given.

**Disposal of shares of shareholder whose whereabouts are unknown**

**136.** (1) Where after exercising reasonable diligence a Labuan company is unable to discover the whereabouts of a registered shareholder for a period of not less than ten years, the company may cause a notice to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the shares, after the expiration of one month from the date of the notice, will be liable to be forfeited to the Authority.

(2) If after the expiration of one month from the date of a notice under subsection (1) the whereabouts of a shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Authority and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Authority; and the person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such moneys in respect of the shares.

**Power to grant relief**

**137.** (1) In any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, if it appears to the Court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach, the Court may relieve him either wholly or partly from his liability on such terms as the Court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court shall have the same power to relieve him under this section as it would have had if it had been a Court before which proceedings against him for the negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are —

- (a) officers of a Labuan company;
- (b) persons employed by a Labuan company as auditors, whether or not they are officers of the company;
- (c) experts within the meaning of this Act; and
- (d) all persons, including receivers and managers or approved liquidators, who are appointed or directed by the Court or the Authority to carry out any duty under this Act in relation to a Labuan company.

### **Injunctions**

**137A.** (1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute—

- (a) a contravention of this Act;
- (b) an attempt to contravene this Act;
- (c) an attempt that aids, abets, advises or procures a person to contravene this Act;
- (d) an attempt to induce, whether by threats, promises or otherwise, a person to contravene this Act;

- (e) an attempt by which any person would be in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) an attempt of conspiracy with others to contravene this Act,

the Court may, on the application of the Authority, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person fails or refuses to do an act or thing that the person is required by this Act to do, the Court may, on the application of the Authority or any person whose interests have been, are or would be affected by the failure or refusal of the person to do that act or thing, grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.

(3) The power of the Court to grant an injunction restraining a person from engaging in that conduct may be exercised whether or not —

- (a) it appears to the Court that the person intends to engage again or to continue to engage, in conduct of that kind;
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(4) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not —

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) the person has previously refused or failed to do that act or thing; or
- (c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(5) Where the Authority applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(6) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(7) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(8) The Court may revoke or vary an injunction granted under subsection (1), (2) or (7).

(9) In granting an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

### **Irregularities in proceedings**

**138.** (1) No proceedings under this Act shall be invalidated by any omission, defect, error, irregularity or deficiency of notice or time

unless the Court is of the opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court and the Court may, if it thinks fit, make an order or direction declaring that such proceedings are valid notwithstanding any such omission, defect, error, irregularity or deficiency.

(2) Without affecting the generality of subsection (1) or of any other provisions of this Act, where any omission, defect, error, irregularity or deficiency, including the absence of a quorum at any meeting of the Labuan company, has occurred in the management or administration of a Labuan company whereby any breach of the provisions of this Act has occurred, or whereby there has been default in the observance of the memorandum or articles of the company or whereby any proceedings at or in connection with any meeting or purported meeting have been rendered ineffective, including the failure to make or lodge any declaration of solvency, the Court —

- (a) may, either of its own motion or on an application lodged by any interested person, make such order or direction as it thinks fit to rectify or cause to be rectified or to negative or modify or cause to be negated or modified the consequences in law of any such omission, defect, error, irregularity or deficiency, or to validate any act, matter or thing rendered invalid by or as a result of any such omission, defect, error, irregularity or deficiency;
- (b) shall, before making any such order or direction, satisfy itself that such an order or direction would not do injustice to the company or to any member or creditor thereof, or any other person;
- (c) where any such order or direction is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order or direction and whether it should be advertised in any newspaper.



(3) For the purposes of subsection (2), “meeting”, in relation to a Labuan company, includes —

- (a) a meeting of the company;
- (b) a meeting of any class of members of the company;
- (c) a meeting of the debenture holders or any class of debenture holders of the company;
- (d) a meeting of the directors of the company or of any committee of the directors; and
- (e) a meeting of the creditors or any class of the creditors of the company.

(4) The Court, whether the company is in the process of being wound up or not, may extend or shorten any time for doing any act or taking any proceedings allowed or limited by this Act or the regulations on such terms, if any, as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the time originally allowed or limited.

### **Translation of instruments**

**139.** (1) Where under this Act a Labuan company or a foreign Labuan company or a foreign company is required to lodge with the Authority an instrument, certificate, contract or document or a certified copy thereof and the same is not written in the national language or in the English language, the company shall lodge at the same time with the Authority a certified translation thereof in the national language or in the English language.

(2) Where under this Act a Labuan company or a foreign Labuan company is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the national language or in the English language, the company shall keep at its registered office in Labuan a certified

translation thereof in the national language or in the English language.

(3) Where any accounts, minute books or other records of a Labuan company or a foreign Labuan company required to be kept by this Act are not kept in the national language or in the English language, the directors of the company shall cause a true translation in the national language or in the English language of such accounts, minute books and other records to be made from time to time at intervals of not more than seven days and shall cause such translations to be kept with the original accounts, minute books and other records for so long as the original accounts, minute books and other records are required to be kept by this Act.

### **Dividends payable from profits only**

**140.** No dividend shall be payable to any shareholder of any Labuan company except out of profits.

### **Use of word “Corporation”, etc.**

**141.** Every person who carries on business in Labuan under any name or title which incorporates the word or words “Berhad”, “Corporation”, “Incorporated”, “Limited”, “Societe Anonyme”, “Sociedad Anonima”, “Aktiengesellschaft”, “Naamloze Vennootschap” or “Perseroan Terbatas” or any other word or words in the national language of any country which connotes a joint stock company limited by shares or guarantee or an unlimited company, or any abbreviation of those words, unless it is a Labuan company or foreign Labuan company duly created, incorporated or registered under this Act, or a domestic company or incorporated body, shall be guilty of an offence against this Act.

### **Penalties**

**142.** (1) Subject to section 142A, a person who —

(a) does that which by or under this Act he is forbidden to do;

- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a penalty not exceeding ten thousand ringgit.

(3) The penalty or punishment, pecuniary or otherwise, set out in, or at the foot of, any section or part of a section of this Act, shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out, and where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

(4) Where in, or at the foot of, any section or part of a section of this Act there appears the expression "Default penalty", it shall indicate that a person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty or, if an amount is not so expressed, of not more than one thousand ringgit.

(5) Where the offence is committed by a person by reason of his failure to comply with any provision of this Act under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing required or directed to be done by him remains undone, notwithstanding that the period had elapsed.

(6) For the purposes of any provisions of this Act which provides that an officer of a Labuan company or a foreign Labuan company which is in default of an offence against this Act or is liable to a penalty or punishment, the expression “officer who is in default” or any like phrase means an officer of the company who knowingly and willfully —

- (a) is guilty of the offence; or
- (b) authorizes or permits the commission of the offence.

### **Power to impose administrative penalties**

**142A.** (1) The Authority may impose an administrative penalty on any person who fails to comply with any provision of this Act.

(2) The Authority shall, before making a decision to impose an administrative penalty on a person, serve on him a written notice calling on him to show cause why the administrative penalty should not be imposed upon him.

(3) If a satisfactory explanation is not received within such period as may be specified in the written notice, the Authority may impose an administrative penalty in an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of ten thousand ringgit.

(4) Where a person has failed to pay an administrative penalty imposed by the Authority under subsection (3), the penalty imposed by the Authority may be sued for and recovered as a debt due to the Authority.

**143.** *(Deleted by Act A1367).*

### **Compounding of offences**

**144.** (1) The Authority may, with the written consent of the Public Prosecutor, compound any offence committed by any person under

this Act by making a written offer to such person to compound the offence upon payment to the Authority, within such time as may be specified in the offer, such amount not exceeding fifty per centum of the amount of the maximum fine for that offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) Where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Authority may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

(5) Any money received by the Authority under this section shall be paid into and form part of the fund established under section 29 of the Labuan Financial Services Authority Act 1996.

### **Procedure where none laid down**

**145.** In the event that any act or step is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down either in this Act or the regulations, application may be made to the Authority for directions as to the manner in which the same may be done or taken, and any act or step done or taken in accordance with its directions shall be a valid performance of such act or step.

### **Power of the Minister to make regulations**

**146.** (1) The Minister may, on the recommendation of the Authority, make regulations prescribing all matters and things required or authorized by this Act to be prescribed or provided, or

which are necessary or convenient to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

(2) Regulations made under this section may provide for —

- (a) any act or omission in contravention of the regulations to be an offence; and
- (b) the imposition of penalties of a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**147.** *(Deleted by Act A1367).*

### **Prohibition by Minister**

**148.** (1) The Minister may, without assigning reasons therefore, issue, by notification in writing, a Minister direction —

- (a) prohibiting the initial incorporation of any Labuan company or class of companies;
- (b) prohibiting the initial registration of a foreign Labuan company; or
- (c) directing any Labuan company or foreign Labuan company to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.

(2) A direction made under this section may be revoked or varied by the Minister.

### **Secrecy**

**149.** (1) No person who has by any means access to any record, book, register, correspondence, document, material or information

relating to the business and affairs of the Labuan company or foreign Labuan company shall give, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information.

(2) All proceeding, other than criminal proceeding, relating to a Labuan company or foreign Labuan company shall be commenced in any Court, either under the provisions of this Act or for determining the rights or obligations of officers, members or debenture holders.

(3) Such proceeding and any appeal therefrom shall, unless the Court otherwise orders, be heard *in camera* and no details of the proceeding shall be published by any person without leave of the Court.

(4) The provisions of subsection (1) shall not apply —

- (a) when lawfully required to make such disclosure by any Court or under the provisions of any law being enforced by the Authority;
- (b) for the purpose of the performance of the Authority's supervisory functions as may be provided for under any written law;
- (c) when lawfully required pursuant to section 22 of the Labuan Business Activity Tax Act 1990 [Act 445]; or
- (d) when duly authorized by the Labuan company or the foreign Labuan company.

(5) A person who contravenes subsection (1) shall be guilty of an offence against this Act.

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

(6) Nothing in this section shall prevent any Court from exercising its discretion to require a person to produce any document or to give

any evidence in any proceeding before the Court which is relevant to those proceedings.

### **Power of the Minister to grant exemptions**

**150.** The Minister may, on the recommendation of the Authority, on an application in writing, exempt any Labuan company or foreign Labuan company or any person or class of persons or class of Labuan companies or foreign Labuan companies from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

### **Annual fee**

**151.** (1) A Labuan company shall pay such annual fee as may be prescribed, on or before the anniversary of the date of its incorporation or establishment and in the event a Labuan company is wound up prior to its first anniversary, the Labuan company shall pay the annual fee proportionately to the number of months, weeks and days the Labuan company was in existence for that year.

(1A) The Authority may impose an administrative penalty on payment of any annual fees received later than the anniversary date as specified in subsection (1).

(2) Notwithstanding subsection (1A), if a Labuan company fails to pay the annual fee referred to in subsection (1) on or before the expiration of a period of six months from the annual fee payment date then there shall be payable in addition to the annual fee an amount equivalent to fifty per cent of the annual fee.

(3) If a Labuan company fails to pay the annual fee and the additional amount specified in subsection (2) on or before the expiration of a period of one month from the date of expiration of the period of six months specified in subsection (2), the Authority may after the expiration of the period of one month send to the company secretary of the Labuan company a written notice that the name of the Labuan company shall be struck off the register if the annual fee and



the amount specified in subsection (2) are not paid within one month from the date of the notice or such extended period as may be allowed by the Authority.

(4) If the Labuan company fails to pay the annual fee and the additional amount specified in subsection (2) within one month from the date of the notice or the extended period as may be allowed by the Authority under subsection (3), the Authority may strike the name of the Labuan company off the register.

(5) Notwithstanding that the name of a Labuan company has been struck off the register under this section, the Labuan company shall remain liable for all claims, debts, liabilities and obligations of the Labuan company, and the striking off shall not affect the liability of any of its members, directors, officers or agents under this Act or any other law.

(6) The striking off of the name of a Labuan company from the register under this section shall not be affected by any failure on the part of the Authority to serve a notice on the company secretary or to publish a notice in the *Gazette*.

(7) Subsections (2) to (5) do not apply to Labuan company in the process of being wound up and dissolved.

### **Company struck off liable for fees, etc.**

**151A.** A Labuan company incorporated under this Act shall continue to be liable for all fees, licence fees and penalties payable under this Act, including the additional amount specified in subsection 151(2), notwithstanding that the name of the Labuan company has been struck off the register; and such fees, licence fees and penalties shall have priority over all other claims against the assets of the Labuan company.

### **Fees payable to Authority**

**151B.** The Authority may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

**Effect of striking off**

**151c.** (1) Where the name of a Labuan company has been struck off the register, the Labuan company, and the directors, members, approved liquidators and receivers thereof, shall not —

- (a) commence any legal proceedings, carry on any business or in any way deal with the assets of the Labuan company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the Labuan company; or
- (c) act in any way with respect to the affairs of the Labuan company.

(2) Notwithstanding subsection (1), where the name of the Labuan company has been struck off the register, the a Labuan company, or a director, member, approved liquidator or receiver thereof, may —

- (a) apply to the Authority for the Labuan company to be registered afresh;
- (b) continue to defend proceedings that were commenced against the Labuan company prior to the date of the striking off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the Labuan company prior to the date of striking off.

(3) The fact that the name of a Labuan company has been struck off the register does not prevent —

- (a) the Labuan company from incurring liabilities;
- (b) any creditor from making a claim against the Labuan company and pursuing the claim through to judgment or execution; or

- (c) the appointment by the Court of an approved liquidator for the Labuan company under Part VIII and Part X (in so far as they relate to a Labuan company limited by shares) of the Companies Act 1965.

### **Dissolution of a Labuan company**

**151D.** If the name of a Labuan company has been struck off the register under section 151 and remains struck off continuously for a period of three years, the Labuan company shall be deemed to have been dissolved, but the Authority may apply to the Court on or before the expiration of the period of three years to have the company put into liquidation and a person appointed by the Court shall be the approved liquidator of the Labuan company.

### **Letter of confirmation and letter of good standing**

**151E.** (1) Upon a request by a Labuan trust company or an approved liquidator and on the payment of the prescribed fee, the Authority may, if it is satisfied that —

- (a) the name of the Labuan company is on the register; and
- (b) the Labuan company has paid all fees and penalties due and payable,

issue a letter of confirmation under its seal.

(2) A letter of confirmation issued under subsection (1) shall state the following:

- (a) the name of the Labuan company, its date of incorporation and the company number;
- (b) the registered address of the Labuan company;
- (c) the directors and secretaries of the Labuan company;

- (d) a statement to indicate whether the Labuan company is in the process of being wound up and dissolved or being struck off the register; or
- (e) any other information as requested by a Labuan trust company or an approved auditor as deemed fit by the Authority.

(3) Where any information is lodged by the Labuan trust company with the Authority under this Act, neither the Authority nor any of its officers or employees involved in the issuance of the letter of confirmation pursuant to subsection (1) shall be held liable for any loss or damage suffered by any person by reason of any default, error or omission if made in good faith and in the ordinary course of the discharge of duties.

#### **Non-application of specified written laws**

**152.** (1) The Yang di-Pertuan Agong may, by order published in the *Gazette*, provide that any written law, or part thereof, specified in the order, shall not apply in relation to a Labuan company, a foreign Labuan company, a Labuan trust company, or a person who holds a valid licence granted under the Labuan Financial Services and Securities Act 2010 or the Labuan Islamic Financial Services and Securities Act 2010, or shall apply thereto with such modifications as may be set out in the order.

(1A) Except as otherwise expressly provided in this Act, the provisions of the Companies Act 1965 shall not apply to a Labuan company or a foreign Labuan company incorporated or registered under this Act.

(2) The modifications made to a written law by an order made under subsection (1) shall be deemed to be an integral part of such written law for the purposes of the order.

(3) An order under subsection (1) may be made to have retrospective effect from such date as may be specified in the order.

(4) In this section “modification” includes amendment, adaptation, alteration, variation, addition, deletion, substitution, or exclusion.

**Application of specified written laws**

**153.** (1) Nothing in this Act shall affect the application of the Exchange Control Act 1953 [*Act 17*] and the Labuan Financial Services Authority Act 1996.

(2) In the application of the provisions of this Act to any person, the provisions shall apply subject to the provisions of the Exchange Control Act 1953 and the Labuan Financial Services Authority Act 1996.

(3) Where there is conflict or inconsistency between the provisions of this Act and the Exchange Control Act 1953, the provisions of the Exchange Control Act 1953 shall prevail.

(4) Where there is conflict or inconsistency between the provisions of this Act and the Labuan Financial Services Authority Act 1996, the provisions of the Labuan Financial Services Authority Act 1996 shall prevail.

---

SCHEDULE

*(Deleted by Act A1367)*

---

**LAWS OF MALAYSIA****Act 441****LABUAN COMPANIES ACT 1990****LIST OF AMENDMENTS**

Amending law	Short title	In force from
Act A817	Offshore Companies (Amendment) Act 1992	21-02-1992
P.U. (A) 72/1996	Labuan Offshore Financial Services Authority (Modification of Offshore Companies Act 1990, Labuan Trust Companies Act 1990, Offshore Banking Act 1990 and Offshore Insurance Act 1990) Order 1996	15-02-1996
Act A988	Offshore Companies (Amendment) Act 1997	20-03-1997
Act A1090	Offshore Companies (Amendment) Act 2000	21-09-2000
Act A1367	Offshore Companies (Amendment) Act 2010	11-02-2010
Act A1428	Labuan Companies (Amendment) Act 2012	01-08-2012

---

**LAWS OF MALAYSIA****Act 441****LABUAN COMPANIES ACT 1990****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
1	Act A1367	11-02-2010
2	P.U. (A) 72/1996 Act A988 Act A1367	15-02-1996 20-03-1997 11-02-2010
5	Act A1367	11-02-2010
6	Act A817 Act A988 Act A1367	21-02-1992 20-03-1997 11-02-2010
7	Act A988 Act A1367	20-03-1997 11-02-2010
8	Act A1367	11-02-2010
9	Act A988 Act A1367	20-03-1997 11-02-2010
9A	Act A1090 Act A1367	21-09-2000 11-02-2010
9B	Act A1090 Act A1367	21-09-2000 11-02-2010
9C	Act A1090	21-09-2000
9D	Act A1367	11-02-2010
10-17	Act A1367	11-02-2010
18	Act A1367 Act A1428	11-02-2010 01-08-2012
19	Act A1367	11-02-2010

Section	Amending authority	In force from
21	Act A988 Act A1367	20-03-1997 11-02-2010
22-23	Act A1367	11-02-2010
25-26	Act A1367	11-02-2010
27	Act A1367	11-02-2010
PART IV	Act A1367	11-02-2010
28	Act A1367	11-02-2010
29	Act A817 Act A988 Act A1367	21-02-1992 20-03-1997 11-02-2010
30	Act A1367	11-02-2010
31	Act A817 Act A1367	21-02-1992 11-02-2010
32-43	Act A1367	11-02-2010
46-47A	Act A1367	11-02-2010
48-48A	Act A1367	11-02-2010
49-50	Act A1367	11-02-2010
51	Act A988 Act A1367	20-03-1997 11-02-2010
53	Act A1367	11-02-2010
55	Act A988 Act A1367	20-03-1997 11-02-2010
56-58	Act A1367	11-02-2010
61-68	Act A1367	11-02-2010
81	Act A1367	11-02-2010
83	Act A988 Act A1367	20-03-1997 11-02-2010
84	Act A988 Act A1367	20-03-1997 11-02-2010



*Labuan Companies*

185

Section	Amending authority	In force from
85	Act A988 Act A1367	20-03-1997 11-02-2010
86	Act A988 Act A1367	20-03-1997 11-02-2010
87	Act A817 Act A988 Act A1367	21-02-1992 20-03-1997 11-02-2010
88	Act A1367	11-02-2010
90-92	Act A1367	11-02-2010
93	Act A988 Act A1367	20-03-1997 11-02-2010
94	Act A988 Act A1367	20-03-1997 11-02-2010
94A	Act A988 Act A1367	20-03-1997 11-02-2010
94B	Act A1367	11-02-2010
95	Act A1367	11-02-2010
101A	Act A1367	11-02-2010
103	Act A1367	11-02-2010
105	Act A1367	11-02-2010
106	Act A988	20-03-1997
109	Act A817 Act A1367	21-02-1992 11-02-2010
110	Act A1367	11-02-2010
111	Act A817 Act A1367 Act A1428	21-02-1992 11-02-2010 01-08-2012
112	Act A817	21-02-1992
113	Act A1367	11-02-2010
113A	Act A817 Act A1367	21-02-1992 11-02-2010

Section	Amending authority	In force from
114	Act A1367	11-02-2010
117	Act A1367	11-02-2010
118	Act A1367	11-02-2010
118A-118D	Act A1367	11-02-2010
119-120	Act A1367	11-02-2010
121	Act A988 Act A1367 Act A1428	20-03-1997 11-02-2010 01-08-2012
122-124	Act A1367	11-02-2010
126	Act A988	20-03-1997
127	Act A1367	11-02-2010
PART VIIIA	Act A988 Act A1367	20-03-1997 11-02-2010
130A-130M	Act A988 Act A1367	20-03-1997 11-02-2010
PART VIIIB	Act A1367	11-02-2010
130N	Act A1367	11-02-2010
130o	Act A1367 Act A1428	11-02-2010 01-08-2012
130p-130u	Act A1367	11-02-2010
130v	Act A1367 Act A1428	11-02-2010 01-08-2012
130w-130z	Act A1367	11-02-2010
130ZA	Act A1367	11-02-2010
130ZB	Act A1367	11-02-2010
130ZC	Act A1367	11-02-2010
PART IX	Act A1367	11-02-2010
131	Act A1367	11-02-2010

*Labuan Companies*

187

Section	Amending authority	In force from
131A	Act A1367	11-02-2010
PART X	Act A1367	11-02-2010
133-135	Act A1367	11-02-2010
137	Act A1367	11-02-2010
137A	Act A1367	11-02-2010
141	Act A988 Act A1367	20-03-1997 11-02-2010
142	Act A1367	11-02-2010
142A	Act A1367	11-02-2010
143-146	Act A1367	11-02-2010
147	Act A988 Act A1367	20-03-1997 11-02-2010
148-149	Act A1367	11-02-2010
150	Act A817 Act A988 Act A1367	21-02-1992 20-03-1997 11-02-2010
151	Act A817 Act A988 Act A1367 Act A1428	21-02-1992 20-03-1997 11-02-2010 01-08-2012
151A-151B	Act A988	20-03-1997
151C	Act A988 Act A1367	20-03-1997 11-02-2010
151D-151E	Act A1367	11-02-2010
152	Act A817 Act A1367	21-02-1992 11-02-2010
153	Act A1367	11-02-2010
Schedule	Act A1367	11-02-2010

---