

LANGKAWI INTERNATIONAL YACHTING COMPANIES
BILL 2005

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A BILL

intituled

An Act to provide for the incorporation, registration and administration of international yachting companies in Langkawi and for matters connected therewith.

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Langkawi International Yachting Companies Act 2005.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

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

"yacht-related activities" means yacht ownership, ownership of aircraft (mainly helicopters) that is carried on board a yacht, yacht management, yacht crewing and training, yacht chartering, yacht

broking or otherwise marketing, yacht supplies and services, yacht security, yacht-related recreational or holiday activities or facilities, or any other businesses relating to yachts and yachting as the Registrar may determine;

"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;

"month" means a period of thirty days;

"debenture" means any securities of a corporation in relation to a charge on the assets of the corporation;

"printed" includes typewritten or lithographed or reproduced by any mechanical means;

"certified" means certified in the prescribed manner to be a particular document or to be a true copy of the document;

"lodged" means lodged in accordance with the provisions of this Act;

"prescribed" means prescribed by or under this Act;

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

"dollar" means a dollar unit of the currency of the United States of America;

"management entity" means the corporation authorized by the Minister to act on behalf of a Langkawi company or foreign Langkawi company under section 102 of this Act;

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

"approved auditor" means a person approved under subsection 16(1);

"Langkawi" means Langkawi Island and all adjacent islands lying nearer to Langkawi Island than to the mainland;

"Court" means the High Court or a judge thereof;

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

"Minister" means the Minister charged with the responsibility for domestic trade and consumer affairs;

"issued share capital", in relation to par value shares, means, at any particular time, the sum of the par value of all shares of a Langkawi company that have been issued;

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

"expert" means an engineer, valuer, accountant, auditor and any other person whose profession or reputation gives authority to a statement made by him;

"officer", in relation to a Langkawi company or foreign Langkawi company, includes —

- (a) any director, secretary or other person appointed under a directors' resolution to hold a specified office;
- (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;

"approved liquidator" means a person approved under subsection 18(1);

"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*];

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

"contributory", in relation to a Langkawi company, means a person liable to contribute to the assets of the company in the event of it 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;

"Registrar" means the Registrar of Companies under the Companies Act 1965 [*Act 125*], and includes any Regional Registrar, Deputy Registrar or Assistant Registrar of Companies;

"director" means any person, by whatever name called, occupying the position of director of a Langkawi company or foreign Langkawi 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;

"regulations" means regulations made under this Act;

"corporation" means a Langkawi company, foreign Langkawi company, domestic company or foreign company;

"post" includes communication by mail, e-mail, courier, freight, telex or facsimile;

"prospectus" means any prospectus, notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, any shares or any units of shares in a Langkawi company or proposed Langkawi company;

"foreign company" means —

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

"domestic company" means a company incorporated under the Companies Act 1965;

"Langkawi company" means a company incorporated under this Act and carrying out yacht-related activities;

"foreign Langkawi company" means a foreign company registered under Part VIII;

"share", in relation to a Langkawi company, means a share in the share capital of that company, and includes stock;

"annual fee payment date" means the date on which the annual fee of a Langkawi company shall be payable pursuant to subsection 21(6);

"allot" includes sell, issue, assign, and convey; and "allotment" has a corresponding meaning.

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

Definition of subsidiary and holding company

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

(a) that other corporation —

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

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

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

(a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

(b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

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

(a) any shares held or power exercisable by that other corporation in a trustee or fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable —

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a trustee or fiduciary capacity); or

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

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

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and

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

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

Related companies

4. Where a corporation —

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

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

Non-application of Companies Act 1965

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

Permitted and prohibited purposes and activities of Langkawi company

6. (1) Subject to subsection (2), a Langkawi company shall carry on any lawful business in respect of yacht-related activities, but it shall not carry on any business with a resident of Malaysia except as provided in subsection (3).

(2) The business referred to in subsection (1) if carried on in, from or through Malaysia, shall be carried on only in, from or through Langkawi.

(3) No Langkawi company shall carry on any business with a resident of Malaysia except in relation to yacht-related activities or procuring finance or lending in relation to yacht-related activities.

(4) For the purposes of subsection (3), a Langkawi company shall not be treated as carrying on business with persons resident in Malaysia by reason only that it makes or maintains deposits with a person carrying on business within Malaysia;

- (b) it makes or maintains professional contact with any counsel and attorney, accountant, book-keeper, investment adviser, trustee or other similar person carrying on business within Malaysia;
- (c) it prepares or maintains books and records in Malaysia;
- (d) it holds, within Malaysia, meetings of its directors or members;
- (e) it acquires or holds any lease of any property for the purposes of its operation or as accommodation for its officers or employees;
- (f) it holds shares, debt obligations or other securities in a Langkawi company; or
- (g) a resident of Malaysia holds shares in that Langkawi company.

(5) A Langkawi company may be managed by one or more of its members, herein referred to as "managing members", and if so managed, shall have any appropriate words or abbreviations thereof in romanised characters that describe it as such.

(6) Managing members referred to in subsection (5) shall, for the purposes of this Act, be considered to be directors of the Langkawi company.

PART II

ADMINISTRATION OF ACT

Registrar of Companies

7. (1) The Registrar shall be responsible for the administration of this Act.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar.

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

(4) Neither the Registrar nor any person authorized by the Registrar under this Act shall be liable to be sued in any court for any act or matter done or ordered to be done or omitted to be done by him in good faith and in the intended exercise of any power or performance of any duty, conferred or imposed on him by or under this Act.

Power to obtain information

8. (1) The Registrar may require any Langkawi company or foreign Langkawi company to give orally or may by written notice require any Langkawi company or foreign Langkawi company to give in writing within a time specified in the notice all such information in his possession or within his knowledge as may be required by the Registrar for the purposes of this Act.

(2) Any Langkawi company or foreign Langkawi company who fails to supply any information, or who in supplying any information makes any statement which it knows to be false in a material particular, or recklessly makes such statement, shall be guilty of an offence against this Act.

Power to conduct inspection

9. (1) For the purpose of ascertaining whether a Langkawi company or foreign Langkawi company is complying with this Act, the Registrar or any person authorized by him may have access to any place or building and may inspect and make copies of or take extracts from any book, minute book, register, record or document required by or under this Act to be kept by the company.

(2) A Langkawi company or foreign Langkawi company or any officer of the company shall, on being required by the Registrar or any person authorized by him, produce any such book, minute book, register, record or document.

(3) A Langkawi company or foreign Langkawi company or any officer of the company who—

(a) fails to produce any such books, minute books, registers, records or documents as required by the Registrar or any person authorized by him under this section; or

(b) obstructs or hinders the Registrar or any person authorized by him while exercising any of the powers under this section,

shall be guilty of an offence against this Act.

(4) The Registrar or any person authorized by him, except for the purposes of this Act or in the course of any criminal proceedings, shall not make a record of, or divulge or communicate to any other person, any information which he has acquired by reason of such inspection.

(5) Subsection (1) shall not be construed as limiting or affecting any power to make any such inspection conferred on any person by any other law.

Power to conduct investigation

10. (1) Where the Registrar has reason to suspect that a person has committed an offence against this Act, he may make such investigation as he thinks expedient for the due administration of this Act.

(2) Whenever it appears to any Magistrate upon written information and after such enquiry as he thinks necessary, that there is reasonable cause to believe that in any place or building there is any object, article, material, thing, accounts, book or other document including any travel or other personal document which may be used as evidence of the commission of an offence against this Act, he may by warrant direct the Registrar to enter the place or building, by force if necessary, and thereto search for, seize, take possession of and detain such object, article, material, thing, accounts, book or document.

(3) Whenever it appears to the Registrar that there is reasonable cause to believe that in any place or building there is concealed or deposited any object, article, material, thing, accounts, book or other document including any travel or other personal document which may be used as evidence of the commission of an offence against this Act, and the Registrar has reasonable grounds for believing that by reason of the delay in obtaining a search warrant, such object, article, material, thing, accounts, book or document may be interfered with or destroyed or the object of the search is

likely to be frustrated, he may in respect of the place or building exercise all the powers mentioned in subsection (2) in as full and ample measure as if he were empowered to do so by warrant issued under that subsection.

(4) The Registrar may authorize any person to inspect any accounts, book or other document seized and taken possession of by the Registrar during the course of an investigation under this Act if such person is entitled to inspect such accounts, book or document under this Act.

Power to examine persons

11. (1) For the purpose of any investigation under section 10, the Registrar may by written notice require any person whom he believes to be acquainted with the facts and circumstances of the case to appear before him and to be examined orally, and shall reduce into writing any statement made by the person so examined.

(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the Registrar and to state the truth, whether or not the statement is made wholly or partly in answer to the questions, and shall not refuse to answer any question on the ground that it tends to incriminate him.

(3) A statement made by a person under this section and reduced into writing shall be signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish:

Provided that where the person examined refuses to sign or affix his thumb print on the statement, the Registrar shall endorse thereon under his hand the fact of such refusal and the reason therefore, if any, stated by the person examined.

(4) Any statement made and recorded under this section shall be admissible as evidence in any proceedings under this Act in any court, either against the person who made it or any other person.

(5) Any person who —

(a) without reasonable excuse fails to appear before the Registrar as required under subsection (1);

- (b) without reasonable excuse refuses to answer all questions put to him by the Registrar as required by subsection (2); or
- (c) knowingly furnishes to the Registrar any information or statement that is false or misleading in a material particular,

shall be guilty of an offence against this Act.

Lodgement or filing of documents with Registrar

12. (1) Every document required or permitted to be lodged or filed with the Registrar under this Act shall be so lodged or filed through a management entity.

(2) Subject to subsection (3), every application to the Registrar for any certificate or document or any extract or copy of a certificate or document relating to a Langkawi company or foreign Langkawi company to be issued under this Act shall be made through a management entity.

(3) An application may be made directly to the Registrar where it is in respect of a Langkawi company or foreign Langkawi company and the application is made by a member of that company for a certificate, document or an extract or copy of a certificate or document for his own personal use.

Electronic lodgement or filing of documents

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

(2) A person who intends to use the service provided under subsection (1) shall become a subscriber to the service by paying the prescribed fee and by complying with such terms and conditions as may be determined by the Registrar.

(3) Only a subscriber to the service provided under subsection (1) may electronically lodge or file documents with the Registrar.

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

(5) The Registrar may, by written notice, specify the documents that may be electronically lodged or filed.

(6) 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 by the Registrar.

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

Evidentiary value of electronically lodged or filed documents

14. A copy of or an extract from any document electronically lodged or filed with the Registrar under section 13 that is duly certified by the Registrar as a true copy of or extract from that document shall be admissible in evidence in any proceedings as of equal validity as the original document.

Original copies to be kept at office of management entity

15. (1) The original copies of the documents specified by the Registrar to be electronically lodged or filed with the Registrar by a management entity shall, at all times, be kept at the office of the management entity.

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

Penalty: Ten thousand ringgit. Default penalty.

Approved auditors

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

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

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

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

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

Company auditors

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

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

(2) For the purposes of subsection (1), a person shall be deemed to be an officer of a Langkawi company if he is an officer of a company that is deemed to be related to the Langkawi 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 Langkawi company or of the other company.

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

(4) No person shall appoint a person as an auditor of a Langkawi company unless the person to be appointed as an 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 Langkawi companies.

Approved liquidator

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

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

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

(4) No person shall be appointed or shall act as a liquidator of a Langkawi 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 five thousand dollars or an equivalent amount in any other currency; or
- (c) if he has not consented in writing to such appointment.

(5) Where an approved liquidator is appointed to be a liquidator of a Langkawi company, whether by the Court or in a voluntary winding up, he shall immediately notify the Registrar in writing of any interest which he has in the Langkawi company as an officer,

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

Registers

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

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

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

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

(4) In any legal proceedings —

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

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

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

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

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

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

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

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

- (a) in respect of which any provision in the nature of an 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 Langkawi company or foreign Langkawi company or person, having made default in complying with—

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

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

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

- (a) in the case of a Langkawi company or foreign Langkawi company —
 - (i) any return of allotment of shares for cash which has been lodged or filed for not less than six years;
 - (ii) any 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 of association 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 Langkawi company or foreign Langkawi company that has been dissolved or has ceased to be registered for not less than fifteen years, any document lodged, filed or registered; or

- (c) any document a transparency of which has been incorporated with a register kept by the Registrar.

PART III CONSTITUTION OF

COMPANIES

DIVISION 1

INCORPORATION

Formation of companies

20. (1) Subject to this Act, any person may, by subscribing his name to a memorandum and complying with the requirements as to registration, form a Langkawi company for any lawful business in respect of yacht-related activities.

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

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

Registration and incorporation

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

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

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

(4) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, the subscribers to the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum, capable immediately 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 Us being wound up as is provided by this Act.

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

(6) A Langkawi company shall pay such annual fee as may be prescribed in the prescribed manner.

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

Application for registration of foreign company as being continued in Langkawi

22. (1) Subject to section 6, a foreign company incorporated under the laws of any country other than Malaysia, or of any jurisdiction within such a country, may, if it is so authorized by the laws of that country or jurisdiction, apply to the Registrar for the registration of its company to be continued in Langkawi as if it had been incorporated under this Act.

(2) Upon application under subsection (1), supported by such material as the Registrar considers adequate and satisfactory, the Registrar may, if he is satisfied that the consent of such number or proportion of the shareholders, debenture holders and creditors of the foreign company as may be required by the laws of that country or jurisdiction, and the consent of the proper officer of that country

or jurisdiction, to such registration has been obtained by the company, register such company as being so continued and, if so registered, the company shall be deemed thereafter to be a Langkawi company incorporated under this Act and domiciled in Langkawi:

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 to the company 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 of association shall be binding on the company and its members accordingly.

Prior approval in principle

23. (1) A foreign company may, prior to applying for registration under section 22, request that such registration be approved in principle and upon such request and on payment of the prescribed fee, the Registrar may, if he is satisfied that the company is eligible for registration under section 22, issue a certificate confirming his approval of the company being so registered subject to an application under section 22 being made within a period of six months from the date of the certificate.

(2) The certificate of approval given by the Registrar under subsection (1) shall not relieve the foreign company to whom it is issued from complying with the provisions of section 22 on a subsequent application for registration.

Requirements as to memorandum

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

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

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

DIVISION 2

STATUS AND NAME

Powers of companies

25. Subject to section 6, the powers of a Langkawi company shall include, unless expressly excluded or modified by its articles of association to such extent as not being inconsistent with this Act, the powers set forth in the Schedule, which shall be exercisable in Langkawi and elsewhere, and such other powers as are set out in its articles of association or granted to it generally or specially by regulations.

Ultra vires transactions

26. (1) No actor purported act of a Langkawi 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 Langkawi company shall be invalid by reason only of the fact that the company was without capacity or power to do the act or purported 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 Langkawi 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 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 Langkawi 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 Langkawi companies

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

(2) A Langkawi 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.

(3) A Langkawi company may have the word "(LGK)" as part of its name.

(4) Notwithstanding subsection (2), a Langkawi 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 Langkawi company, the Langkawi company shall in addition have the word "(LGK)" as part of its name.

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

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

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

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

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

(9) The reservation of a name under this section in respect of an intended Langkawi company or a Langkawi 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

28. (1) A Langkawi 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 27(1).

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

(3) If the name of a Langkawi 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 27(1), the company may, by special resolution, change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within six weeks after the date of direction or such longer period as the Registrar allows, unless the Minister, by written notice, annuls the direction, and if the company fails to comply with the direction it shall be guilty of an offence against this Act.

Penalty: Five thousand ringgit.

(4) A change of name pursuant to this Act shall not affect the identity of the Langkawi 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

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

(2) Articles of association shall be —

(a) printed;

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

Alteration of memorandum or articles of association

30. (1) Subject to this Act, a Langkawi company may, by special resolution, alter or add to its memorandum or articles of association.

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

Copies of memorandum and articles of association

31. (1) A Langkawi company shall, on being so required by any member, furnish to him a copy of the memorandum and the articles of association (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 association of a Langkawi company, a copy of the memorandum or articles of association 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 of association and the particular clauses or articles affected are indicated in ink.

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

Penalty: Five thousand ringgit.

Transactions and establishment of a branch

32. (1) Contracts on behalf of a Langkawi 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 Langkawi company may be signed by an authorized officer of the company and need not be under its common seal.

(3) A Langkawi 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 Langkawi company may, if authorized by its articles of association, establish a branch in any part of the world but it shall not establish a branch in any part of Malaysia outside Langkawi.

(5) A Langkawi company and any branch of the company may have for use in any place outside Langkawi 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; and that seal shall be known as the branch seal.

(6) Where a Langkawi company has established a branch it may, in the instrument establishing the branch or in a subsequent instrument signed or sealed by the 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 Langkawi company may enter into transactions.

(8) Instruments made or authenticated under or by the use of any branch seal of a Langkawi 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 Langkawi company has no members

33. (1) Subject to subsection (2), if at any time a Langkawi company has no members and carries on business for more than a period of 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 the period of 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 the period of 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 the period of six months.

(2) Subsection (1) shall not apply in respect of an officer, servant, employee or agent of a Langkawi company which has no members who carries on the business of the company after the period of 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 AND

CHARGES

DIVISION 1

SHARES

Return of allotment

34. (1) Where a Langkawi company makes any allotment of its shares, the company shall make 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 allotment;
- (c) the amount (if any) deemed to be paid, or due and payable, on the allotment of each share;
- (d) where the capital of the company is divided into shares of different classes, the class of shares to which each share in the allotment belongs; and
- (e) the full name and address of each of the allottees and the number and class of shares allotted to him.

(2) The return under subsection (1) shall be kept at the registered office of the Langkawi company.

(3) The Registrar may, as the circumstances deem necessary by written notice, require a Langkawi company to lodge with the Registrar a return in respect of any allotment of its shares.

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

Penalty: Five thousand ringgit. Default penalty.

Calls

35. A Langkawi 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

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

Share premium account

37. (1) Where a Langkawi company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called the "share premium account", and the provisions of this Act relating to the reduction of the share capital of a Langkawi company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

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

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

- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;
- (b) in writing off—
 - (i) the preliminary expenses of the company; or

- (ii) the expenses of, or the commission paid or discount allowed on, any issue of shares in, or debentures of, the company; or
 - (c) in providing for the premium payable on redemption of debentures or redeemable preference shares.
- (4) Where shares are issued for a consideration other than cash under subsection (2), the shares shall not be allotted until —
- (a) the undertaking constituting the consideration has been performed; or
 - (b) the assets constituting the consideration have been transferred to the company; and assets shall be considered as transferred to a company —
 - (i) in the case of goods, when the ownership or property therein passes to the company or when they are delivered to it;
 - (ii) in the case of negotiable instruments, when the company becomes entitled to enforce all the rights embodied in them in its own name without the concurrence of any other person; and
 - (iii) in any other case, when the ownership or lesser rights agreed to be vested in the company are legally vested in it.

Power to issue shares and voting rights

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

(2) The articles of association 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.

Dealings by a Langkawi company in its own shares, etc.

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

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

- (a) eliminating fractional shares;
- (b) paying dissenting shareholders entitled to payment for their shares under the provisions of this Act or the regulations; or

- (c) effecting, subject to this Act, the retirement of its redeemable shares by redemption or by purchase at a price not exceeding the redemption price.

Cancellation of reacquired shares by a Langkawi company

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

Issue of shares at a discount

41. (1) Subject to this section, a Langkawi company may issue at a discount shares of the company of a class already issued.

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

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

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

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

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

Alteration of share capital

42. (1) A Langkawi company may, by special resolution, alter the conditions of its memorandum and articles of association in any one or more of the following ways:

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

(2) 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.

(3) 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.

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

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

Penalty: Five thousand ringgit. Default penalty.

Validation of shares improperly issued

43. Where a Langkawi 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 association 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 an application being 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 of the order being lodged by the company or by such holder, mortgagee or creditor with the Registrar, those shares shall be deemed to have been validly issued or allotted upon the terms of issue or allotment thereof as varied by the conditions, if any, imposed by the Court.

Special resolution for reduction of share capital

44. (1) Subject to confirmation by the Court, a Langkawi company may, if so authorized by its articles of association, 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 the 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 Langkawi 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 Langkawi 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 it, 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 Langkawi company to publish as the Court directs the reasons for the 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 Langkawi company as altered by the order, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the order, deemed to be paid up on each share.

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

(7) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of a Langkawi 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 Langkawi 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 Langkawi 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 Langkawi 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 Langkawi company is wound up, the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, may settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up,

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

(10) Any officer of a Langkawi 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: Ten thousand ringgit.

Rights of holders of preference shares to be set out in articles of association

45. (1) No Langkawi company shall allot a preference share, or convert an issued share into a preference share, unless there is set out in its articles of association 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 Langkawi 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 of association in force at the time the existing preference shares were issued.

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

Redeemable preference shares

46. (1) Subject to this section, a Langkawi company having a share capital may, if so authorized by its articles of association, 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 of association.

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

(3) The shares shall not be redeemed —

(a) except out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) unless they are fully paid up.

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

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

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

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

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

Restriction on inviting investments from public

47. (1) A Langkawi company shall not make any offer or issue any invitation to the public to subscribe for or purchase any shares of or interest in the company except where the offer or invitation relates to shares or interest which entitles the holder of its shares and interest the right to use or enjoy any yacht-related recreational or holiday activities or facilities.

(2) The provisions of Divisions 1 and 5 of Part IV of the Companies Act 1965 shall apply in relation to any offer or invitation made by a Langkawi company to the public to subscribe for or purchase its shares or interest as if the offer or invitation to the public is made by an unlisted recreational club, subject to such modifications as the Minister may make by order to be consistent with the intent and purposes of this Act, and in particular references to a "company" shall be taken as references to a Langkawi company.

(3) For the purposes of this section —

"unlisted recreational club" means a corporation which provides the holder of its shares the right to use or enjoy any yacht-related recreational or holiday activities or facilities and whose shares are not listed or proposed to be listed for quotation on any stock market of a stock exchange;

"interest" means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent in any time-sharing scheme or 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 —

- (a) any share in or debenture of a corporation; or
- (b) any interest in a partnership agreement unless the agreement—
 - (i) relates to an undertaking, scheme, enterprise or investment contract promoted by, or on behalf of, a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is a party to the agreement; 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 entitles the investor to a right to use or enjoy any yacht-related recreational or holiday activities or facilities for a consideration and for a duration of not less than twelve months whether or not on a recurring basis;

"modification" includes amendment, adaptation, alteration, variation, addition, division, substitution or exclusion;

"time-sharing scheme" means a scheme, undertaking or enterprise—

- (a) in which participants are, or may become, entitled to use, occupy or possess, for two or more periods during the period for which the scheme, undertaking or enterprise, whether in Malaysia or elsewhere is to operate, a yacht to which the scheme, undertaking or enterprise relates; and
- (b) that is to operate for a period of not less than three years.

DIVISION 2

TITLE AND TRANSFERS

Nature of shares

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

Numbering of shares

49. (1) Each share in a Langkawi company shall be distinguished by its appropriate number.

(2) Notwithstanding subsection (1) —

- (a) if at any time all the issued shares in a Langkawi company, or all the issued shares therein of a particular class, are fully paid up and rank *part passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pah 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 Langkawi company are evidenced by certificates in accordance with section 50 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

50. (1) A certificate, under the seal of a Langkawi company or any branch of the company, 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 Langkawi company or a branch of the company 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 Langkawi 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 Langkawi company and every officer of the company who is in default shall be guilty of an offence against this Act.

Langkawi company may have share seal

51. A Langkawi company may, if authorized by its articles of association, 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

52. (1) A Langkawi 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 Langkawi 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 of association, 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 Langkawi company with respect to issue of certificate

53. (1) Every Langkawi 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 Langkawi company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Five thousand ringgit. Default penalty.

(3) If a Langkawi 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 3

REGISTER OF CHARGES

Non-application of Division

54. Nothing in this Division shall apply to a charge created by a Langkawi company or foreign Langkawi company on property outside Malaysia.

Register of charges

55. (1) Every Langkawi company or foreign Langkawi company shall keep at its registered office a register of charges and shall enter in it all charges specifically affecting the 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 Langkawi company or foreign Langkawi 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 Langkawi company or foreign Langkawi 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 with the approval of a director or member of the company at all reasonable times without any charge.

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

Penalty: Five thousand ringgit. Default penalty.

PART V MANAGEMENT AND

ADMINISTRATION

DIVISION 1 OFFICE

AND NAME

Registered office of Langkawi company

56. (1) Every Langkawi company shall at all times have a registered office in Langkawi, which office shall be the principal office of a management entity.

(2) 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: Five thousand ringgit. Default penalty.

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

57. (1) Every Langkawi company or foreign Langkawi company shall paint or affix, and keep painted or affixed, its name in a conspicuous position, in romanized letters easily legible, in printed or in an electronic display format or otherwise, at every office or place in which its business is carried on.

Penalty: Five thousand ringgit. Default penalty.

(2) The name of a Langkawi company or foreign Langkawi 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.

(3) The name of a Langkawi company or foreign Langkawi company (whether or not it is carrying on business under a business name) in legible romanized letters and the company number of the Langkawi company or foreign Langkawi 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.

(4) Where a Langkawi company or foreign Langkawi 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.

(5) If an officer of a Langkawi company or foreign Langkawi 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, official notice or publication of the company wherein its name or former name (if applicable) is not so mentioned;
- (c) signs, issues or authorizes to be signed or issued, on behalf of the company, any bill of exchange, promissory note, cheque or other negotiable instrument or, any endorsement, order, receipt or letter of credit, wherein its name or former name (if applicable) is not so mentioned; or
- (d) signs or authorizes to be signed on behalf of the company, the memorandum and articles of association or such other documents as may be prescribed by the Registrar, wherein the name and the company number of the Langkawi company or foreign Langkawi 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: Five thousand ringgit. Default penalty.

DIVISION 2 DIRECTORS

AND OFFICERS

Directors

58. (1) Every Langkawi company shall have at least one director.

(2) The first directors of a Langkawi company shall be named in the articles of association of the company.

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

(4) Subject to any contrary provision in the articles of association of a Langkawi company, a director or officer of a Langkawi 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 director of a Langkawi 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.

(6) A director of a Langkawi company who, in contravention of subsection (4), 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.

(7) Notwithstanding any other provision of this Act or the regulations to the contrary, and unless otherwise provided in the articles of association of a Langkawi company, a director of a Langkawi 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

59. A person shall not be appointed or named as a director or proposed director in the articles of association of a Langkawi company unless, before the registration of the articles of association,

he has, by himself or by his agent authorized in writing for the purpose, signed and caused to be lodged with the Registrar a consent in writing to act as a director.

Validity of acts of directors

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

Registrar's power to restrain persons from managing Langkawi companies

61. (1) The Registrar may issue a direction that a person who, in Langkawi or elsewhere—

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

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

(2) After a direction has been issued by the Registrar under subsection (1), a Langkawi 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: Ten thousand ringgit.

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

62. (1) Subject to this section, every director of a Langkawi 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 Langkawi company consists only in him being a member or creditor of another Langkawi 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) Subject to any contrary provision in the articles of association of a Langkawi 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.

(4) For the purposes of subsection (1), a general notice given to the directors of a Langkawi company by a director to the effect that he is an officer or a member of a specified Langkawi company or a member of a specified firm and 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 a 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.

(5) Every director of a Langkawi 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.

(6) The declaration required of a director under subsection (5) 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.

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

(8) 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 association of a Langkawi company restricting a director of that company from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

Duty and liability of officers

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

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

(3) An officer of a Langkawi company who contravenes this section shall be—

(a) liable to the company for any profit made by him and for any damage suffered by the company as a result of such breach; and

(b) guilty of an offence against this Act.

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

Secretary

64. (1) Every Langkawi company shall appoint one or more secretaries, at least one of whom shall be a management entity and who shall also be the resident secretary of the Langkawi company.

(2) Subject to any contrary provision in the memorandum and articles of association of a Langkawi company, a secretary of a Langkawi 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.

(3) Every secretary of a Langkawi company shall be appointed by the directors of the company.

(4) Subject to subsection (5), the resident secretary of a Langkawi company shall be responsible for the compliance by the company with the requirements of this Act in relation to the lodging of all documents with the Registrar, the maintenance of the company's records at the registered office of the company and the dealing with communications served to the company at its registered office.

(5) 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 howsoever arising otherwise than by reason of his wilful misconduct, wilful default or wilful neglect.

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

Register of directors and officers

65. (1) Every Langkawi company shall keep at its registered office in Langkawi a register of its directors and officers.

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

(3) The register shall contain with respect to each officer, in the case of an individual, his present full name and any former name, his usual residential address and identification (if any) and, where applicable, the name of a management entity 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 and the address of its registered office.

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

(5) A Langkawi company shall lodge with the Registrar—

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

(6) If a default is made by a Langkawi 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: Five thousand ringgit. Default penalty.

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

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

66. Where any offence against any provision of this Act has been committed by the management entity acting as a director or resident secretary of a Langkawi company, any person who at the time of the commission of the offence was a director or an officer of the management entity 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 management entity, or was assisting in such management, shall be guilty of that offence.

DIVISION 3

MEETINGS AND PROCEEDINGS

Meetings of members

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

(2) The directors of a Langkawi company, notwithstanding anything in the articles of association, 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, immediately proceed to convene a meeting of members.

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

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

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

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

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

Notice of meetings of members

68. (1) Subject to any requirement in the memorandum or articles of association to give a 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 76 and who are entitled to vote at the meeting.

(2) Notwithstanding subsection (1), but subject to any limitations in the memorandum or articles of association, 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 association, 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 a 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

69. (1) Except as otherwise provided in the articles of association of a Langkawi company, where a Langkawi 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 of the meeting; 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 Langkawi 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 Langkawi 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 Langkawi 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 association 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 Langkawi 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

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

(2) The directors of a Langkawi 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

71. Subject to any limitations in the memorandum or articles of association of a Langkawi 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 order meetings to be called

72. (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 of association 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

73. (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 to 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.

Lodgement of copies of certain resolutions and agreements

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

(2) A copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the memorandum, articles of association or prospectus, as the case may

be, and where so varied, issued after the passing of the resolution or the making of the agreement.

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

(4) This section shall apply to—

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

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

Penalty: Five thousand ringgit. Default penalty.

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

Penalty: Fifty ringgit for each copy in respect of which default is made.

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

Minutes of proceedings

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

(2) Unless the Registrar otherwise directs, all minute books of a Langkawi 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 without any charge by any member.

DIVISION 4

REGISTER OF MEMBERS

Register of members

76. (1) Every Langkawi company shall keep a register of its members and enter in the register—

- (a) the names, nationalities and addresses, and any other relevant information and particulars, as may be prescribed in the articles of association, 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 in the register as required or authorized by this Act.

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

Penalty: Five thousand ringgit. Default penalty.

Place to keep register

77. (1) Unless the Registrar otherwise directs, the register of members of a Langkawi company shall be kept at the registered office of the company and shall be open for inspection without any charge by any member only.

(2) Notwithstanding subsection (1), every Langkawi company shall, within one month after the register is first kept at a place other than the registered office of the company, lodge with the Registrar notice of the place where the register is kept and shall, within one month after any change in the place at which the register is kept, lodge with the Registrar notice of the change.

Consequences of default by agent

78. Where the register of members is kept at some place other than the registered office of a Langkawi company and by reason of any default of the person in charge of such place the company fails to comply with section 77 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

79. (1) If, in relation to a Langkawi 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 an 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 Langkawi company on the other hand; and
- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

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

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

DIVISION 5 RETURNS OF

COMPANY

Returns of Langkawi company

80. (1) The Registrar may, as the circumstances deem necessary by written notice, require a Langkawi company to lodge with the Registrar a return in respect of that company for a particular calendar year.

(2) The return shall contain prescribed particulars and be in accordance with the form as prescribed for the purpose or as near thereto as circumstances permit, and shall be signed by a director or secretary of the company.

(3) If a Langkawi 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

81. (1) A Langkawi 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 Langkawi company and the directors of the company shall cause appropriate entries to be made in the accounting and other records of the company within sixty days of the completion of the transactions to which they relate.

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

(4) Notwithstanding subsection (3), the accounting and other records of operations outside Langkawi of a Langkawi company may be kept by the company at a place outside Langkawi, and there shall be sent to and kept at a place in Langkawi such statements and returns with respect to the business dealt with in the accounting and other records so kept as will enable to be prepared true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto.

(5) If any accounting and other records are kept at a place outside Langkawi pursuant to subsection (4), the company shall, if required by the Registrar to produce those accounting and other records at a place in Langkawi, comply with the requirements.

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

(7) Any director of a Langkawi company who fails to take all reasonable steps to secure compliance by the company with the requirements of this section and sections 83 and 84 shall be guilty of an offence against this Act.

Accounts to be laid before meeting

82. (1) Subject to section 85, the directors of a Langkawi company shall cause to be laid before the company at a meeting of members the audited accounts or unaudited accounts, as the case may be, of the company not more than nine months after the date to which the audited accounts or unaudited accounts are made up.

(2) Notwithstanding subsection (1), a Langkawi company shall not be required to lay before the company at a meeting of members the audited accounts or unaudited accounts, as the case may be, of the company if the members unanimously resolve that such accounts need not be laid at a meeting of members in respect of each financial year.

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

Penalty: Ten Thousand ringgit. Default penalty.

Accounts to be sent to members

83. A copy of every audited account or unaudited account, as the case may be, which is to be laid before a Langkawi company at a

meeting of members accompanied with 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

84. (1) Subject to section 85, the directors of a Langkawi company shall, within ninety days of its incorporation, appoint a person or persons to be the auditor or auditors of the company.

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

Auditor not required in certain circumstances

85. A Langkawi company shall not be required to appoint an auditor so long as—

- (a) the company or a director, officer, agent or any person on behalf of the company does not issue an invitation or distribute forms of application to the public or to any member of the public to subscribe for shares in the company; or
- (b) the members of the company so resolve at a meeting of members of the company that such an appointment need not be made in respect of each financial year.

Removal and resignation of auditors

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

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

(3) If an auditor gives written notice to the directors of a Langkawi 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) A Langkawi company shall, within thirty days of any change in the auditor of the company, lodge with the Registrar a notice thereof in the prescribed form and such notice shall be accompanied with the new auditor's written consent.

Remuneration of auditor

87. The fees and expenses of an auditor of a Langkawi 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

88. An auditor of a Langkawi company may attend and address all meetings of members of the company.

Rights and duties of auditors

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

PART VII

ARRANGEMENT AND RECONSTRUCTION

Arrangement

90. (1) In this section, "arrangement" means—

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

(2) The directors of a Langkawi 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 Langkawi company shall make an application to the Court for approval of the proposed plan of arrangement.

(4) The Court may, upon an application being 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 or debt obligations in the company may dissent from the proposed arrangement and receive payment of the value of his shares or debt obligations;
- (d) conduct a hearing and permit any interested persons to appear; and

(e) approve or reject the plan of arrangement as proposed or approve it with such amendments as it may direct.

(5) Where the Court makes an order approving a plan of arrangement, the directors of the Langkawi 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 to the plan of arrangement.

(6) The directors of the Langkawi 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 Langkawi company and shall contain—

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

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

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

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

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

days from the date the articles of arrangement are registered with the Registrar, as is stated in the articles of arrangement.

Regulations in respect of takeovers and mergers

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

PART VIII

FOREIGN LANGKAWI COMPANIES

Application and interpretation

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

(2) In this Part, the expression "carrying on business in Langkawi" means carrying on business in respect of yacht-related activities in, from or through Langkawi.

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

93. (1) A foreign company shall not have a place of business or carry on business in Langkawi unless it is registered as a foreign Langkawi company under this Part, and a foreign company which acts and every officer of the company 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 Langkawi, lodge with the Registrar for registration —

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin, or a document of similar effect;
- (b) a certified copy of its charter, statute or memorandum and articles of association 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 officers of a Langkawi company under section 65;
- (d) where the list referred to in paragraph (c) includes directors resident in Langkawi who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign Langkawi company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign Langkawi company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name and address of a management entity 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 management entity,

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

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

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

(5) A foreign Langkawi company shall pay an annual fee of such amount as may be prescribed not later than thirty days from 1 January of each calendar year.

Prohibition and restriction on foreign Langkawi companies

94. A foreign Langkawi company shall not carry on any business in Langkawi that a Langkawi company is prohibited to carry on.

Registered office of foreign Langkawi companies

95. Every foreign Langkawi company shall at all times have a registered office in Langkawi, which office shall be the principal office of a management entity.

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

- 96.** (1) Where any change or alteration is made in—
- (a) the charter, statute, memorandum or articles of association of a foreign Langkawi company, or other instrument relating to the company, lodged with the Registrar;
 - (b) the directors of a foreign Langkawi company or in the name or address of any director;
 - (c) the address of the registered office of a foreign Langkawi company in its place of incorporation or origin;
 - (d) the name of a foreign Langkawi company;
 - (e) the powers of any directors resident in Langkawi who are members of the local board of directors of a foreign Langkawi company; or
 - (f) the management entity or the name or address of the management entity referred to in paragraph 93(2)(e),

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

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

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

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

(5) If a foreign Langkawi 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 or took place, lodge with the Registrar notice of the increase.

Service on foreign Langkawi companies

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

- (a) if at any time the registered office so notified has ceased to exist; or
- (b) 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 Langkawi, 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 Langkawi

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

Liquidation or dissolution of a foreign Langkawi company in place of incorporation or origin

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

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

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

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

- (a) pay to the Registrar all penalties, costs, fees and charges due and owing;

- (b) pay the amount of all taxes payable under the Income Tax Act 1967 [Act 53]; and
- (c) pay to any person resident in Langkawi to whom, at the time of the appointment of the liquidator in Langkawi, any debt incurred *bonafide* by a foreign Langkawi company in respect of the supply of services to or for the foreign Langkawi 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 Langkawi company ranking after the costs of the liquidator appointed by the Registrar but in priority to all other charges and claims whatsoever.

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

Names of foreign Langkawi companies

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

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

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

Returns of foreign Langkawi company

101. (1) A foreign Langkawi company shall make a return in respect of the company for every calendar year.

(2) The return shall contain the prescribed particulars and be in accordance with the form as prescribed for the purpose or as near thereto as circumstances permit.

(3) The Registrar may, as the circumstances deem necessary by written notice, require a foreign Langkawi company to lodge with the Registrar a return in respect of that company for a particular calendar year.

PART IX

MANAGEMENT ENTITY

Authorization of management entity

102. Subject to such terms and conditions as he deems fit to impose, the Minister may authorize any corporation to be a management entity for the purpose of acting on behalf of a Langkawi company or foreign Langkawi company in pursuance of the provisions of this Act.

Revocation of authorization

103. The Minister may revoke an authorization given under section 102 if the management entity—

- (a) has contravened the provisions of any terms, conditions, restrictions or limitations as specified in the authorization; or
- (b) has been convicted of an offence under this Act or of a criminal offence in Malaysia or in any other country or jurisdiction.

PART X

MISCELLANEOUS

Receivership and winding up

104. (1) The provisions of Parts VIII and X of the Companies Act 1965 (in so far as they relate to a company limited by shares) shall apply to the receivership and winding up of a Langkawi company, subject to such modifications as the Minister may make by order, and in particular references to a "company" shall be taken as references to a Langkawi company.

(2) The Companies (Winding-Up) Rules 1972 [P.U.(A) 289/72] shall also apply to the winding up of a Langkawi company, subject to such modifications as the Minister may make by order, and in particular references to a "company" shall be taken as references to a Langkawi company.

(3) In this section, "modification" includes amendment, adaptation, alteration, variation, addition, division, substitution or exclusion.

Service of documents on Langkawi companies

105. Any document may be served on a Langkawi company by leaving it at, or sending it by post to, the registered office of the company, or if the registered office of the company ceases to exist, the document may be served by leaving it at or sending it by post to any place of business established by the company in Langkawi.

Transfer from Langkawi

106. (1) A Langkawi company may, upon obtaining the approval of the Registrar and within two months from the date on which the approval is obtained, apply to the proper officer of another country or of a jurisdiction within such a country, by the laws of which such transfer is authorized, for an instrument transferring a company as if it had been incorporated under the laws of that other country or jurisdiction, and on the date of the instrument of transfer, the company shall, subject to the provisions of this section, become a company under the laws of that country or jurisdiction and be domiciled in that country or jurisdiction.

(2) A Langkawi company shall not apply to the Registrar for approval under subsection (1) unless —

(a) the application is authorized —

- (i) where the company has a share capital, by the holders of not less than three-fourths of the shares of each class;
- (ii) by the holders of not less than three-fourths of the company's debentures (if any) of each class; and
- (iii) by all the directors of the company; and

- (b) the company, not less than thirty days before applying to the Registrar for such approval, has published a notice in a newspaper circulating generally in Langkawi of its intention to the company in which are set out

and an application shall not be accepted unless in 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 the creditors; and
- (d) a statement to the effect that the proposed transfer of domicile is unlikely to be detrimental to the rights or proper interests of any of the company's members, debenture holders or creditors.

(3) The Registrar shall not give his approval to a Langkawi company applying for transfer to another country or jurisdiction unless he is satisfied that—

- (a) the requirements of subsection (2) have been complied with; and
- (b) the company has complied with any provision of this Act which it should have complied with,

and the Registrar may grant his approval on such conditions as he thinks necessary to safeguard the rights and proper interests of any member, debenture holder or creditor of the company or any class of such members, debenture holders or creditors and upon the company taking such steps as he considers necessary to remedy any failure to comply with any provision of this Act.

(4) Upon an instrument transferring the company to another country or jurisdiction being executed by the proper officer of that other country or jurisdiction, the company shall immediately notify the Registrar of the details and the company shall be deemed to have ceased to be a company incorporated in Langkawi from the date of its transfer to that other country or jurisdiction takes effect and the Registrar shall remove its name from the register:

Provided that nothing in this subsection shall take away or affect the jurisdiction of any Court (whether the High Court or otherwise) to hear and determine any proceedings commenced therein by or against the company before it ceased to be a company incorporated in Langkawi.

(5) Where a Langkawi company notifies the Registrar under subsection (4) that an instrument transferring the company to another country or jurisdiction has been executed by the proper officer of that other country or jurisdiction and that notification is false, then, notwithstanding that the Registrar has removed the name of the company from the register in pursuance of that subsection—

- (a) the liability (if any) of any officer or member of the company shall continue and may be enforced as if the company were still registered under this Act; and
- (b) the company shall be liable to be wound up pursuant to the provisions of this Act as if it were still registered under this Act .

Costs of proceedings before Court

107. 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

108. Where a Langkawi 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

109. (1) Where after exercising reasonable diligence, a Langkawi company is unable to discover the whereabouts of a registered shareholder for a period of not less than ten years, the company may cause a notice to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the shares, after the expiration of one month from the date of the notice, will be liable to be forfeited to the Registrar.

(2) If after the expiration of one month from the date of a notice under subsection (1), the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Registrar and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Registrar; and the person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of all such moneys in respect of the shares.

Power to grant relief

110. (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, breach of duty or breach of trust, 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 Langkawi company;
- (b) persons employed by a Langkawi company as auditors, whether or not they are officers of the company;
- (c) experts within the meaning of this Act; and

- (d) all persons, including receivers and managers or liquidators, who are appointed or directed by the Court or the Registrar to carry out any duty under this Act in relation to a Langkawi company.

Irregularities in proceedings

111. (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 Langkawi company, has occurred in the management or administration of a Langkawi 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 association 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 of the company, 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 Langkawi 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

112. (1) Where under this Act a Langkawi company or foreign Langkawi company is required to lodge with the Registrar an instrument, certificate, contract or document or a certified copy thereof and the same is not written in the national language or in the English language, the company shall lodge at the same time with the Registrar a certified translation thereof in the national language or in the English language.

(2) Where under this Act a Langkawi company or foreign Langkawi 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 Langkawi a certified translation thereof in the national language or in the English language.

(3) Where any accounts, minute books or other records of a Langkawi company or foreign Langkawi company required to be kept under 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 under this Act.

Dividends payable from profits only

113. (1) No dividends shall be payable to any shareholder of any Langkawi company except out of profits.

(2) Every director of a Langkawi company who wilfully pays or permits to be paid any dividend out of what he knows is not profit shall be guilty of an offence against this Act.

Use of word "Corporation", etc.

114. Every person who carries on business in Langkawi under any name or title which incorporates the word or words "Berhad", "Corporation", "Incorporated", "Limited", "Societe Anonyme", "Sociedad Anonima", "Aktiengesellschaft", "Naamloze Vennootschap", "Perseroan Terbatas" or any other word or words in the national language of any country which connotes a joint stock company limited by shares, or any abbreviation of those words shall, unless it is a Langkawi company, foreign Langkawi company duly incorporated or registered under this Act, domestic company or incorporated body, be guilty of an offence against this Act.

General penalty

115. (1) A person who—

- (a) does that which by or under this Act he is forbidden to do;
- (b) does not do that which by or under this Act he is required or directed to do; or

- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty expressly provided for the offence, or if no penalty is expressly provided, to a fine not exceeding ten thousand ringgit.

(3) The penalty, 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 not exceeding that so set out, and where the penalty is expressed to apply to a part only of the section, it shall apply to that part only.

Default penalty

116. (1) Where in or at the foot of any section or part of a section of this Act there appears the expression "Default penalty", it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part of that section 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 of the section as the amount of the default penalty or, if an amount is not so expressed, of not more than ten thousand ringgit.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

(3) For the purposes of any provision of this Act which provides that an officer of a Langkawi company, foreign Langkawi company or guarantor company who is in default is guilty of an offence against this Act or is liable to a penalty, the expression "officer

who is in default" or any like phrase means any officer of the company who knowingly and wilfully —

(a) is guilty of the offence; or

(b) authorizes or permits the commission of the offence.

Prosecution

117. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Compounding of offences

118. (1) The Registrar may, with the consent of the Public Prosecutor, compound any offence committed by any person against this Act or the regulations and prescribed by the Minister to be a compoundable offence by regulations by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Registrar of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within the time as specified in the offer,

(2) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for the offence has been instituted, and where the amount specified in the offer is not paid within the time as specified in the offer, or within such extended time as the Registrar may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where the offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

Procedure where none laid down

119. 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, an application may be made to the Registrar for directions as to the manner in

which the same may be done or taken, and any act or step done or taken in accordance with his directions shall be a valid performance of such act or step.

Regulations

120. (1) The Minister may from time to time make regulations prescribing all matters and things required or authorized by this Act to be prescribed or provided, or which may be necessary or expedient, for the carrying out of or giving full effect to the provisions of this Act .

(2) Without prejudice to the generality of subsection (1), regulations may be made for prescribing —

- (a) the forms to be used for the purposes of this Act and the matters to be specified in such forms;
- (b) the forms of applications and other notices under this Act;
- (c) the fees and charges to be paid under this Act and the penalties for late payment, or delegating the power of fixing such fees, charges and penalties to prescribed persons or bodies;
- (d) the manner in which accounting and other records required to be made or kept under this Act are to be made or kept, and the declarations, reports, annexures, schedules or details which are to accompany or to be attached to such accounting or other records;
- (e) the offences which may be compounded and the procedure for the compounding of such offences; and
- (f) any other matter which is expedient or necessary for the purposes of this Act.

Prohibition by Minister

121. (1) The Minister may without assigning reasons therefore, issue, by notification in the *Gazette*, the Minister's direction—

- (a) prohibiting the initial incorporation of any Langkawi company or class of companies;

- (b) prohibiting the initial registration of a foreign Langkawi company; or
- (c) directing any Langkawi 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

122. (1) All proceedings (other than criminal proceedings) relating to any Langkawi company or foreign Langkawi company commenced in any Court, either under the provisions of this Act or for the purpose solely of determining the rights or obligations of officers, members or holders of debentures, and any appeal therefrom, shall, unless the Court otherwise orders, be heard *in camera* and no details of the proceedings shall be published by any person without leave of the Court.

(2) Where-

- (a) in any proceedings for the winding up of a Langkawi company the Court is satisfied that the company or any officer thereof has failed to comply with any provisions of this Act; or
- (b) a Langkawi company or any officer thereof is convicted by the Court of any offence under this Act,

the Court may, if it thinks fit, order that the records, books and registers of that company and the entries in the Registrar's registers and records relating to that company be opened to the public for inspection.

(3) A person who, with respect to any Langkawi company, otherwise than for the purpose of the administration of this Act or the carrying on of the business of the company in Langkawi or elsewhere—

- (a) divulges;
- (b) attempts, offers or threatens to divulge; or
- (c) induces or attempts to induce other persons to divulge,

any information concerning or touching upon —

- (d) the shareholding in, or beneficial ownership of, any share or shares in such company;
- (e) the management of such company; and
- (f) any of the business, financial or other affairs or transactions of the company,

shall be guilty of an offence against this Act.

(4) Nothing in this section shall prevent any Court from exercising its discretion to require any person to produce any document or to give any evidence in any proceedings before the Court which is relevant to those proceedings.

Power of exemption

123. The Minister may, on the recommendation of the Registrar, on an application in writing, exempt any Langkawi company or foreign Langkawi company, or any person or class of persons, or class of Langkawi companies or foreign Langkawi companies from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

Fees, penalties and striking off

124. (1) A Langkawi company shall pay to the Registrar the annual fee due on the annual fee payment date.

(2) If a Langkawi 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 Langkawi company fails to pay the annual fee and the additional amount specified in subsection (2) on or before the expiration of a period of one month from the date of expiration of the period of six months specified in subsection (2), the Registrar may after the expiration of the period of one month send to the secretary of the Langkawi company a written notice that the name

of the Langkawi company shall be struck off the register if the annual fee and the amount specified in subsection (2) are not paid within one month from the date of the notice or such extended period as may be allowed by the Registrar.

(4) If the Langkawi company fails to pay the annual fee and the additional amount specified in subsection (2) within one month from the date of the notice or the extended period as may be allowed by the Registrar under subsection (3), the Registrar may strike the name of the Langkawi company off the register.

(5) Notwithstanding that the name of a Langkawi company has been struck off the register under this section, the Langkawi company shall remain liable for all claims, debts, liabilities and obligations of the Langkawi 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 Langkawi company from the register under this section shall not be affected by any failure on the part of the Registrar to serve a notice on the secretary or to publish a notice in the *Gazette*.

(7) Subsections (2) to (5) do not apply to a Langkawi company in the process of being wound up and dissolved.

Company struck off liable for fees, etc.

125. A Langkawi company incorporated under this Act shall continue to be liable for all fees, including annual fees and penalties payable under this Act, including the additional amount as specified in subsection 124(2), notwithstanding that the name of the Langkawi company has been struck off the register; and such fees, including the annual fees and penalties, shall have priority over all other claims against the assets of the Langkawi company.

Fees payable to Registrar

126. The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.

Effect of striking off

127. (1) Where the name of a Langkawi company has been struck off the register, the Langkawi company, and the directors, members, liquidators and receivers of the company, shall not—

- (a) commence any legal proceedings, carry on any business or in any way deal with the assets of the Langkawi company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the Langkawi company; or
- (c) act in any way with respect to the affairs of the Langkawi company.

(2) Notwithstanding subsection (1), where the name of the Langkawi company has been struck off the register, the Langkawi company, or a director, member, liquidator or receiver of the company, may—

- (a) apply to the Registrar for the Langkawi company to be registered afresh;
- (b) continue to defend proceedings that were commenced against the Langkawi company prior to the date of the striking off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the Langkawi company prior to the date of striking off.

(3) The fact that the name of a Langkawi company has been struck off the register does not prevent—

- (a) the Langkawi company from incurring liabilities;
- (b) any creditor from making a claim against the Langkawi company and pursuing the claim through to judgement or execution; or
- (c) the appointment by the Court of an official liquidator for the Langkawi company under Parts VIII and X of the Companies Act 1965, in so far as they relate to a Langkawi company limited by shares.

SCHEDULE

[Section 25]

POWERS OF A LANGKAWI COMPANY

1. To carry on any business, other than a business which is prohibited by this Act or the regulations from being carried on, which may seem to the company capable of being conveniently carried on or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights
2. To enter into or be a party to any transaction or document
3. To acquire, hold, dispose of or deal with any information or rights or property of any kind
4. To acquire, hold, dispose of or deal with the whole or any part of the undertaking of any other company, association or business
5. To dispose of or otherwise deal with the whole or any part of its undertaking or business
6. To assume any duties, obligations or liabilities
7. To acquire any rights or interests
8. To provide or procure provision of any services
9. To lend and borrow
10. To procure its registration or recognition in any place outside Langkawi
11. To create and extinguish liabilities and rights and interests
12. To issue shares and debentures, and to take shares and debentures and to redeem and forfeit the same
13. To employ or retain persons in and about its business or the business of any other company or person
14. To give indemnities and guarantees and obtain indemnities and guarantees
15. To take out insurance of all kinds whether over the property or rights of the company or not
16. To promote any other company
17. To make gifts, donations and wages which may lawfully be made, whether the same may, or may not, be for the purpose of advancing its business

18. By way of settlement or other dealing or disposition, to give the right to a person not a member of the company to share in the whole or any part of its gains or profits to the exclusion of its members, provided that in exercising such power no distribution of gains or profits shall be made pursuant to such settlement, disposition or other dealing which would exceed the amount properly distributable as a dividend or properly capable of being returned as capital surplus to some or to all of the members of the company
19. To do any of the things which it may do in association with any other person and as principal or agents or as trustee or for its own benefit
20. To promote any other business
21. To do all such things as are incidental or conducive to the exercise of the powers of the company
22. To do all other things which are not prohibited by or under this Act or the regulations.

EXPLANATORY STATEMENT

The Langkawi International Yachting Companies Act 2005 ("the Act") proposed by this Bill provides for the incorporation, registration and administration of international yachting companies in Langkawi and for other matters connected to it.

PART I

2. Part I seeks to provide for preliminary matters.
3. *Clause 1* contains the short title and allows the Minister to appoint a date of coming into operation of the Act.
4. *Clause 2* contains the definitions of certain expressions used in the Act.
5. *Clauses 3 and 4* provide for the interpretation of the terms "holding company", "subsidiary", "ding company" and "related companies" in respect of corporations.
6. *Clause 5* provides for the non-application of the Companies Act 1965 to a Langkawi company or foreign Langkawi company unless the Act expressly provides to the contrary.
7. *Clause 6* specifies the nature of business that may be carried on by a Langkawi company, but the company shall not carry on any business with a resident of Malaysia except in certain circumstances as stated in that *clause*.

PART II

8. Part II seeks to provide for matters relating to the administration of the Act.
9. *Clause 7* provides that the Registrar shall be responsible for the administration of the Act and also provides in respect of the judicial notice of the seal and signature of the Registrar.
10. *Clauses 8, 9, 10, and 11* provide for the power of the Registrar to obtain information, conduct an inspection or investigation and to examine persons in relation to an investigation.
11. *Clause 12* provides that the lodgment of a document with the Registrar, or an application for any certificate or document, or any extract or copy of such certificate or document from the Registrar shall be made through a management entity, except where the application is made by a member of a Langkawi company or foreign Langkawi company for his own personal use.
12. *Clause 13* sets out the procedure for the lodgement or filing of documents with the Registrar by electronic means.
13. *Clause 14* deals with the evidentiary value of documents that are electronically lodged or filed with the Registrar.
14. *Clause 15* provides that the original copies of documents that have been electronically lodged or filed with the Registrar by a management entity shall be kept at the office of the management entity.
15. *Clause 16* empowers the Registrar to approve a person as an approved auditor of a Langkawi company, and to revoke such approval.
16. *Clause 17* sets out the circumstances in which a person shall not knowingly consent to be appointed as or to knowingly act as an auditor of a Langkawi company.
17. *Clause 18* empowers the Registrar to approve a person as an approved liauidator of a Langkawi company, and to revoke such approval.
18. *Clause 19* provides for the Registrar to keep registers and allows for interested persons to inspect the registers. *Subclause (4)* deals with the evidentiary value of the matters specified in a certificate issued under the hand and seal of the Registrar. *Subclause (5)* sets out the circumstances where the Registrar may refuse to register a document. *Subclause (7)* provides that a person may appeal to the Minister against any act or decision of the Registrar, including his refusal to register a Langkawi company or foreign Langkawi company. *Subclause (9)* sets out the manner in which the Registrar deals with the old records of a Langkawi company or foreign Langkawi company.

PART III

19. Part III contains provisions relating to the constitution of companies. This Part is divided into two divisions, namely Division 1 and Division 2.

20. Division 1 provides for the incorporation of Langkawi companies.
21. *Clauses 20 and 21* set out the procedure for the incorporation of Langkawi companies, that shall be companies limited by shares. It also provides for the issuance of a certificate of incorporation by the Registrar upon the incorporation of the company.
22. *Clause 22* sets out the procedure to enable the registration of a foreign company incorporated under the laws of any country, other than Malaysia, to be continued in Langkawi, and upon its registration the foreign company shall be deemed to be a Langkawi company domiciled in Langkawi without affecting the continuance of the company. *Clause 23* seeks to provide that prior to a foreign company submitting its application for registration under *clause 22*, the foreign company may request for its registration to be approved in principle by the Registrar.
23. *Clause 24* contains provisions relating to the memorandum of Langkawi companies.
24. Division 2 provides in respect of the status and name of a Langkawi company.
25. *Clause 25* seeks to set out the powers of a Langkawi company.
26. *Clause 26* seeks to provide in respect of the effect of any act or purported act, or any conveyance or transfer that was carried out or executed by a Langkawi company that does not have the capacity or power to carry out or execute that act or purported act, conveyance or transfer.
27. *Clause 27* specifies provisions in respect of the names of Langkawi companies registered under the Act.
28. *Clause 28* seeks to allow a Langkawi company to change its name by special resolution or where so directed by the Registrar, and provides for the effect of the change of name.
29. *Clause 29* specifies matters pertaining to the contents of the articles of association of Langkawi companies.
30. *Clause 30* seeks to allow a Langkawi company by special resolution to alter or add to its articles of association or memorandum.
31. *Clause 31* provides that a member may request for a copy of the company's memorandum and articles of association.
32. *Clause 32* sets out the manner for entering into contracts on behalf of a Langkawi company and the establishment of a branch of a Langkawi company.
33. *Clause 33* prohibits the officers, servants, employees or agents of a Langkawi company to carry on business when it has no members for more than a period of six months, unless under the direction of the Court or an approved liquidator.

PART IV

34. Part IV contains provisions relating to the issue of shares and the register of charges. This Part is divided into three divisions, namely Division 1, Division 2 and Division 3.
35. Division 1 sets out matters relating to the allotment and dealing in shares of a Langkawi company.
36. *Clause 34* provides that a Langkawi company shall make a return of an allotment of its shares, and the Registrar may, where the circumstances deem necessary, require such return to be lodged with the Registrar.
37. *Clause 35* sets out the manner in which a Langkawi company may make a call of its shares.
38. *Clause 36* authorizes a Langkawi company to determine, by special resolution, that certain portion of its share capital shall not be liable to be called up except in the event of winding up of the company.
39. *Clause 37* requires premiums received by a Langkawi company on the issue of shares to be transferred to a share premium account, and imposes certain limitations on the application of the account.
40. *Clause 38* empowers a Langkawi company to issue shares, which may be divided into one or more classes of shares, and the value of such shares is to be expressed in foreign currencies only.
41. *Clause 39* authorizes a Langkawi company to deal in its own shares in certain circumstances, including the acquisition and disposal of the shares.
42. *Clause 40* empowers a Langkawi company to cancel all or any part of the shares reacquired by it, other than redeemable shares redeemed or purchased.
43. *Clause 41* authorizes a Langkawi company to issue at a discount shares of a class already issued with the prior written approval of the Registrar.
44. *Clause 42* provides that a Langkawi company may by special resolution alter its share capital.
45. *Clause 43* empowers the Court to validate any shares improperly issued by a Langkawi company subject to such conditions as it thinks fit to impose.
46. *Clause 44* allows a Langkawi company to reduce its share capital by special resolution subject to the reduction being confirmed by the Court.
47. *Clause 45* seeks to protect the rights of the holders of preference shares by requiring such right to be set out in the articles of association before the allotment of such shares.

48. *Clause 46* authorizes a Langkawi company to issue redeemable preference shares if so authorized by its articles of association.
49. *Clause 47* restricts a Langkawi company from making any offer or issuing any invitation to the public for the subscription or purchase of its shares or interest except where such offer or invitation relates to shares or interest which entitles the holder of its shares or interest the right to use any yacht-related recreational or holiday activities or facilities.
50. Division 2 relates to matters concerning the title and transfer of shares and interests of a Langkawi company.
51. *Clause 48* specifies the nature of the share or interest of any member of a Langkawi company.
52. *Clause 49* requires each share of a Langkawi company to have an appropriate number by which it can be distinguished, but such numbering may be dispensed with in certain circumstances as stipulated in that *clause*.
53. *Clause 50* deals with the evidentiary value of a share certificate and the contents of a share certificate issued by a Langkawi company.
54. *Clause 51* authorizes a Langkawi company to have a share seal for the purposes of its share certificate.
55. *Clause 52* provides in respect of the registration of a transfer of shares or debentures by a Langkawi company, and also allows for the transfer of shares or debentures by personal representatives of a deceased person.
56. *Clause 53* requires a Langkawi company to issue share certificates and debentures within two months after the allotment of the shares and debentures, and to complete any transfer of share or debenture within one month after the transfer is lodged with the company.
57. Division 3 contains provisions relating to the register of charges.
58. *Clause 54* provides for the non-application of this Division to a charge created by a Langkawi company or foreign Langkawi company on property outside Malaysia.
59. *Clause 55* requires a Langkawi company or foreign company to maintain a register of charges, and to keep a copy of every instrument creating a charge at its registered office.

PART V

60. Part V contains provisions relating to the management and the administration of a Langkawi company and is divided into five divisions, namely Division 1, Division 2, Division 3, Division 4 and Division 5.
61. Division 1 relates to the registered office and name of a Langkawi company.

62. *Clause 56* requires every Langkawi company to have a registered office in Langkawi, which office shall be the principal office of a management entity.
63. *Clause 57* contains provisions requiring the display of the name of the Langkawi company at all its offices, and on its seals, negotiable instruments and other documents.
64. Division 2 relates to the appointment and duties of directors and officers of a Langkawi company.
65. *Clause 58* provides that every Langkawi company shall have at least one director, where a director may be a corporation that may act by itself or through a nominee appointed in writing.
66. *Clause 59* provides that a person may be appointed or named as a director of a Langkawi company only if his written consent has been lodged with the Registrar.
67. *Clause 60* provides that any defect in the appointment or qualification of a director of a Langkawi company shall not render invalid any act of the director.
68. *Clause 61* empowers the Registrar to restrain certain persons from managing Langkawi companies.
69. *Clause 62* requires a director to disclose his interests in any contract or proposed contract with the Langkawi company of which he is a director.
70. *Clause 63* imposes a duty on every officer of a Langkawi company to act honestly and diligently and prohibits him from improperly using any information acquired by virtue of his position in order to gain advantage for himself or other persons.
71. *Clause 64* provides that every Langkawi company shall have one or more secretaries, at least one of whom shall be a management entity and whom shall also be the resident secretary.
72. *Clause 65* requires a Langkawi company to keep at its registered office a register of its directors and officers that shall contain particulars such as the full name and usual residential address of the directors or officers.
73. *Clause 66* contains provisions relating to an offence committed against any provision of the Act by a management entity acting as a director or resident secretary of a Langkawi company.
74. Division 3 sets out matters regarding the meeting of members of a Langkawi company and its proceedings.
75. *Clause 67* empowers the director of a Langkawi company to convene a meeting of members as and when necessary, and also provides for a member of a meeting to be represented by proxy or to participate at a meeting of members through telephone or other electronic means.

76. *Clause 68* requires at least seven days notice to be given in respect of a meeting of members, but a shorter notice may be agreed upon by members holding a ninety per centum majority or such lesser majority as may be specified in the articles of association or memorandum.

77. *Clause 69* deals with matters regarding the quorum and voting in a meeting of members.

78. *Clauses 70* provides that each share has one vote, except as otherwise provided in the memorandum or articles of association of a Langkawi company, and *clause 71* provides that any 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 any other form of written electronic communication.

79. *Clause 72* empowers the Court to direct a meeting of members to be called if it is impracticable for the Langkawi company to call a meeting in the manner in which meetings are required to be called or to conduct a meeting in the manner prescribed in the articles of association or the Act.

80. *Clause 73* contains provisions regarding special resolutions at a meeting of members.

81. *Clause 74* provides for the lodgement of copies of resolutions and agreements as stipulated in this *clause* with the Registrar.

82. *Clause 75* requires a Langkawi company to keep and maintain at its registered office minutes of all proceedings of meetings of members and directors.

83. Division 4 provides for the register of members.

84. *Clause 76* requires a Langkawi company to keep and maintain a register of members.

85. *Clause 77* provides that the register of members is to be kept at the registered office of the Langkawi company and to be open for inspection without any charge by any member only.

86. *Clause 78* sets out the consequences of the failure to comply with *clause 77* and other requirements of the Act as to the production of the register.

87. *Clause 79* empowers the Court to rectify the register with respect to entries in the register.

88. Division 5 contains provisions regarding the returns of a Langkawi company.

89. *Clause 80* provides that the Registrar may as the circumstances deem necessary require a Langkawi company to lodge with the Registrar a return in respect of the company for a particular calendar year.

PART VI

90. Part VI seeks to provide in respect of the accounts and audit of a Langkawi company and has two divisions, namely Division 1 and Division 2.

91. Division 1 relates to the accounts of a Langkawi company.

92. *Clause 81* requires a Langkawi company to keep proper accounting and other records which shall be open for inspection by the directors of the company and any approved auditor acting for the director.

93. *Clause 82* provides that the directors of a Langkawi company may cause to be laid at a meeting of members the audited or unaudited accounts of the company.

94. *Clause 83* requires a copy of every audited or unaudited account which is to be laid at a meeting of members to be circulated to all members of the company at least seven days before the meeting of members.

95. Division 2 relates to the auditing of the accounts of a Langkawi company.

96. *Clause 84* provides for the appointment of an auditor of a Langkawi company.

97. *Clause 85* provides for circumstances where the appointment of an auditor of a Langkawi company is not be required.

98. *Clause 86* contains provisions regarding the removal or resignation of auditors of a Langkawi company.

99. *Clause 87* provides that the fees and expenses of auditors of a Langkawi company may be fixed by the directors of the company.

100. *Clause 88* allows an auditor of a Langkawi company to attend and address all meetings of members of the company.

101. *Clause 89* requires an auditor to make a report on the accounts of the company to the members of the company.

PART VII

102. Part VII seeks to provide in respect of the arrangement and reconstruction of a Langkawi company.

103. *Clause 90* provides for the definition of the term "arrangement" and sets out procedures for making arrangements, including the approval of a plan of arrangement by the directors of the company.

104. *Clause 91* empowers the Minister to make regulations in respect of the supervision and control of takeover and merger transactions.

PART VIII

105. Part VIII seeks to provide for matters relating to foreign Langkawi companies.

106. *Clause 92* provides for the application of this Part to foreign companies that have a place of business or are carrying on business in Langkawi and are not registered under the Companies Act 1965. This *clause* also sets out the definition of the term "carrying on business in Langkawi".

107. *Clause 93* specifies provisions regarding the registration of a foreign company intending to have a place of business or carry on business in Langkawi.

108. *Clause 94* prohibits a foreign Langkawi company from carrying on any business in Langkawi that a Langkawi company is prohibited from carrying on.

109. *Clause 95* requires every foreign Langkawi company to have a registered office in Langkawi, which office shall be the principal office of a management entity.

110. *Clause 96* requires a foreign Langkawi company to lodge with the Registrar particulars of any change or alteration that involves the company, including the company's memorandum and articles of association or the directors of the company.

111. *Clause 97* specifies provisions regarding the service of any process or document on a foreign Langkawi company.

112. *Clause 98* requires a foreign Langkawi company to notify the Registrar if it ceases to have a place of business or carry on business in Langkawi.

113. *Clause 99* empowers the Registrar to appoint a liquidator for a foreign Langkawi company which goes into liquidation or is dissolved in the place of its incorporation or origin, and also to provide for the duties and responsibilities of the liquidator.

114. *Clause 100* provides in respect of the registration of names of foreign Langkawi companies.

115. *Clause 101* provides that the Registrar may as the circumstances deem necessary require a foreign Langkawi company to lodge with the Registrar a return in respect of the company for a particular calendar year.

PART IX

116. Part IX seeks to provide in respect of a management entity.

117. *Clause 102* empowers the Minister to authorize any corporation to be a management entity for the purpose of acting on behalf of a Langkawi company or foreign Langkawi company.

118. *Clause 103* deals with instances where any authorization under *clause 102* may be revoked by the Minister.

PART X

119. Part X seeks to provide for miscellaneous matters.

120. *Clause 104* provides for the application of the provisions of Parts VIII and X of the Companies Act 1965 and the Companies (Winding-Up) Rules 1972 to the receivership and winding up of a Langkawi company.

121. *Clause 105* specifies provisions regarding the service of any documents on a Langkawi company.

122. *Clause 106* enables a Langkawi company to transfer its incorporation to another country or jurisdiction whose laws authorize such transfer, upon the approval of the Registrar.

123. *Clauses 107 and 108* provide for the costs in respect of any proceedings before a court and the payment of security for such costs.

124. *Clause 109* deals with the disposal by a Langkawi company of the shares of a shareholder whose whereabouts cannot be determined by the company.

125. *Clause 110* provides that the Court is empowered in specified circumstances to relieve any officer or auditor of a Langkawi company, any expert and persons including a receiver and manager or liquidator of a Langkawi company, either wholly or partially from liability in any proceedings for negligence, default, breach of duty or breach of trust.

126. *Clause 111* provides that an omission, error, irregularity or deficiency as to notice or time shall not invalidate any proceeding, including a meeting of a Langkawi company, unless the Court is of the opinion that substantial injustice has been caused.

127. *Clause 112* requires that all documents, accounts and other records that are not written in the national language or the English language and required to be lodged with the Registrar shall be accompanied with a certified translation of that document, account or other records in the national language or the English language.

128. *Clause 113* prohibits the payment of dividends by a Langkawi company except out of profits.

129. *Clause 114* prohibits a person carrying on business in Langkawi, other than a Langkawi company, foreign Langkawi company, domestic company or incorporated body, from using a name or title that incorporates certain words as set out in that *clause*.

130. *Clause 115* contains provisions that stipulate a general penalty for offences committed against the Act for which no specific penalty is expressly provided.

131. *Clause 116* contains provisions that deal with default penalties.

132. *Clause 117* provides that a prosecution under the Act shall only be instituted by or with the written consent of the Public Prosecutor.

133. *Clause 118* provides for the compounding of offences.
134. *Clause 119* empowers the Registrar to determine the appropriate procedure for any matter under the Act for which no procedure has been laid down by the Act or the regulations.
135. *Clause 120* empowers the Minister to make regulations for the purpose of carrying out or giving effect to the provisions of the Act.
136. *Clause 121* empowers the Minister to issue a Minister's direction to prohibit the initial incorporation of a Langkawi company, the initial registration of a foreign Langkawi company, or direct an existing Langkawi company to cease its operation.
137. *Clause 122* provides for the confidentiality of proceedings, other than criminal proceedings, against a Langkawi company, or any appeal from such proceedings. This *clause* also provides that it is an offence to divulge any information relating to shareholdings, beneficial ownership of shares, and the management or other affairs of a Langkawi company.
138. *Clause 123* empowers the Minister, on the recommendation of the Registrar, to exempt any Langkawi company or foreign Langkawi company, or any person or class of persons or class of Langkawi companies or foreign Langkawi companies from any provisions of the Act.
139. *Clause 124* provides for the payment of annual fees of a Langkawi company on the annual fee payment date, and enables the Registrar to strike off the name of a Langkawi company from the register if such company fails to pay the annual fee or any penalties in respect of such fees within the stipulated time.
140. *Clause 125* provides that a Langkawi company shall continue to be liable for all fees and penalties payable under the Act notwithstanding that the name of the Langkawi company has been struck off the register, and that such fees and penalties shall have priority over all other claims against the assets of the Langkawi company.
141. *Clause 126* provides that the Registrar may refuse to take any action required of him under the Act for which a fee is prescribed until all the fees have been paid.
142. *Clause 127* sets out the effects of striking off a Langkawi company.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2407]