



# THE STATUTES OF THE REPUBLIC OF SINGAPORE

## COMPANIES ACT 1967

### 2020 REVISED EDITION

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# Companies Act 1967

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An Act relating to companies.

[29 December 1967]

## PART 1

### PRELIMINARY

#### Short title

1. This Act is the Companies Act 1967.

#### Division into Parts

2. This Act is divided into Parts and Divisions as follows:

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Part 10A sections 355-364A	... Transfer of Registration sections 355-364A.
Part 11 Various Types of Companies, etc. sections 365-386	... Division 2 — Foreign Companies sections 365-373, 375-384, 386.
Part 11A sections 386AA-386AP	... Register of Controllers and Nominee Director of Companies sections 386AA-386AP.
Part 12 General sections 387-411	... Division 1 — Enforcement of this Act sections 386A-399. ... Division 2 — Offences sections 401-409B. ... Division 3 — Miscellaneous sections 409C-411.

## Repeals

3.—(1) The written laws mentioned in the First Schedule to the extent to which they are therein expressed to be repealed or amended are repealed or amended accordingly.

## Transitory provisions

(2) Unless the contrary intention appears in this Act —

(a) all persons, things and circumstances appointed or created under any of the repealed or amended written laws or existing or continuing under any of such written laws immediately before 29 December 1967 continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if such written laws had not been so repealed or amended; and

(b) in particular and without limiting paragraph (a), such repeal does not disturb the continuity of status, operation or effect of any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired under any of such written laws before that date.

(3) Nothing in this Act affects the Table in any repealed written law corresponding to Table A in the repealed Fourth Schedule in force immediately before 3 January 2016 or any part thereof (either as originally enacted or as altered pursuant to any statutory power) or the corresponding Table in any former written law relating to companies (either as originally enacted or as so altered) so far as the same applies to any company existing on 29 December 1967.

[36/2014]

## Interpretation

### 4.—(1) In this Act, unless the contrary intention appears —

“accounting corporation” means a company approved or deemed to be approved as an accounting corporation under the Accountants Act 2004;

“accounting entity” means a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership;

“accounting firm” means a firm approved or deemed to be approved as an accounting firm under the Accountants Act 2004;

“accounting limited liability partnership” means a limited liability partnership approved as an accounting limited liability partnership under the Accountants Act 2004;

“accounting records”, in relation to a corporation, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the corporation are made up;

“Accounting Standards” means the accounting standards made or formulated by the Accounting Standards Council under Part 3 of the Accounting Standards Act 2007 and applicable to companies and to foreign companies in respect of their operations in Singapore for the purposes of this Act;

“accounts” means profit and loss accounts and balance sheets and includes notes (other than auditors’ reports or directors’ reports) attached or intended to be read with any of those profit and loss accounts or balance sheets;

“Act” includes any regulations;

“alternate address” means —

- (a) in the case of a company — the alternate address that is recorded in place of the residential address of a director, chief executive officer or secretary in a company’s register of directors, chief executive

officers or secretaries (as the case may be) referred to in section 173; or

(b) in the case of a foreign company — an alternate address maintained with the Registrar under section 370A;

“annual general meeting”, in relation to a company, means a meeting of the company required to be held by section 175;

“annual return” means the return required to be lodged under section 197(1);

“approved exchange in Singapore” means an approved exchange as defined in section 2(1) of the Securities and Futures Act 2001;

“audit requirements” means the requirements of sections 201(8) and (9) and 207;

“Authority” means the Accounting and Corporate Regulatory Authority established under the Accounting and Corporate Regulatory Authority Act 2004;

“Authority’s website” means the Authority’s Internet website;

“banking corporation” means a bank or merchant bank licensed under the Banking Act 1970;

“book-entry securities” has the meaning given by section 81SF of the Securities and Futures Act 2001;

“books” includes any account, deed, writing or document and any other record of information, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

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

“branch register”, in relation to a company, means —

- (a) a branch register of members of the company kept pursuant to section 196; or
- (b) a branch register of holders of debentures kept pursuant to section 93,

as the case may require;

“business day” means any day other than a Saturday, Sunday or public holiday;

“certified”, in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

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

“chief executive officer”, in relation to a company, means any one or more persons, by whatever name described, who —

- (a) is in direct employment of, or acting for or by arrangement with, the company; and
- (b) is principally responsible for the management and conduct of the business of the company, or part of the business of the company, as the case may be;

“commencement of winding up” —

- (a) in a winding up by the Court, has the meaning given by section 126 of the Insolvency, Restructuring and Dissolution Act 2018; and
- (b) in a voluntary winding up, has the meaning given by section 161(6) of the Insolvency, Restructuring and Dissolution Act 2018;

“company” means a company incorporated under this Act or under any corresponding previous written law;

“company having a share capital” includes an unlimited company with a share capital;

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

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

“constitution”, in relation to a company, means —

(a) the constitution of the company which is registered with the Registrar under section 19, as may be amended from time to time; and

(b) in the case of a company incorporated before 3 January 2016, the memorandum of association of the company, the articles of association of the company, or both, in force immediately before that date;

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

“corporation” means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes any foreign company but does not include —

(a) any body corporate that is incorporated in Singapore and is by notification of the Minister in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government or to be a body corporate which is not incorporated for commercial purposes;

- (b) any corporation sole;
- (c) any cooperative society;
- (d) any registered trade union; or
- (e) any limited liability partnership;

“Court” means the General Division of the High Court;

“corresponding previous written law” means any written law relating to companies which has been at any time in force in Singapore and which corresponds with any provision in this Act;

“debenture” includes debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of the corporation or not, but does not include —

- (a) a cheque, letter of credit, order for the payment of money or bill of exchange;
- (b) subject to the regulations, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months;
- (c) for the purposes of the application of this definition to a provision of this Act in respect of which any regulations made thereunder provide that the word “debenture” does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;

“default penalty” means a default penalty within the meaning of section 408;

“Depository” has the meaning given by section 81SF of the Securities and Futures Act 2001;

“director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of a

corporation are accustomed to act and an alternate or substitute director;

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

“electronic communication” means communication transmitted (whether from one person to another, from one device to another, from a person to a device or from a device to a person) —

(a) by means of a telecommunication system; or

(b) by other means but while in an electronic form,

such that it can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form;

“emoluments”, in relation to a director or auditor of a company, includes any fees, percentages and other payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that company or by a holding company or a subsidiary of that company, whether made or given to the director or auditor in the director’s or auditor’s capacity as such or otherwise in connection with the affairs of that company or of the holding company or the subsidiary;

“exempt private company” means —

(a) a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members; or

(b) any private company, being a private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the *Gazette* to be an exempt private company;

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

“filed” means filed under this Act or any corresponding previous written law;

“financial year” —

- (a) in relation to a corporation — means the period in respect of which the financial statements of the corporation is made up, whether that period is a year or not; and
- (b) in relation to a company — is also to be determined in accordance with section 198;

“foreign company” means —

- (a) a company, corporation, society, association or other body incorporated outside Singapore; 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 body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore;

“identification” means —

- (a) in the case of an individual issued with an identity card under the National Registration Act 1965 — the number of the individual’s identity card; and
- (b) in the case of an individual not issued with an identity card under that Act — particulars of the individual’s passport or such other similar evidence of identity as is acceptable to the Registrar;

“liquidator” includes the Official Receiver when acting as the liquidator of a corporation;

- “limited company” means a company limited by shares or by guarantee or, prior to the expiry of the period of 2 years as specified in section 17(6), a company limited both by shares and guarantee;
- “limited liability partnership” has the meaning given by section 2(1) of the Limited Liability Partnerships Act 2005;
- “listed”, in relation to a company or corporation, means a company or corporation that has been admitted to the official list of an approved exchange in Singapore and has not been removed from that official list;
- “lodged” means lodged under this Act or any corresponding previous written law;
- “marketable securities” means debentures, funds, stocks, shares or bonds of any government or of any local authority or of any corporation or society and includes any right or option in respect of shares in any corporation and units in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001;
- “minimum subscription”, in relation to any shares offered to the public for subscription, means the amount stated in the prospectus relating to the offer as the minimum amount which in the opinion of the directors must be raised by the issue of the shares so offered;
- “office copy”, in relation to any Court order or other Court document, means a copy authenticated under the hand or seal of the Registrar or other proper officer of the Court;
- “officer”, in relation to a corporation, includes —
- (a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;
  - (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

- (c) any liquidator of a 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;
- (f) any liquidator appointed by the Court or by the creditors; or
- (g) a judicial manager appointed under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018;

“Official Assignee” means the Official Assignee appointed under section 16(1) of the Insolvency, Restructuring and Dissolution Act 2018 and includes a Deputy Official Assignee, a Senior Assistant Official Assignee and an Assistant Official Assignee;

“Official Receiver” means the Official Receiver appointed under section 17(1) of the Insolvency, Restructuring and Dissolution Act 2018 and includes a Deputy Official Receiver, a Senior Assistant Official Receiver and an Assistant Official Receiver;

“prescribed” means prescribed under this Act or by the rules;

“principal register”, in relation to a company, means the register of members of the company kept pursuant to section 190;

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

“private company” means —

- (a) any company which immediately prior to 29 December 1967 was a private company under the provisions of the repealed written laws;
- (b) any company incorporated as a private company by virtue of section 18; or
- (c) any company converted into a private company pursuant to section 31(1),

being a company which has not ceased to be a private company under section 31 or 32;

“profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document —

(a) inviting applications or offers from the public to subscribe for or purchase; or

(b) offering to the public for subscription or purchase, any shares in or debentures of, or any units of shares in or debentures of, a corporation or proposed corporation, and includes any document deemed to be a prospectus under section 257 of the Securities and Futures Act 2001, but does not include —

(c) a profile statement; or

(d) any material, advertisement or publication which is authorised by section 251 (other than subsection (5)) of that Act;

“public accountant” means a person who is registered or deemed to be registered under the Accountants Act 2004 as a public accountant;

“public company” means a company other than a private company;

“registered” means registered under this Act or any corresponding previous enactment;

“registered qualified individual” means a qualified individual registered under section 32 of the Accounting and Corporate Regulatory Authority Act 2004;

“Registrar” means the Registrar of Companies appointed under this Act and includes any Deputy or Assistant Registrar of Companies;

“regulations” means regulations made under this Act;

“related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the firstmentioned corporation by virtue of section 6;

“repealed written laws” means the written laws repealed by this Act;

“residential address” means —

- (a) in the case of a person registered under the National Registration Act 1965 — the place of residence of that person as registered under that Act; or
- (b) in the case of a person not registered under the National Registration Act 1965 — the usual residential address of that person;

“Rules” means Rules of Court;

“share” means share in the share capital of a corporation and includes stock except where a distinction between stocks and shares is expressed or implied;

“solicitor” means an advocate and solicitor of the Supreme Court;

“statutory meeting” means the meeting mentioned in section 174;

“statutory report” means the report mentioned in section 174;

“summary financial statement” means a summary financial statement referred to in section 203A;

“telecommunication system” has the meaning given by the Telecommunications Act 1999;

“treasury share” means a share which —

- (a) was (or is treated as having been) purchased by a company in circumstances in which section 76H applies; and
- (b) has been held by the company continuously since the treasury share was so purchased;

“unit”, in relation to a share, debenture or other interest, means any right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever name called and includes any option to acquire any such right or interest in the share, debenture or other interest;

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

“VCC” means a VCC or variable capital company as defined in section 2(1) of the VCC Act;

“VCC Act” means the Variable Capital Companies Act 2018;

“voting share”, in relation to a body corporate, means an issued share in the body corporate, not being —

- (a) a share to which, in no circumstances, is there attached a right to vote; or
- (b) a share to which there is attached a right to vote only in one or more of the following circumstances:
  - (i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;
  - (ii) upon a proposal to reduce the share capital of the body corporate;
  - (iii) upon a proposal that affects rights attached to the share;
  - (iv) upon a proposal to wind up the body corporate;
  - (v) upon a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;
  - (vi) during the winding up of the body corporate.

*[39/2007; 36/2014; 4/2017; 15/2017; 40/2018; 44/2018; 40/2019; 1/2020]*

## **Directors**

(2) For the purposes of this Act, a person (*A*) is not regarded as a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are

accustomed to act by reason only that the directors or the majority of the directors act on advice given by *A* in a professional capacity.

[36/2014]

### **When statement untrue**

(3) For the purposes of this Act, a statement included in a statement in lieu of prospectus is deemed to be untrue if it is misleading in the form and context in which it is included.

### **When statement included in statement in lieu of prospectus**

(4) For the purposes of this Act, a statement is deemed to be included in a statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

### **Invitation to lend money deemed invitation to purchase debentures**

(5) For the purposes of this Act, any invitation to the public to deposit money with or lend money to a corporation (other than a corporation that is a prescribed entity mentioned in section 239(4) of the Securities and Futures Act 2001 is deemed to be an invitation to subscribe for or purchase debentures of the corporation.

(5A) For the purposes of this Act, any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation is deemed to be a debenture.

(6) [*Deleted by Act 42 of 2001*]

(7) Unless the contrary intention appears, any reference in this Act to a person being or becoming bankrupt or to a person assigning the person's estate for the benefit of the person's creditors or making an arrangement with the person's creditors under any written law relating to bankruptcy or to a person being an undischarged bankrupt or to any status, condition, act, matter or thing under or in relation to the law of bankruptcy is to be construed as including a reference to a person being or becoming bankrupt or insolvent or to a person

making any such assignment or arrangement or to a person being an undischarged bankrupt or insolvent or to the corresponding status, condition, act, matter or thing (as the case requires) under any written law relating to bankruptcy or insolvency.

### **As to what constitutes affairs of a corporation**

(8) A reference in section 8A, 8C, 8D, 216, Part 9 or section 402 to the affairs of a corporation is, unless the contrary intention appears, to be construed as including a reference to —

- (a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;
- (b) in the case of a corporation (not being a trustee corporation) that is a trustee (but without limiting paragraph (a)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- (c) the internal management and proceeding of the corporation;
- (d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —
  - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
  - (ii) the corporation is under judicial management;

- (iii) a compromise or an arrangement made between the corporation and another person or other persons is being administered; or
- (iv) the corporation is being wound up,  
and, without limiting the foregoing, any conduct of such a receiver or such a receiver and manager, or such a judicial manager, of any person administering such a compromise or arrangement or of any liquidator or provisional liquidator of the corporation;
- (e) the ownership of shares in, debentures of, and interests issued by, the corporation;
- (f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;
- (g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially to influence the policy of the corporation;
- (h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the corporation;
- (i) where the corporation has issued interests, any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and
- (j) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

[40/2018]

(9) For the purposes of this Act, wherever a reference to the affairs of a company or a foreign company appears it is to be construed as

including a reference to the affairs of a corporation as defined in subsection (8).

(10) A reference in this Act to the directors of a company is, in the case of a company which has only one director, to be construed as a reference to that director.

(11) A reference in this Act to the doing of any act by 2 or more directors of a company is, in the case of a company which has only one director, to be construed as the doing of that act by that director.

(12) For the purposes of section 20(3), 27(2), (5), (5AA), (5A) or (12C), 28(3), (3D), (3DA) or (3E), 29(8A), 155B(8), 359(9), 360(3), 369(2), 377(13) or 378(5), (9) or (16), any reference to the Minister includes a reference to a Minister of State for his or her Ministry who is authorised by the Minister for the purposes of hearing an appeal under that section.

*[36/2014; 15/2017; 40/2018]*

(13) With effect from 3 January 2016 —

(a) the memorandum of association and the articles of association of a company that are in force for the company immediately before that date —

(i) are collectively deemed to constitute, and have effect as, that company's constitution; and

(ii) may be amended by the company from time to time in the same manner as the constitution of a company; and

(b) any reference in any written law and in any contract or other document having legal effect to the memorandum of association, or the articles of association, or both, of a company is deemed to refer to the company's constitution.

*[36/2014]*

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

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

- (a) that other corporation —
  - (i) controls the composition of the board of directors of the firstmentioned corporation; or
  - (ii) controls more than half of the voting power of the firstmentioned corporation; or
- (b) the firstmentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

[36/2014]

(2) For the purposes of subsection (1), the composition of a corporation's board of directors is 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 is deemed to have power to make such an appointment if —

- (a) a person cannot be appointed as a director without the exercise in his or her favour by that other corporation of such a power; or
- (b) a person's appointment as a director follows necessarily from his or her 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 fiduciary capacity is to 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 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 fiduciary capacity,

is to 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 firstmentioned corporation or of a trust deed for securing any issue of such debentures is to 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)) is to 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 company or other corporation is a reference to a corporation of which that last mentioned company or corporation is a subsidiary.

(5) For the purposes of this Act, the Depository is not to be regarded as a holding company of a corporation by reason only of the shares it holds in that corporation as a bare trustee.

[36/2014]

### **Definition of ultimate holding company**

**5A.** For the purposes of this Act, a corporation is the ultimate holding company of another corporation if —

- (a) the other corporation is a subsidiary of the firstmentioned corporation; and
- (b) the firstmentioned corporation is not itself a subsidiary of any corporation.

### **Definition of wholly owned subsidiary**

**5B.** For the purposes of this Act, a corporation is a wholly owned subsidiary of another corporation if none of the members of the firstmentioned corporation is a person other than —

- (a) that other corporation;
- (b) a nominee of that other corporation;
- (c) a subsidiary of that other corporation being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or
- (d) a nominee of such subsidiary.

### **When corporations deemed to be related to each other**

#### **6. 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 firstmentioned corporation and that other corporation are for the purposes of this Act deemed to be related to each other.

### **Interests in shares**

7.—(1) The following subsections have effect for the purposes of Division 4 of Part 4 and sections 163, 164 and 165 and subsection (6A), in addition, also has effect for the purposes of section 244.

[36/2014]

(1A) Subject to this section, a person has an interest in shares if the person has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares.

[36/2014]

(1B) For the purposes of subsection (1A), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction.

[36/2014]

(2) Where any property held in trust consists of or includes shares and a person knows, or has reasonable grounds for believing, that the

person has an interest under the trust, the person is deemed to have an interest in those shares.

[36/2014]

(3) A unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001 —

(a) that is the subject of an offer of units within the meaning of section 283 of that Act and that has been so subscribed or purchased; or

(b) that is issued for the purpose of an offer of units within the meaning of section 283 of that Act and is held by the manager of the collective investment scheme concerned,

does not constitute an interest in a share.

(4) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

(a) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or

(b) a person has a controlling interest in the body corporate, that person is deemed to have an interest in that share.

(4A) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and the person's associates are,

entitled to exercise or control the exercise of not less than 20% of the voting power in the body corporate, that person is deemed to have an interest in that share.

[36/2014]

(5) For the purposes of subsection (4A), a person is an associate of another person if the firstmentioned person is —

(a) a subsidiary of that other person;

- (b) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share mentioned in subsection (4A); or
- (c) a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share mentioned in subsection (4A).

[36/2014]

(6) Where a person —

- (a) has entered into a contract to purchase a share;
- (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to the person or to the person's order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
- (c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
- (d) is entitled (otherwise than by reason of the person having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which the person is the registered holder,

that person is deemed to have an interest in that share.

(6A) For the purposes of Division 4 of Part 4 and sections 163 to 165 and 244, a book-entry security is to be treated as if it were an interest in a share.

[36/2014]

(7) A person is not to be deemed not to have an interest in a share by reason only that the person has the interest in the share jointly with another person.

(8) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(9) There is to be disregarded —

- (a) an interest in a share if the interest is that of a person who holds the share as bare trustee;
- (b) an interest in a share if the interest is that of a person whose ordinary business includes the lending of money if the person holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a share, if that interest is an interest held by the person by reason of the person holding a prescribed office;
- (ca) an interest of a company in its own shares if that interest is purchased or otherwise acquired in accordance with sections 76B to 76G (including treasury shares); and
- (d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

[36/2014]

(10) An interest in a share is not to be disregarded by reason only of —

- (a) its remoteness;
- (b) the manner in which it arose; or
- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

### **Solvency statement and offence for making false statement**

**7A.**—(1) In this Act, unless the context otherwise requires, “solvency statement”, in relation to a proposed redemption of preference shares by a company out of its capital under section 70,

a proposed giving of financial assistance by a company under section 76(9A) or (9B) or a proposed reduction by a company of its share capital under section 78B or 78C, means a statement by the directors of the company that they have formed the opinion —

- (a) that, as regards the company's situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts;
- (b) where —
  - (i) it is intended to commence winding up of the company within the period of 12 months immediately after the date of the statement, that the company will be able to pay its debts in full within the period of 12 months after the date of commencement of the winding up; or
  - (ii) it is not intended so to commence winding up, that the company will be able to pay its debts as they fall due during the period of 12 months immediately after the date of the statement; and
- (c) that the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed redemption, giving of financial assistance or reduction (as the case may be), become less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

[36/2014]

(2) The solvency statement —

- (a) if the company is exempt from audit requirements under section 205B or 205C, must be in the form of a written declaration signed by every director; or
- (b) if the company is not such a company, must be in the form of a written declaration signed by every director or must be accompanied by a report from its auditor that the auditor has inquired into the affairs of the company and is of the

opinion that the statement is not unreasonable given all the circumstances.

*[36/2014]*

(3) In forming an opinion for the purposes of subsection (1)(a) and (b), the directors of the company must take into account all liabilities of the company (including contingent liabilities).

(4) In determining, for the purposes of subsection (1)(c), whether the value of the company's assets is or will become less than the value of its liabilities (including contingent liabilities) the directors of the company —

(a) must have regard to —

(i) the most recent financial statements of the company that comply with section 201(2) and (5), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of its liabilities (including contingent liabilities); and

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

*[36/2014]*

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the directors of a company may take into account —

(a) the likelihood of the contingency occurring; and

(b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(6) A director of a company who makes a solvency statement without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.

## PART 2

## ADMINISTRATION OF THIS ACT

**Administration of Act and appointment of Registrar of Companies, etc.**

**8.**—(1) The Authority is responsible for the administration of this Act, subject to the general or special directions of the Minister.

(1A) The Minister may, after consultation with the Authority —

- (a) appoint an officer of the Authority to be the Registrar of Companies; and
- (b) from among the officers of the Authority, public officers and the officers of any other statutory board, appoint such number of Deputy Registrars and Assistant Registrars of Companies as the Minister considers necessary,

for the proper administration of this Act.

(1B) The Authority may give to the Registrar such directions, not inconsistent with the provisions of this Act, as to the exercise of the Registrar's powers, functions or duties under this Act, and the Registrar must give effect to such directions.

(2) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any such Deputy or Assistant Registrar and is as valid and effectual as if done or signed by the Registrar.

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

**Certain signatures to be judicially noticed**

(4) All courts, judges and persons acting judicially are to take judicial notice of the seal and signature of the Registrar and of any Deputy or Assistant Registrar.

(5) [*Deleted by Act 36 of 2014*]

(6) [*Deleted by Act 36 of 2014*]

(6A) [*Deleted by Act 36 of 2014*]

(7) The Minister may, by notification in the *Gazette*, add to, vary or amend —

- (a) the Twelfth Schedule in relation to the contents of the directors' statement which is required to accompany the financial statements under section 201(16);
- (b) the Thirteenth Schedule in relation to the criteria for determining whether a company is a small company for the purposes of section 205C;
- (c) the Fourteenth Schedule in relation to the list of companies to which Part 11A does not apply;
- (d) the Fifteenth Schedule in relation to the list of foreign companies registered under Division 2 of Part 11 to which Part 11A does not apply; and
- (e) the Sixteenth Schedule in relation to the meanings of “significant control” and “significant interest”.

[36/2014; 15/2017]

### **Inspection of books of corporation**

**8A.**—(1) Where the Minister is satisfied that there is good reason for so doing, the Minister may at any time —

- (a) give directions to a corporation requiring that corporation at such place and time as may be specified in the directions to produce such books relating to the affairs of a corporation as may be so specified; or
- (b) authorise any person (called in this section and section 8B an authorised person), on producing (if required to do so) evidence of his or her authority, to require that corporation to produce to him or her any books relating to the affairs of a corporation which the authorised person may specify.

(2) Where by virtue of subsection (1) the Minister or an authorised person has power to require the production of any books from a

corporation relating to the affairs of a corporation, the Minister or that authorised person has the like power to require production of those books from any person who appears to the Minister or authorised person to be in possession of them; but where any such person claims a lien on any books produced by the person, the production is without prejudice to the lien.

(3) Any power conferred by this section to require a corporation or other person to produce books relating to the affairs of a corporation includes power —

(a) if the books are produced —

- (i) to make copies of, or take extracts from, them; and
- (ii) to require that person who is a present or past officer of, or who is or was at any time employed by the corporation to provide an explanation of any of them; and

(b) if the books are not produced, to require the person required to produce them to state, to the best of the person's knowledge and belief, where they are.

(4) A statement made by a person in compliance with a requirement imposed by this section may be used in evidence against the person.

(5) A power conferred by this section to make a requirement of a person extends, if the person is a body corporate (including a body corporate that is in the course of being wound up) or was a body corporate (being a body corporate that has been dissolved) to making that requirement of any person who is or has been an officer of the body corporate.

(6) If a requirement to produce books relating to the affairs of a corporation or provide an explanation or make a statement which is imposed by virtue of this section is not complied with, the corporation or other person on whom the requirement was imposed shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

(7) Where a person is charged with an offence under subsection (6) in respect of a requirement to produce any books relating to the affairs of a corporation, it is a defence to prove that they were not in the person's possession or under the person's control or that it was not reasonably practicable for the person to comply with the requirement.

(8) A person, who in purported compliance with a requirement imposed by this section, provides an explanation or statement which the person knows to be false or misleading in a material particular or recklessly provides or makes an explanation or a statement which is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Power of Magistrate to issue warrant to seize books**

**8B.**—(1) If a Magistrate is satisfied, on information on oath or affirmation laid by an authorised person, that there are reasonable grounds for suspecting that there are on any premises any books of which production has been required by virtue of section 8A and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any police officer, together with any other persons named in the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of any books appearing to be such books or papers as are referred to in this subsection, or to take, in relation to any books so appearing, any other steps which may appear necessary for preserving them and preventing interference with them and to deliver any books, possession of which is so taken, to an authorised person.

(2) Every warrant issued under this section continues in force until the end of the period of one month after the date on which it was issued.

(3) Where under this section a person takes possession of, or secures against interference, any books, and a person has a lien on the books, the taking of possession of the books or the securing of the books against interference does not prejudice the lien.

(4) Where, under this section, a person takes possession of, or secures against interference, any books, that person or any authorised person to whose possession the books were delivered —

- (a) may make copies of, or take extracts from, the books;
- (b) may require any person who was party to the compilation of the books to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;
- (c) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Minister; and
- (d) during that period must permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the firstmentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(5) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or who obstructs the exercise of a right so conferred to take possession of any books, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

(6) The powers conferred by this section are in addition to, and not in derogation of, any other power conferred by law.

### **Copies of or extracts from books to be admitted in evidence**

**8C.**—(1) Subject to this section, in any legal proceedings, whether proceedings under this Act or otherwise, a copy of or extract from a book relating to the affairs of a corporation is admissible in evidence as if it were the original book or the relevant part of the original book.

(2) A copy of or extract from a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book.

(3) For the purposes of subsection (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a person authorised to take affidavits or statutory declarations.

### **Destruction, mutilation, etc., of company documents**

**8D.**—(1) An officer of a corporation to which section 8A(1) applies, who destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting or relating to the property or affairs of the corporation, or makes or is privy to the making of a false entry in such a document, shall, unless the officer proves that he or she had no intention to conceal the affairs of the corporation or to defeat the law, be guilty of an offence.

(2) A person to whom subsection (1) applies who fraudulently either parts with, alters or makes an omission in any such document, or who is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) In this section, “officer of a corporation” includes a person who —

- (a) was at any time an officer of the corporation; or
- (b) has, or had, a financial or other interest in the affairs of the corporation.

### **Saving for advocates and solicitors**

**8E.** Nothing in sections 8A and 8B compels the production by an advocate and solicitor of a document containing a privileged communication made by or to him or her in that capacity or authorises the taking of possession of any such document which is in his or her possession but if the advocate and solicitor refuses to produce the document he or she is nevertheless obliged to give the

name and address (if he or she knows them) of the person to whom or by or on behalf of whom the communication was made.

### **Investigation of certain matters**

**8F.** Without limiting the powers conferred upon the Minister under section 8A, where the Minister has reason to suspect that a person has committed an offence under this Act, the Minister may make such investigation as he or she thinks expedient for the due administration of this Act.

### **Saving for banks, insurance companies and certain financial institutions**

**8G.** Nothing in section 8A authorises the Minister to call for the production of books of a banking corporation or of any company carrying on insurance business or of any financial institution that is subject to control by the Monetary Authority of Singapore under sections 27 and 28 of the Monetary Authority of Singapore Act 1970 and nothing in section 8F authorises the Minister to conduct an investigation into any such corporation, company or financial institution.

### **Security of information**

**8H.—(1)** No information or document relating to the affairs of a corporation which has been obtained under section 8A or 8B may, without the previous consent in writing of that corporation, be published or disclosed, except to the Minister, the Registrar of Companies and their officers or to an inspector appointed under Part 9, unless the publication or disclosure is required —

- (a) with a view to the institution of or otherwise for the purposes of, any criminal proceedings pursuant to, or arising out of this Act or any criminal proceedings for an offence entailing misconduct in connection with the management of the corporation's affairs or misapplication or wrongful retention of its property;
- (b) for the purpose of complying with any requirement or exercising any power imposed or conferred by this Act in

connection with reports made by inspectors appointed under Part 9;

- (c) with a view to the institution by the Minister of proceedings for the winding up of companies under this Act of the corporation; or
- (d) for the purpose of proceedings under section 8A or 8B.

(2) A person who publishes or discloses any information or document in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

9. *[Repealed by Act 40 of 2018]*

### **Company auditors**

10.—(1) No person other than an accounting entity may —

- (a) knowingly consent to be appointed as auditor for a company; or
- (b) knowingly act as an auditor for a company.

*[36/2014]*

(2) Without limiting subsection (1)(b), a person acts as an auditor for a company if the person prepares any report required by this Act to be prepared by an auditor of the company.

*[36/2014]*

(3) No company or person may appoint an accounting entity as an auditor of a company without obtaining the accounting entity's prior consent.

*[36/2014]*

(4) For the purposes of subsection (3), the consent —

- (a) of a public accountant must be in writing signed by the public accountant;
- (b) of an accounting firm, or an accounting limited liability partnership, must be in writing signed by at least one partner of the firm or limited liability partnership; and

- (c) of an accounting corporation must be in writing signed by at least one director of the corporation.

[36/2014]

(5) Where an accounting firm is appointed as auditor of the company in the name of the accounting firm, the appointment takes effect and operates as if the partners of the firm at the time of the appointment, who are public accountants at that time, are appointed as auditors of the company.

[36/2014]

(6) Where an accounting corporation is appointed as auditor of the company in the name of the corporation, the appointment takes effect and operates as if —

- (a) the directors of the corporation who are practising as public accountants in the corporation (whether directors at the time the accounting corporation was appointed as auditor or later); and
- (b) the employees of the corporation who are practising as public accountants in the corporation (whether employed at the time the accounting corporation was appointed as auditor or later),

are appointed as auditors of the company.

[36/2014]

## 11. [Repealed by Act 40 of 2018]

### Registers

12.—(1) The Registrar is, subject to this Act, to keep such registers as the Registrar considers necessary in such form as he or she thinks fit.

(2) Any person may, on payment of the prescribed fee —

- (a) inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar;
- (b) subject to subsection (2AA), require a copy of the notice of incorporation of a company, any certificate issued under

this Act, any document or extract from any document kept by the Registrar to be given or certified by the Registrar;

- (c) inspect any register of directors, chief executive officers, secretaries or auditors kept by the Registrar under section 173(1) or require a copy of or an extract from any such register; or
- (d) inspect the register of members of any private company kept by the Registrar under section 196A or require a copy of or an extract from any such register.

[36/2014]

(2AA) A certificate of confirmation of incorporation mentioned in section 17(9) or 19(7) may only be issued to the company upon an application made in accordance with those provisions.

[36/2014]

(2A) Subsection (2)(a), (b) and (d) does not apply to such exempt private company that is wholly owned by the Government as the Minister may, by notification in the *Gazette*, specify where the Minister considers that it would not be in the public interest for —

- (a) any document relating to any such company maintained by the Registrar in whatever form to be inspected by any member of the public; and
- (b) any certificate or copy of or extract from any document relating to any such company to be given or certified to any member of the public.

[36/2014]

(2B) Despite the cancellation of any notification mentioned in subsection (2A) in respect of a company, subsection (2)(a), (b) and (d) does not apply to any document or certificate relating to that company that is filed or lodged with the Registrar, or issued under the Act, before the date of such cancellation, whether or not that company remains an exempt private company wholly owned by the Government, and whether or not it has been wound up.

[36/2014]

(2C) Despite subsection (2), a director, chief executive officer, secretary, auditor or member of a company may, without charge —

- (a) inspect the register of directors, register of chief executive officers, register of secretaries and register of auditors of that company kept by the Registrar under section 173(1); or
- (b) obtain from the Registrar a copy of or an extract from the register of directors, register of chief executive officers, register of secretaries and register of auditors of that company kept by the Registrar under section 173(1).

[36/2014]

(2D) Despite subsection (2), a director, chief executive officer, secretary, auditor or member of a private company may, without charge —

- (a) inspect the register of members of that company kept by the Registrar under section 196A; or
- (b) obtain from the Registrar a copy of or an extract from the register of members of that company kept by the Registrar under section 196A.

[36/2014]

### **Evidentiary value of copies certified by Registrar**

(3) A copy of or an extract from any document (including a copy produced by way of microfilm) filed or lodged with the Registrar using a non-electronic medium that is certified to be a true copy or extract by the Registrar is in any proceedings admissible in evidence as of equal validity with the original document.

[36/2014]

### **Evidence of statutory requirements**

(4) In any legal proceedings, a certificate issued by the Registrar that a requirement of this Act specified in the certificate —

- (a) had or had not been complied with at a date or within a period specified in the certificate; or
- (b) had been complied with upon 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.

[36/2014]

### **Registrar may refuse to register or receive document**

(5) If the Registrar is of the opinion that any document submitted to him or her —

- (a) contains any matter contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure,

he or she may refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

### **Destruction or transfer of old records**

(6) If the Registrar is of the opinion that it is no longer necessary or desirable to retain any document lodged, filed or registered with the Registrar and which has been microfilmed or converted to electronic form, the Registrar may —

- (a) destroy the document with the authorisation of the National Library Board under section 17 of the National Library Board Act 1995; or
- (b) transfer the document to the National Archives of Singapore under section 16 of that Act.

[36/2014]

(7) In subsection (3), “non-electronic medium” means a medium other than the electronic transaction system established under Part 6A of the Accounting and Corporate Regulatory Authority Act 2004.

[36/2014]

**Electronic transaction system**

**12A.**—(1) The Registrar may —

- (a) require or permit any person to carry out any transaction with the Registrar under this Act; and
- (b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction mentioned in paragraph (a),

using the electronic transaction system established under Part 6A of the Accounting and Corporate Regulatory Authority Act 2004.

[36/2014]

(2) If the Registrar is satisfied that a transaction should be treated as having been carried out at some date and time earlier than the date and time which is reflected in the electronic transaction system, the Registrar may cause the electronic transaction system and the registers kept by the Registrar to reflect such earlier date and time.

[36/2014]

(3) The Registrar must keep a record whenever the electronic transaction system or the registers are altered under subsection (2).

[36/2014]

(4) In this section —

“document” includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to, the Registrar;

“transaction”, in relation to the Registrar, means —

- (a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;
- (b) any making of any application, submission or request to the Registrar;
- (c) any provision of any undertaking or declaration to the Registrar; and

- (d) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.

[36/2014]

### **Rectification by Court**

**12B.**—(1) Where it appears to the Court, as a result of evidence adduced before it by an applicant company, that any particular recorded in a register is erroneous or defective, the Court may, by order, direct the Registrar to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the Registrar must, upon receipt of the order, rectify the register accordingly.

[36/2014; 40/2019]

(2) An order of the Court made under subsection (1) may require that a fresh document, showing the rectification, must be filed by the applicant company with the Registrar together with a copy of the Court order, and a copy of the Court application.

### **Rectification by Registrar on application**

**12C.**—(1) Despite section 12B, an officer of a company may notify the Registrar in the prescribed form of —

- (a) any error contained in any document relating to the company filed or lodged with the Registrar; or
- (b) any error in the filing or lodgment of any document relating to the company with the Registrar.

[36/2014]

(2) The Registrar may, upon receipt of any notification referred to in subsection (1) and if satisfied that —

- (a) the error referred to in subsection (1)(a) is typographical or clerical in nature; or
- (b) the error referred to in subsection (1)(b) is, in the Registrar's opinion, unintended and does not prejudice any person,

rectify the register accordingly.

[36/2014]

(3) In rectifying the register under subsection (2), the Registrar must not expunge any document from the register.

[36/2014]

(4) The decision made by the Registrar on whether to rectify the register under subsection (2) is final.

[36/2014]

### **Rectification or updating on Registrar's initiative**

**12D.**—(1) The Registrar may rectify or update any particulars or document in a register kept by him or her, if the Registrar is satisfied that —

- (a) there is a defect or error in the particulars or document arising from any grammatical, typographical or similar mistake; or
- (b) there is evidence of a conflict between the particulars of a company or person and —
  - (i) other information in the register relating to that company or person; or
  - (ii) other information relating to that company or person obtained from such department or Ministry of the Government, or statutory body or other body corporate as may be prescribed.

[36/2014]

(2) Before the Registrar rectifies or updates the register under subsection (1), the Registrar must, except under prescribed circumstances, give written notice to the company or person whose documents or particulars are to be rectified or updated of the Registrar's intention to do so, and state in the notice —

- (a) the reasons for and details of the proposed rectification or updating to be made to the register; and
- (b) the date by which any written objection to the proposed rectification or updating must be delivered to the Registrar, being a date at least 30 days after the date of the notice.

[36/2014]

(3) The company or person notified under subsection (2) may deliver to the Registrar, not later than the date specified under

subsection (2)(b), a written objection to the proposed rectification or updating of the register.

[36/2014]

(4) The Registrar must not rectify or update the register if the Registrar receives a written objection under subsection (3) to the proposed rectification or updating by the date specified under subsection (2)(b), unless the Registrar is satisfied that the objection is frivolous or vexatious or has been withdrawn.

[36/2014]

(5) The Registrar may rectify or update the register if the Registrar does not receive a written objection under subsection (3) by the date specified under subsection (2)(b).

[36/2014]

(6) The Registrar may include such notation as the Registrar thinks fit on the register for the purposes of providing information relating to any error or defect in any particulars or document in the register, and may remove such notation if the Registrar is satisfied that it no longer serves any useful purpose.

[36/2014]

(7) Despite anything in this section, the Registrar may, if the Registrar is satisfied that there is any error or defect in any particulars or document in a register, by written notice, request that the company to which the particulars or document relate, or its officers take such steps within such time as the Registrar may specify to ensure that the error or defect is rectified.

[36/2014]

### **Enforcement of duty to make returns**

**13.—**(1) If a corporation or person, having made default in complying with —

- (a) any provision of this Act or of any other law (other than the Insolvency, Restructuring and Dissolution Act 2018) which requires the filing or lodging in any manner with the Registrar of any return, account or other document or the giving of notice to the Registrar of any matter;
- (b) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document; or

- (c) any request of the Registrar under section 12D(7) to rectify any error or defect in any particulars or document in the register,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the corporation or by the Registrar, make an order directing the corporation and any officer of the corporation or such person to make good the default within such time as is specified in the order.

[36/2014; 40/2018]

(2) Any such order may provide that all costs of and incidental to the application must be borne by the corporation or by any officer of the corporation responsible for the default or by such person.

(3) Nothing in this section limits the operation of any written law imposing penalties on a corporation or its officers or such person in respect of any such default.

### **Relodging of lost registered documents**

**14.—**(1) If in the case of any corporation incorporated or registered under this Act or any corresponding previous written law the constitution or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for permission to lodge a copy of the document as originally filed or lodged.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as the Registrar thinks fit.

(3) The Registrar upon being satisfied —

- (a) that the original document has been lost or destroyed;
- (b) of the date of the filing or lodging thereof with the Registrar; and
- (c) that a copy of such document produced to the Registrar is a correct copy,

may certify upon that copy that the Registrar is so satisfied and direct that that copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment, that copy for all purposes has, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and must be registered by the Registrar, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate are invalidated or affected by such variation or rescission.

(6) No fee is payable upon the lodging of a document under this section.

### **Size, durability and legibility of documents delivered to Registrar**

**15.—**(1) For the purposes of securing that the documents delivered to the Registrar under the provisions of this Act are of a standard size, durable and easily legible, the Minister may by regulations prescribe such requirements (whether as to size, weight, quality or colour of paper, size, type or colour of lettering, or otherwise) as the Minister may consider appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) If under any such provision there is delivered to the Registrar a document (whether an original document or a copy) which in the opinion of the Registrar does not comply with such requirements prescribed under this section as are applicable to it, the Registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are 2 or more such persons, may serve on any of them) a notice stating the Registrar's opinion to that effect and indicating the requirements so prescribed with which in the Registrar's opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any written law which enables a penalty to be imposed in respect of any omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such law whereby such a penalty may be imposed by reference to each day during which the omission continues) —

- (a) any duty imposed by that provision to deliver such a document to the Registrar is to be treated as not having been discharged by the delivery of that document; but
- (b) no account is to be taken of any days falling within the period mentioned in subsection (4).

(4) The period referred to in subsection (3)(b) is the period beginning on the day on which the document was delivered to the Registrar as mentioned in subsection (2) and ending on the 14th day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.

(5) In this section, any reference to delivering a document is to be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.

16. *[Repealed by Act 36 of 2014]*

16A. *[Repealed by Act 36 of 2014]*

## PART 3

### CONSTITUTION OF COMPANIES

#### *Division 1 — Incorporation*

#### **Formation of companies**

17.—(1) Subject to the provisions of this Act, any person may, whether alone or together with another person, by subscribing the person's name or their names to a constitution and complying with the requirements as to registration, form an incorporated company.

*[36/2014]*

(2) A company may be —

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

(3) No company, association or partnership consisting of more than 20 persons may be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed pursuant to some other written law in Singapore or letters patent.

(4) So much of subsection (3) as prohibits the formation of an association or a partnership consisting of more than 20 persons does not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the qualifications laid down in such written law for the purpose of carrying on that profession or calling.

(5) As from 15 August 1984, no company limited by guarantee with a share capital may be registered under this Act.

(6) The prohibition referred to in subsection (5) does not affect a company limited by guarantee which has a share capital and is registered as such before 15 August 1984 and section 38(2) continues to apply to a company so registered; but any such company must, within 2 years of that date, elect to convert and re-register that company either as a company limited by shares or as a company limited by guarantee.

(7) The conversion of a company referred to in subsection (6) is effected by lodging with the Registrar a special resolution determining the conversion of the company from a company limited by guarantee with a share capital to a company limited by shares or to a company limited by guarantee (as the case may be) and altering its constitution to the extent that is necessary to bring them into conformity with the requirements of this Act relating to the

constitution of a company limited by shares or of a company limited by guarantee, as the case may be.

[36/2014]

(8) On compliance by a company with subsection (7) and on the issue by the Registrar of a notice of incorporation of the company in accordance with the special resolution, the company becomes a company limited by shares or a company limited by guarantee, as the case may be.

(9) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate of confirmation of incorporation.

[36/2014]

### **Private company**

**18.—**(1) A company having a share capital may be incorporated as a private company if its constitution —

(a) restricts the right to transfer its shares; and

(b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of its subsidiary or any person who while previously in the employment of the company or of its subsidiary was and thereafter has continued to be a member of the company).

[36/2014]

(2) Where, on 29 December 1967, the constitution of a company that is a private company by virtue of paragraph (a) of the definition of “private company” in section 4(1) does not contain the restrictions and limitations required by subsection (1) to be included in the constitution of a company that may be incorporated as a private company, the constitution of the company is deemed to include each such restriction or limitation that is not so included and a restriction on the right to transfer its shares that is so deemed to be included in its constitution is deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

[36/2014]

(3) Where a restriction or limitation deemed to be included in the constitution of a company under subsection (2) is inconsistent with

any provision already included in the constitution of the company, that restriction or limitation, to the extent of the inconsistency, prevails.

[36/2014]

(4) A private company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its constitution or any limitation on the number of its members included, or deemed to be included, in its constitution, but not so that the constitution of the company ceases to include the limitation required by subsection (1)(b) to be included in the constitution of a company that may be incorporated as a private company.

[36/2014]

### **Registration and incorporation**

**19.—**(1) A person desiring the incorporation of a company must —

- (a) submit to the Registrar the constitution of the proposed company and such other documents as may be prescribed;
- (b) furnish the Registrar with the last day of the proposed company's first financial year and such other information as may be prescribed; and
- (c) pay the Registrar the prescribed fee.

[36/2014; 15/2017]

(2) Either —

- (a) a registered qualified individual engaged in the formation of the proposed company; or
- (b) a person named in the constitution as a director or the secretary of the proposed company,

must make a declaration to the Registrar that —

- (c) all of the requirements of this Act relating to the formation of the company have been complied with; and
- (d) he or she has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the proposed company,

and the Registrar may accept such declaration as sufficient evidence of those matters.

[36/2014]

(3) Upon receipt of the documents, information and payment referred to in subsection (1) and declaration mentioned in subsection (2), the Registrar must, subject to this Act, register the company by registering its constitution.

[36/2014]

### **Notice of incorporation**

(4) On the registration of the constitution the Registrar must issue in the prescribed manner a notice of incorporation in the prescribed form stating that the company is, on and from the date specified in the notice, incorporated, and that the company is —

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

as the case may be, and where applicable, that it is a private company.

[36/2014]

### **Effect of incorporation**

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

[36/2014; 15/2017]

### **Members of company**

(6) The subscribers to the constitution are deemed to have agreed to become members of the company and on the incorporation of the company must be entered as members —

- (a) in the case of a public company — in the register of members kept by the public company under section 190; or
- (b) in the case of a private company — in the electronic register of members kept by the Registrar under section 196A.

[36/2014]

(6A) Apart from the subscribers mentioned in subsection (6), every other person who agrees to become a member of a company and whose name is entered —

- (a) in the case of a public company — in the register of members kept by the public company under section 190; or
- (b) in the case of a private company — in the electronic register of members kept by the Registrar under section 196A,

is a member of the company.

[36/2014]

(7) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate of confirmation of incorporation.

[36/2014]

### **Power to refuse registration**

**20.**—(1) Without affecting the powers of the Registrar under section 12(5), where a constitution is delivered for registration under section 19, the Registrar must not register the constitution unless the Registrar is satisfied that all the requirements of this Act in respect of the registration and of all matters precedent and incidental thereto have been complied with.

[36/2014]

(2) Despite anything in this Act or any rule of law, the Registrar must refuse to register the constitution of a proposed company where the Registrar is satisfied that —

- (a) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

- (b) it would be contrary to the national security or interest for the proposed company to be registered.

[36/2014]

(3) Any person aggrieved by the decision of the Registrar under subsection (2) may, within 30 days of the date of the decision, appeal to the Minister whose decision is final.

### **Minimum of one member**

**20A.** A company must have at least one member.

### **Membership of holding company**

**21.—(1)** A corporation cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary is void.

(1A) Subsection (1), insofar as it provides that any transfer of shares in contravention of it is void, does not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1).

[36/2014]

(2) Subsection (1) does not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section does not prevent a subsidiary which, on 29 December 1967, is a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary has no right to vote at meetings of the holding company or any class of members thereof.

(4) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a

subsidiary of the holding company, it already holds shares in that holding company, but —

- (a) subject to subsection (2), the subsidiary has no right to vote at meetings of the holding company or any class of members thereof; and
- (b) subject to subsections (4A) and (4B), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

[36/2014]

(4A) To avoid doubt, subsection (4)(b) ceases to apply if, during the period referred to in that subsection, the subsidiary ceases to be a subsidiary of the holding company.

[36/2014]

(4B) Any shares in the holding company that are not disposed of in accordance with subsection (4)(b) may, subject to subsections (4C) and (6E), be held or continued to be held by the subsidiary.

[36/2014]

(4C) With respect to the shares referred to in subsection (4B) —

- (a) subject to this subsection and subsection (6E), sections 76J(1), (2), (3), (5) and (6) and 76K apply with the necessary modifications, including the following modifications:
  - (i) a reference to treasury shares is a reference to shares referred to in subsection (4B);
  - (ii) a reference to a company holding treasury shares is a reference to a subsidiary holding shares referred to in subsection (4B);
  - (iii) the reference in section 76J(6) to “as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied” is a reference to “as if they were already held by the subsidiary at the time they were allotted,

in circumstances in which section 21(4) applied”;  
and

- (b) the holding company must, within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (4B), lodge with the Registrar a notice in the prescribed form.

[36/2014]

(5) Subject to subsection (2), subsections (1), (3), (4), (4B), (6A) and (6C) apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

[36/2014]

(6) This section does not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if the allotment is made by way of capitalisation of reserves of the holding company and is made to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.

(6A) This section does not operate to prevent the transfer of shares in a holding company to a subsidiary by way of a distribution in specie, amalgamation or scheme of arrangement but —

- (a) subject to subsection (2), the subsidiary has no right to vote at meetings of the holding company or any class of members thereof; and
- (b) subject to subsections (6B) and (6C), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after the transfer to the subsidiary of the shares in the holding company, dispose of all of the shares in the holding company.

[36/2014]

(6B) To avoid doubt, subsection (6A)(b) ceases to apply if, during the period referred to in that subsection, the subsidiary ceases to be a subsidiary of the holding company.

[36/2014]

(6C) Any shares in the holding company that are not disposed of in accordance with subsection (6A)(b) may, subject to subsections (6D) and (6E), be held or continued to be held by the subsidiary.

[36/2014]

(6D) With respect to the shares referred to in subsection (6C) —

(a) subject to this subsection and subsection (6E), sections 76J(1), (2), (3), (5) and (6) and 76K apply with the necessary modifications, including the following modifications:

(i) a reference to treasury shares is a reference to shares referred to in subsection (6C);

(ii) a reference to a company holding treasury shares is a reference to a subsidiary holding shares referred to in subsection (6C);

(iii) the reference in section 76J(6) to “as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied” is a reference to “as if they were transferred to the subsidiary at the time they were allotted, in circumstances in which section 21(6A) applied”; and

(b) the holding company must, within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (6C), lodge with the Registrar a notice in the prescribed form.

[36/2014]

(6E) With respect to any share referred to in subsection (4B) or (6C) —

(a) where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company under subsection (4B) or (6C) or by the holding company as treasury shares, must not at any time exceed 10% of the total number of shares of the holding company at that time;

- (b) where the share capital of the holding company is divided into shares of different classes, the aggregate number of the shares of any class held by all the subsidiaries of the holding company under subsection (4B) or (6C) or by the holding company as treasury shares, must not at any time exceed 10% of the total number of the shares in that class of the holding company at that time;
- (c) where paragraph (a) or (b) is contravened, the holding company must dispose of or cancel the excess shares, or procure the disposal of the excess shares by its subsidiary, in accordance with section 76K before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow;
- (d) where the subsidiary is a wholly-owned subsidiary of the holding company, no dividend may be paid, and no other distribution (whether in cash or otherwise) of the holding company's assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (4B) or (6C); and
- (e) where the subsidiary is not a wholly-owned subsidiary of the holding company, a dividend may be paid and other distribution (whether in cash or otherwise) of the holding company's assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (4B) or (6C).

[36/2014]

(6F) In subsection (6E)(c), "excess shares" means such number of the shares, held by any subsidiary under subsection (4B) or (6C) or by the holding company as treasury shares at the time in question, as resulted in the limit referred to in subsection (6E)(a) or (b) being exceeded.

[36/2014]

(6G) In sections 7(9)(ca), 33(5A), 63A(1)(e), 74(1A), 76B(3E), 78, 81(4), 164A(1), 176(1A), 177(1), 179(8), 184(4)(b)(i), 201A(4)(b), 205B(6), 206(1)(b), 215(1), (1C), (1D) and (3A) and 232(1)(a)(i) —

- (a) a reference to “treasury shares” includes a reference to shares held by a subsidiary under subsection (4B) or (6C); and
- (b) a reference to a company being registered as a member of itself or being a member of itself includes a reference to a subsidiary being registered as a member of its holding company.

[36/2014; 40/2018]

(7) Where but for this section a subsidiary would have been entitled to subscribe for shares in the holding company, the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

(8) In relation to a holding company that is a company limited by guarantee, the reference in this section to shares is to be read as including a reference to the interest of its members as such, whatever the form of that interest.

(9) For the purposes of this section, a company must inform the Registrar of the occurrence of any of the following events by lodging a notice in the prescribed form within 14 days after the date of occurrence:

- (a) where a shareholder of a company that is a corporation becomes a subsidiary of the company;
- (b) where shares of the company are held by a subsidiary of the company and there is a change in the number of shares held by the subsidiary.

[36/2014]

## **Requirements as to constitution**

**22.—**(1) The constitution of every company must comply with such requirements as may be prescribed, must be dated and must state, in addition to other requirements —

- (a) the name of the company;

- (b) if the company is a company limited by shares — that the liability of the members is limited;
- (c) if the company is a company limited by guarantee — that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount;
- (d) if the company is an unlimited company — that the liability of the members is unlimited;
- (e) if the company is an unlimited company or a company limited by guarantee — the number of members with which the company is applying to be registered;
- (f) the full names, addresses and occupations of the subscribers to the constitution of the company; and
- (g) that such subscribers are desirous of being formed into a company in pursuance of the constitution and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

[36/2014]

(1AA) Where a company to which subsection (1)(e) applies changes the number of its members with which it is registered, the company must, within 14 days after the occurrence of such change, lodge with the Registrar a notice of the change in the prescribed form.

[36/2014]

(1AB) If default is made by a company in complying with subsection (1AA), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be

liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

[36/2014]

(1A) On 30 January 2006, any provision (or part thereof) then subsisting in the constitution of any company which states —

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

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

[36/2014]

(2) Each subscriber to the constitution must, if the company is to have a share capital, make a declaration to the Registrar, either personally or through a registered qualified individual authorised by the subscriber, as to the number of shares (not being less than one) that the subscriber agrees to take.

[36/2014]

(3) A statement in the constitution of a company limited by shares that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

[36/2014]

(4) A copy of the constitution, duly signed by the subscribers and stating, if the company is to have a share capital, the number of shares that each subscriber has agreed to take, must be kept at the registered office of the company.

[36/2014]

## *Division 2 — Powers*

### **Capacity and powers of company**

**23.—**(1) Subject to the provisions of this Act and any other written law and its constitution, a company has —

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers and privileges.

[36/2014]

(1A) A company may have the objects of the company included in its constitution.

[36/2014]

(1B) The constitution of a company may contain a provision restricting its capacity, rights, powers or privileges.

[36/2014]

### **Restriction as to power of certain companies to hold lands**

(2) A company formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or any other like object not involving the acquisition of gain by the company or by its individual members must not acquire any land without the approval of the Minister but the Minister may empower any such company to hold lands in such quantity and subject to such conditions as the Minister thinks fit.

(3) Notice of a decision of the Minister under subsection (2) must be given by the Registrar on behalf of the Minister to the company.

(4) The decision of the Minister under subsection (2) is final and is not to be called in question by any court.

[12/2002]

(5) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the decision under subsection (2).

### **Power of company to provide for employees on cessation of business**

**24.**—(1) The powers of a company are, if they would not otherwise do so, deemed to include power to make provision, in connection with any cessation of the whole or any part of the business carried on by the company or any subsidiary of the company, for the benefit of persons employed or formerly employed by the company or its subsidiary.

(2) Subsection (1) relates only to the capacity of a company as a body corporate and does not affect any provision in a company's

constitution requiring any exercise of the power mentioned in that subsection to be approved by the company in general meeting or otherwise prescribing the manner in which that power is to be exercised.

[36/2014]

### **Ultra vires transactions**

**25.—**(1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a 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 company is invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

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

- (a) proceedings against the 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 the trustee for the holders of those debentures to restrain the doing of any act or acts 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 application by the Minister to wind up the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers 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 action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract must not be awarded by the Court as a loss or damage sustained.

### **No constructive notice**

**25A.** Despite anything in the constitution of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the constitution of, or any other document relating to, the company merely because —

- (a) the constitution or document is registered by the Registrar;  
or
- (b) the constitution or document is available for inspection at the registered office of the company.

[36/2014]

### **Power of directors to bind company**

**25B.**—(1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.

[36/2014]

(2) For the purposes of subsection (1), a person dealing with a company —

- (a) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so; and
- (b) is presumed to have acted in good faith unless the contrary is proved.

[36/2014]

(3) The references in subsection (1) or (2) to limitations on the directors' powers under the company's constitution include limitations deriving —

- (a) from a resolution of the company or of any class of shareholders; or

- (b) from any agreement between the members of the company or of any class of shareholders.

[36/2014]

(4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors; but no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

[36/2014]

(5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors exceeding their powers.

[36/2014]

- (6) This section has effect subject to section 25C.

[36/2014]

### **Constitutional limitations: transactions with directors or their associates**

**25C.**—(1) This section applies to a transaction if or to the extent that its validity depends on section 25B.

[36/2014]

(2) Nothing in this section is to be construed as excluding the operation of any other written law or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

[36/2014]

- (3) Where —

(a) a company enters into such a transaction; and

(b) the parties to the transaction include —

(i) a director of the company or of its holding company;  
or

(ii) a person connected with any such director,

the transaction is voidable at the instance of the company.

[36/2014]

(4) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (3)(b)(i) or (ii), and any director of the company who authorised the transaction, is liable —

- (a) to account to the company for any gain the party or the director has made directly or indirectly by the transaction; and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

[36/2014]

(5) The transaction ceases to be voidable if —

- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible;
- (b) the company is indemnified for any loss or damage resulting from the transaction;
- (c) rights acquired bona fide for value and without actual notice of the directors exceeding their powers by a person who is not party to the transaction would be affected by the avoidance; or
- (d) the transaction is affirmed by the company.

[36/2014]

(6) A person other than a director of the company is not liable under subsection (4) if the person shows that at the time the transaction was entered into the person did not know that the directors were exceeding their powers.

[36/2014]

(7) Nothing in subsections (1) to (6) affects the rights of any party to the transaction not within subsection (3)(b)(i) or (ii); but the court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the court to be just.

[36/2014]

(8) In this section, “transaction” includes any act.

[36/2014]

**Persons connected with director in section 25C**

**25D.**—(1) For the purposes of section 25C, a reference to a person connected with a director means —

- (a) a member of the director's family;
- (b) a body corporate with which the director is connected within the meaning of subsection (2)(b);
- (c) a person acting in the person's capacity as trustee of a trust —
  - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with the director; or
  - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any person mentioned in sub-paragraph (i),  
other than a trust for the purposes of an employees' share scheme or on a pension scheme;
- (d) a person acting in the person's capacity as partner —
  - (i) of the director; or
  - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
- (e) a firm that is a legal person under the law by which it is governed and in which —
  - (i) the director is a partner;
  - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c), is connected with the director; or
  - (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director; and

- (f) a reference to a person connected with a director of a company does not include a person who is himself or herself a director of the company.

[36/2014]

(2) For the purposes of this section —

- (a) a member of a director's family includes the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter;
- (b) a director is connected with a body corporate if, and only if, the director and the persons connected with the director together —
- (i) are interested in at least 20% of the share capital of that body corporate; or
  - (ii) are entitled to exercise or control, directly or indirectly, the exercise of more than 20% of the voting power at any general meeting of that body corporate;
- (c) a reference in paragraph (b)(ii) to voting power the exercise of which is controlled by a director includes voting power whose exercise is controlled by a body corporate controlled by the director;
- (d) to avoid circularity in the application of subsection (1) —
- (i) a body corporate with which a director is connected is not treated for the purposes of this subsection as connected with the director unless it is also connected with the director by virtue of subsection (1)(c) or (d); and
  - (ii) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this subsection as connected with a director by reason only of that fact; and
- (e) “body corporate” includes a body incorporated outside Singapore, but does not include —

- (i) a corporation sole; or
- (ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed.

[36/2014]

### **General provisions as to alteration of constitution**

**26.—(1)** Unless otherwise provided in this Act, the constitution of a company may be altered or added to by special resolution.

[36/2014]

(1AA) Any alteration or addition made to the constitution under subsection (1) is, subject to this Act, deemed to form part of the original constitution on and from the date of the special resolution or such later date as is specified in the resolution.

[36/2014]

(1AB) A special resolution adopting the whole or any part of the model constitution prescribed under section 36 for the description to which the company belongs may do so by reference to the title of the model constitution, or to the numbers of the particular regulations of the model constitution and need not set out the text of the whole or part of the model constitution to be adopted.

[36/2014]

(1A) Subsection (1) is subject to section 26A and to any provision included in the constitution of a company in accordance with that section.

[36/2014]

(1B) Despite subsection (1), a provision contained in the constitution of a company immediately before 1 April 2004 and which could not be altered under the provisions of this Act in force immediately before that date, may be altered only if all the members of the company agree.

[36/2014]

(2) In addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court or other document affecting the constitution of a company, the company must, within 14 days after the passing of any such resolution or the making of any such order, lodge

with the Registrar a copy of such resolution or other document or a copy of such order together with (unless the Registrar dispenses therewith) a copy of the constitution as adopted or altered, as the case may be.

[36/2014]

(2A) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

(3) The Registrar must register every resolution, order or other document lodged with the Registrar under this Act that affects the constitution of a company and, where an order is so registered, must issue to the company a notice of the registration of that order.

[36/2014]

(4) [*Deleted by Act 12 of 2002*]

(5) Notice of the registration must be published in such manner (if any) as the Court or the Registrar directs.

(6) The Registrar must, where appropriate, issue a notice of incorporation in accordance with the alteration made to the constitution.

[36/2014]

(7) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation in accordance with the alteration made to the constitution.

[36/2014]

### **Power to entrench provisions of constitution of company**

**26A.**—(1) An entrenching provision may —

- (a) be included in the constitution with which a company is formed; and
- (b) at any time be inserted in the constitution of a company only if all the members of the company agree.

[36/2014]

(2) An entrenching provision may be removed or altered only if all the members of the company agree.

[36/2014]

(3) The provisions of this Act relating to the alteration of the constitution of a company are subject to any entrenching provision in the constitution of a company.

[36/2014]

(4) In this section, “entrenching provision” means a provision of the constitution of a company to the effect that other specified provisions of the constitution —

(a) may not be altered in the manner provided by this Act; or

(b) may not be so altered except —

(i) by a resolution passed by a specified majority greater than 75% (the minimum majority required by this Act for a special resolution); or

(ii) where other specified conditions are met.

[36/2014]

### **Names of companies**

**27.—**(1) Except with the Minister’s consent or as provided in subsection (1B), the Registrar must refuse to register a company under this Act under a name which, in the Registrar’s opinion —

(a) is undesirable;

(b) is identical to the name of any other company, limited liability partnership, limited partnership or corporation or to any registered business name;

(c) is identical to a name reserved under subsection (12B), subsection (12B) as applied by section 357(2), or section 378(15), section 16 of the Business Names Registration Act 2014, section 23(4) of the Limited Liability Partnerships Act 2005, section 17(4) of the Limited Partnerships Act 2008, subsection (12B) as applied by section 21(8) of the VCC Act, or subsection (12B) as applied by section 133(2) of the VCC Act; or

- (d) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

[36/2014; 15/2017; 44/2018]

(1A) In addition to subsection (1), the Registrar must, on or after 3 January 2016, except with the Minister's consent, refuse to register a company under a name, if —

- (a) it is identical to the name of a company that was dissolved —
- (i) unless, in a case where the company was dissolved following its winding up under the Insolvency, Restructuring and Dissolution Act 2018, a period of at least 2 years has passed after the date of dissolution; or
  - (ii) unless, in a case where the company was dissolved following its name being struck off the register under section 344 or 344A, a period of at least 6 years has passed after the date of dissolution;
- (b) it is identical to the business name of a person whose registration and registration of that business name has been cancelled under the Business Names Registration Act 2014 or had ceased under section 22 of that Act, unless a period of at least one year has passed after the date of cancellation or cessation;
- (c) it is identical to the name of a foreign company notice of the dissolution of which has been given to the Registrar under section 377(2), unless a period of at least 2 years has passed after the date of dissolution;
- (d) it is identical to the name of a limited liability partnership that was dissolved —
- (i) unless, in a case where the limited liability partnership was dissolved following its winding up under section 39 of, and the Fifth Schedule to, the Limited Liability Partnerships Act 2005, a period of at least 2 years has passed after the date of dissolution; or

- (ii) unless, in a case where the limited liability partnership was dissolved following its name being struck off the register under section 63 of the Limited Liability Partnerships Act 2005, a period of at least 6 years has passed after the date of dissolution;
- (e) it is identical to the name of a limited partnership that was cancelled or dissolved —
  - (i) unless, in a case where the registration of the limited partnership was cancelled under section 14(1) or 19(4) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of cancellation; or
  - (ii) unless, in a case where notice was lodged with the Registrar of Limited Partnerships that the limited partnership was dissolved under section 19(2) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of dissolution; or
- (f) it is identical to the name of a VCC that was dissolved —
  - (i) unless, in a case where the VCC was dissolved following its winding up under Part 11 of the VCC Act, a period of at least 2 years has passed after the date of dissolution; or
  - (ii) unless, in a case where the VCC was dissolved following its name being struck off the register under section 344 or 344A of this Act as applied by section 130 of the VCC Act, a period of at least 6 years has passed after the date of dissolution.

*[36/2014; 40/2018; 44/2018]*

(1B) Despite subsection (1), the Registrar may, on or after 3 January 2016, register a company under —

- (a) a name that is identical to the name of a foreign company registered under Division 2 of Part 11 —
  - (i) in respect of which notice was lodged under section 377(1) that the foreign company has ceased to have a place of business in Singapore or ceased to

carry on business in Singapore, if a period of at least 3 months has passed after the date of cessation; and

(ii) the name of which was struck off the register under section 377(8), (9) or (10), if a period of at least 6 years has passed after the date the name was so struck off; or

(b) a name that is identical to the name of a limited partnership in respect of which notice was lodged under section 19(1) of the Limited Partnerships Act 2008 that the limited partnership ceased to carry on business in Singapore, if a period of at least one year has passed after the date of cessation.

[36/2014]

(2) Despite anything in this section and section 28 (other than section 28(4)), where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after 30 January 2006) by a name —

- (a) which is one that is not permitted to be registered under subsection (1)(a), (b) or (d);
- (aa) which is one that is not permitted to be registered under subsection (1A) until the expiry of the relevant period mentioned in that subsection;
- (ab) which is one that is permitted to be registered under subsection (1B) only after the expiry of the relevant period mentioned in that subsection;
- (b) which so nearly resembles the name of any other company, or any corporation, limited liability partnership, limited partnership or registered business name, as to be likely to be mistaken for it; or
- (c) the use of which has been restrained by an injunction granted under the Trade Marks Act 1998,

the Registrar may direct the firstmentioned company to change its name, and the company must comply with the direction within

6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

*[36/2014]*

(2A) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (2) on a ground referred to in that subsection; but the Registrar must not consider any application to give a direction to a company on the ground referred to in subsection (2)(b) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

(2B) If the company fails to comply with subsection (2), the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(2C) *[Deleted by Act 36 of 2014]*

(2D) *[Deleted by Act 36 of 2014]*

(3) *[Deleted by Act 36 of 2014]*

(4) *[Deleted by Act 36 of 2014]*

(5) An appeal to the Minister against the following decisions of the Registrar that are made on or after 3 January 2016 may be made by the following persons within the following times:

(a) in the case of the Registrar's decision under subsection (2) — by the company aggrieved by the decision within 30 days after the decision; and

(b) in the case of the Registrar's refusal to give a direction to a company under subsection (2) pursuant to an application under subsection (2A) — by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

*[36/2014]*

(5AA) The decision of the Minister on an appeal made under subsection (5) is final.

*[36/2014]*

(5A) To avoid doubt, where the Registrar makes a decision under subsection (2) or the Minister makes a decision under subsection (5), he or she must accept as correct any decision of the Court to grant an injunction referred to in subsection (2)(c).

(6) The Minister must cause a direction given by him or her under subsection (1) to be published in the *Gazette*.

(7) Subject to section 29, a limited company must have either “Limited” or “Berhad” as part of and at the end of its name.

(8) A private company must have the word “Private” or “Sendirian” as part of its name, inserted immediately before the word “Limited” or “Berhad” or, in the case of an unlimited company, at the end of its name.

(9) It is lawful to use and no description of a company is deemed inadequate or incorrect by reason of the use of —

- (a) the abbreviation “Pte.” in lieu of the word “Private” or the abbreviation “Sdn.” in lieu of the word “Sendirian” contained in the name of a company;
- (b) the abbreviation “Ltd.” in lieu of the word “Limited” or the abbreviation “Bhd.” in lieu of the word “Berhad” contained in the name of a company; or
- (c) any of such words in lieu of the corresponding abbreviation contained in the name of a company.

(10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as —

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

[36/2014]

(11) A company must not be registered under section 19(3) and the Registrar must not approve the change of name of a company under section 28(2) unless the name which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under subsection (12).

(12) The Registrar may approve an application made under subsection (10) only if the Registrar is satisfied that —

- (a) the application is made in good faith; and

- (b) the name to be reserved is one in respect of which a company may be registered having regard to subsections (1), (1A) and (1B).

[36/2014]

(12A) The Registrar must refuse to approve an application to reserve a name under subsection (10) as the name of an intended company if the Registrar is satisfied that —

- (a) the name is for a company that is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (b) it would be contrary to the national security or interest for the company to be registered.

[36/2014]

(12B) Where an application for a reservation of a name is made under subsection (10), the Registrar must reserve the proposed name for a period starting at the time the Registrar receives the application and ending —

- (a) if the Registrar approves the application — 60 days after the date on which the Registrar notifies the applicant that the application has been approved, or such further period of 60 days as the Registrar may, on application made in good faith, extend; or
- (b) if the Registrar refuses to approve the application — on the date on which the Registrar notifies the applicant of the refusal.

[36/2014]

(12C) A person aggrieved by a decision of the Registrar —

- (a) refusing to approve an application under subsection (10); or
- (b) refusing an application under subsection (12B)(a) to extend the reservation period,

may, within 30 days after being informed of the Registrar's decision, appeal to the Minister whose decision is final.

[36/2014]

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, the Registrar may extend that period for a further period of 60 days.

[36/2014]

(14) [*Deleted by Act 36 of 2014*]

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

[36/2014]

(16) In this section and section 28, “registered business name” has the meaning given by section 2(1) of the Business Names Registration Act 2014.

[36/2014]

### **Change of name**

**28.—**(1) A company may by special resolution resolve that its name should be changed to a name by which the company could be registered under section 27(1), (1A) or (1B).

[36/2014]

(2) If the Registrar approves the name which the company has resolved should be its new name, the Registrar must register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name becomes effective.

(3) Despite anything in this section and section 27, if the name of a company is, whether through inadvertence or otherwise or whether originally or by a change of name —

- (a) a name that is not permitted to be registered under section 27(1)(a), (b) or (d);
- (b) a name that is not permitted to be registered under section 27(1A) until the expiry of the relevant period mentioned in that section;

- (c) a name that is permitted to be registered under section 27(1B) only after the expiry of the relevant period mentioned in that section;
- (d) a name that so nearly resembles the name of another company, or a corporation, limited liability partnership, limited partnership or a registered business name of any person as to be likely to be mistaken for it; or
- (e) a name the use of which has been restrained by an injunction granted under the Trade Marks Act 1998,

the company may by special resolution change its name to a name that is not referred to in paragraph (a), (b), (c), (d) or (e) and, if the Registrar so directs, must so change it within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

[36/2014]

(3AA) The Registrar must not direct a change of name under subsection (3) on the ground that the name of the company could not be registered without contravention of section 27(1)(c).

[36/2014]

(3A) Any person may apply in writing to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that subsection; but the Registrar must not consider any application to give a direction to a company on the ground referred to in subsection (3)(d) unless the Registrar receives the application within 12 months from the date of change of name of the company.

[36/2014]

(3B) If the company fails to comply with subsection (3), the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(3C) *[Deleted by Act 36 of 2014]*

(3D) An appeal to the Minister against the following decisions of the Registrar that are made on or after 3 January 2016 may be made by the following persons within the following times:

- (a) in the case of the Registrar's decision under subsection (3) — by the company aggrieved by the decision within 30 days after the decision;
- (b) in the case of the Registrar's refusal to give a direction to a company under subsection (3) pursuant to an application under subsection (3A) — by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

[36/2014]

(3DA) The decision of the Minister on an appeal made under subsection (3D) is final.

[36/2014]

(3E) To avoid doubt, where the Registrar makes a decision under subsection (3) or the Minister makes a decision under subsection (3DA), the Registrar or the Minister (as the case may be) must accept as correct any decision of the Court to grant an injunction referred to in subsection (3)(e).

[36/2014]

(4) Where the name of a company incorporated pursuant to any corresponding previous written law has not been changed since 29 December 1967, the Registrar must not, except with the Minister's approval, exercise the Registrar's power under subsection (3) to direct the company to change its name.

(5) Upon the application of a company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation of the company under the new name.

[36/2014]

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

**Omission of “Limited” or “Berhad” in names of limited companies, other than companies registered under Charities Act 1994**

**29.—**(1) Where it is proved to the satisfaction of the Registrar that a proposed limited company is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, that it has some basis of national or general public interest and that it is in a financial position to carry out the objects for which it is to be formed and will apply its profits (if any) or other income in promoting its objects and will prohibit the payment of any dividend to its members, the Registrar may (after requiring, if the Registrar thinks fit, the proposal to be advertised in such manner as the Registrar directs either generally or in a particular case) approve that it be registered as a company with limited liability without the addition of the word “Limited” or “Berhad” to its name, and the company may be registered accordingly.

[36/2014]

(2) Where it is proved to the Registrar’s satisfaction —

- (a) that the objects of a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto;
- (b) that the company has some basis of national or general public interest;
- (c) that the company is in a financial position to carry out the objects for which it was formed; and
- (d) that by its constitution the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Registrar may grant his or her approval to the company to change its name to a name which does not contain the word “Limited” or “Berhad”, being a name approved by the Registrar.

[36/2014]

(3) The Registrar may grant his or her approval on such conditions as the Registrar thinks fit, and those conditions are binding on the company and must, if the Registrar so directs, be inserted in the constitution of the company and the constitution may by special resolution be altered to give effect to any such direction.

*[36/2014]*

(4) Where the constitution of a company includes, as a result of a direction of the Registrar given pursuant to subsection (3) or pursuant to any corresponding previous written law, a provision that the constitution must not be altered except with the consent of the Minister, the company may, with the Minister's consent, by special resolution alter any provision of the constitution.

*[36/2014]*

(5) A company is, while an approval granted under this section to it is in force, exempted from complying with the provisions of this Act relating to the use of the word "Limited" or "Berhad" as any part of its name.

(6) Any approval granted under this section may at any time be revoked by the Registrar and, upon revocation, the Registrar must enter the word "Limited" or "Berhad" at the end of the name of the company in the register, and the company must thereupon cease to enjoy the exemption granted by reason of the approval under this section but before the approval is so revoked the Registrar must give to the company written notice of the Registrar's intention and must afford it an opportunity to be heard.

*[36/2014]*

(6A) If the Registrar is of the opinion that a company has ceased to satisfy the conditions of approval granted under subsection (1) or (2), the Registrar may revoke the approval.

*[36/2014]*

(7) Where the approval of the Registrar under this section is revoked, the constitution of the company may be altered by special resolution so as to remove any provision in or to the effect that the constitution may be altered only with the consent of the Minister.

*[36/2014]*

(8) Notice of any approval under this section must be given by the Registrar to the company or, in the case of a proposed limited company, to the applicant for the approval.

[36/2014]

(8A) An appeal to the Minister against a decision of the Registrar under subsection (1) or (2) may be made by the following persons within the following times:

- (a) in the case of a decision made by the Registrar under subsection (1) — by the promoter of the proposed limited company within 30 days after the notice is given by the Registrar under subsection (8);
- (b) in the case of a decision made by the Registrar under subsection (2) — by the company within 30 days after the notice is given by the Registrar under subsection (8).

[36/2014]

(9) Upon the application of the company or proposed limited company and payment of the prescribed fee, the Registrar must issue to the company or proposed limited company a certificate confirming the approval under this section.

(10) This section does not apply to a limited company that is registered as a charity under the Charities Act 1994.

[36/2014]

(11) Any approval of the Minister and any condition of the Minister's approval that was in force immediately before 3 January 2016 for a company —

- (a) to be registered without the word “Limited” or “Berhad” to its name; or
- (b) to change its name to one which does not contain the word “Limited” or “Berhad”,

is on or after that date to be treated as the approval of the Registrar and condition of the Registrar's approval.

[36/2014]

(12) Any reference to the Minister's approval in any condition of approval that was in force immediately before 3 January 2016 that was inserted in the constitution of a company pursuant to a direction

of the Minister under section 29(3) in force immediately before that date is, on or after that date, to be read as a reference to the Registrar.  
[36/2014]

(13) A reference to a direction of the Minister in subsections (3) and (4) in force immediately before 3 January 2016 is, on or after that date, to be read as a direction of the Registrar.

[36/2014]

### **Omission of “Limited” or “Berhad” in names of companies registered under Charities Act 1994**

**29A.**—(1) Despite section 28(1) and (2) but subject to section 28(3) to (6), a limited company registered as a charity under the Charities Act 1994 (called in this section a charitable company) may change its name to omit the word “Limited” or “Berhad” from its name.

[36/2014]

(2) A charitable company that proposes to change its name to omit the word “Limited” or “Berhad” from its name must —

- (a) alter its constitution to reflect the change of name; and
- (b) file the prescribed form with the Registrar, together with a copy of the special resolution authorising the change of name.

[36/2014]

(3) Upon receipt of the prescribed form mentioned in subsection (2)(b), the Registrar must —

- (a) register the name of the charitable company with the omission of the word “Limited” or “Berhad” from its name; and
- (b) issue to the company a notice of incorporation of the company under the new name.

[36/2014]

(4) Upon issue of the notice under subsection (3)(b) —

- (a) the change of name becomes effective; and
- (b) the charitable company is exempted from the provisions of this Act relating to the use of the word “Limited” or “Berhad” as part of the name.

[36/2014]

(5) If the Registrar is satisfied that a charitable company that is registered with the omission of the word “Limited” or “Berhad” from its name under this section has ceased to be a charitable company, the Registrar must enter the word “Limited” or “Berhad” at the end of the name of the company and upon notice of that fact being given to the company, the exemption under subsection (4)(b) ceases.

[36/2014]

### **Registration of unlimited company as limited company, etc.**

**30.**—(1) Subject to this section —

- (a) an unlimited company may convert to a limited company if it was not previously a limited company that became an unlimited company pursuant to paragraph (b); and
- (b) a limited company may convert to an unlimited company if it was not previously an unlimited company that became a limited company pursuant to paragraph (a) or any corresponding previous written law.

(2) Where a company applies to the Registrar for a change of status as provided by subsection (1) and, subject to section 33(8) and (9) as applied by subsection (7), lodges with the application the prescribed documents relating to the application, the Registrar must, upon registration of such prescribed documents so lodged as are registrable under this Act, issue to the company a notice of incorporation —

- (a) appropriate to the change of status applied for; and
- (b) specifying, in addition to the particulars prescribed in respect of a notice of incorporation of a company of that status, that the notice is issued pursuant to this section,

and, upon the issue of such a notice of incorporation, the company is deemed to be a company having the status specified therein.

(3) Where the status of a company is changed pursuant to this section, notice of the change of status must be published in such manner (if any) as the Registrar may direct.

(3A) Upon the application of the company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation of the company with the new status.

[36/2014]

(4) In subsection (2), “prescribed documents”, in relation to an application mentioned in that subsection, means —

- (a) a copy of a special resolution of the company —
  - (i) resolving to change the status of the company and specifying the status sought;
  - (ii) making such alterations to the constitution of the company as are necessary to bring the constitution into conformity with the requirements of this Act relating to the constitution of a company of the status sought; and
  - (iii) [*Deleted by Act 36 of 2014*]
  - (iv) [*Deleted by Act 36 of 2014*]
  - (v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;
- (b) where, by a special resolution mentioned in paragraph (a), the constitution of the company is altered or added to — a copy of the constitution as altered; and
- (c) in the case of an application by a limited company to convert to an unlimited company —
  - (i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and
  - (ii) a declaration by or on behalf of a director or the secretary of the company, or a registered qualified individual authorised by the company, verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself or herself, that the

director, secretary or registered qualified individual making the declaration has taken all reasonable steps to satisfy himself or herself that each person who subscribed the form was lawfully empowered to do so.

[36/2014]

(5) Section 26(2) to (6) does not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

(6) A special resolution passed for the purposes of an application under this section takes effect only upon the issue under this section of a notice of incorporation of the company to which the resolution relates.

(7) With such modifications as may be necessary, section 33 (except subsection (1)) applies to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under that section.

(8) A change in the status of a company pursuant to this section does not operate —

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;
- (c) to affect the property, or the rights or obligations, of the company; or
- (d) to render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or commenced by or against it prior to the change in its status may, despite the change in its status, be continued or commenced by or against it after the change in its status.

**Change from public to private company**

**31.—(1)** A public company having a share capital may convert to a private company by lodging with the Registrar —

- (a) a copy of a special resolution —
  - (i) determining to convert to a private company and specifying an appropriate alteration to its name; and
  - (ii) altering the provisions of its constitution so far as is necessary to impose the restrictions and limitations referred to in section 18(1);
- (b) a list of persons holding shares in the company in the prescribed form; and
- (c) such other information relating to the company or its members and officers as may be prescribed.

[36/2014]

**Change from private to public company**

(2) A private company may, subject to its constitution, convert to a public company by lodging with the Registrar —

- (a) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name;
- (b) a statement in lieu of prospectus; and
- (c) a declaration in the prescribed form verifying that section 61(2)(b) has been complied with,

and thereupon the restrictions and limitations referred to in section 18(1) as included in or deemed to be included in the constitution of such company cease to form part of the constitution.

[36/2014]

(3) On compliance by a company with subsection (1) or (2) and on the issue of a notice of incorporation altered accordingly the company becomes a private company or a public company (as the case requires).

(3A) The public company referred to in subsection (2) must, within 14 days after the issue of the notice of incorporation referred to in

subsection (3), lodge with the Registrar in the prescribed form a list of persons holding shares in the company.

[36/2014]

(4) A conversion of a company pursuant to subsection (1) or (2) does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, despite any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion.

(5) Upon the application of the company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the incorporation of the company with the new status.

[36/2014]

### **Default in complying with requirements as to private companies**

**32.—**(1) [*Deleted by Act 5 of 2004*]

(2) Where —

(a) default has been made in relation to a private company in complying with a limitation of a kind specified in section 18(1)(b) that is included, or is deemed to be included in the constitution of the company;

(b) [*Deleted by Act 5 of 2004*]

(c) the constitution of a private company have been so altered that they no longer include restrictions or limitations of the kinds specified in section 18(1); or

(d) a private company has ceased to have a share capital,

the Registrar may by notice served on the company determine that, on such date as is specified in the notice, the company ceased to be a private company.

[36/2014]

(3) Where, under this section, the Court or the Registrar determines that a company has ceased to be a private company —

- (a) the company is a public company and is deemed to have been a public company on and from the date specified in the order or notice;
- (b) the company is on the date so specified deemed to have changed its name by the omission from its name of the word “Private” or the word “Sendirian”, as the case requires; and
- (c) the company must, within a period of 14 days after the date of the order or the notice, lodge with the Registrar —
  - (i) a statement in lieu of prospectus; and
  - (ii) a declaration in the prescribed form verifying that section 61(2)(b) has been complied with.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a private company.

(5) A company that, by virtue of a determination made under this section, has become a public company may not convert to a private company without the permission of the Court.

*[Act 25 of 2021 wef 01/04/2022]*

(6) If default is made in complying with subsection (3)(c), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(7) *[Deleted by Act 5 of 2004]*

(8) Where default is made in relation to a private company in complying with any restriction or limitation of a kind specified in section 18(1) that is included, or deemed to be included, in the constitution of the company, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

*[36/2014]*

**Alterations of objects in constitution**

**33.**—(1) Subject to this section, a company may by special resolution alter the provisions of its constitution with respect to the objects of the company, if any.

[36/2014]

(2) Where a company proposes to alter its constitution, with respect to the objects of the company, it must give 21 days' written notice by post or by electronic communications in accordance with section 387A or 387C, specifying the intention to propose the resolution as a special resolution and to submit it for passing at a meeting of the company to be held on a day specified in the notice.

[36/2014]

(3) The notice must be given to all members, and to all trustees for debenture holders and, if there are no trustees for any class of debenture holders, to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4) The Court may in the case of any person or class of persons for such reasons as to it seem sufficient dispense with the notice required by subsection (2).

(5) If an application for the cancellation of an alteration is made to the Court in accordance with this section by —

(a) the holders of not less in the aggregate than 5% of the total number of issued shares of the company or any class of those shares or, if the company is not limited by shares, not less than 5% of the company's members; or

(b) the holders of not less than 5% in nominal value of the company's debentures,

the alteration does not have effect except so far as it is confirmed by the Court.

(5A) For the purposes of subsection (5), any of the company's issued shares held as treasury shares is to be disregarded.

[36/2014]

(6) The application must be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application

by such one or more of their number as they appoint in writing for the purpose.

(7) On the application, the Court —

- (a) must have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;
- (b) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members;
- (c) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and
- (d) may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit.

(8) Despite any other provision of this Act, a copy of a resolution altering the objects of a company must not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution, or if any application to the Court has been made, before the application has been determined by the Court, whichever is the later.

(9) A copy of the resolution must be lodged with the Registrar by the company within 14 days after the expiration of the 21 days mentioned in subsection (8), but if an application has been made to the Court in accordance with this section, the copy must be lodged with the Registrar together with a copy of the order of the Court within 14 days after the application has been determined by the Court.

(10) On compliance by a company with subsection (9), the alteration (if any) of the objects takes effect.

(11) To avoid doubt, a reference in this section to the alteration of any provision of the constitution of a company or the alteration of the objects of a company includes the removal of that provision or of all or any of those objects.

[36/2014]

### **Alteration of constitution by company pursuant to repeal and re-enactment of sections 10 and 14 of Residential Property Act 1976**

**34.**—(1) Where the constitution of a company contains any of the provisions referred to in section 10(1) of the Residential Property Act 1976 in force immediately before 31 March 2006, the company may, by special resolution, amend its constitution to remove that provision.

[36/2014]

(2) Where the constitution of a company contains a provision to the effect that its constitution must not be altered to remove any of the provisions referred to in section 10(1) of the Residential Property Act 1976 in force immediately before 31 March 2006 except in accordance with the requirements of that Act —

- (a) that provision ceases to have effect as from that date; and
- (b) the company may, by special resolution, amend its constitution to remove that provision.

[36/2014]

### **Regulations for company**

**35.**—(1) Subject to this section, a company's constitution must contain the regulations for the company.

[36/2014]

(2) Subsection (1) does not apply to a company limited by shares that was incorporated before 3 January 2016.

[36/2014]

(3) Despite subsection (2), where immediately before 3 January 2016, regulations were in force for a company, whether the regulations were prescribed in the company's registered articles, or were applicable in lieu of or in addition to the company's registered articles by virtue of section 36(2) in force before that date, such regulations are deemed to be the regulations for the company contained in the company's constitution for the purposes of subsection (1) until such time as the constitution of the company is amended to replace or amend those regulations.

[36/2014]

**Model constitution**

**36.—**(1) The Minister may prescribe model constitutions for —

- (a) private companies; and
- (b) companies limited by guarantee,

(called in this section and section 37 specified companies).

[36/2014]

(2) Different model constitutions may be prescribed for different descriptions of specified companies.

[36/2014]

**Adoption of model constitution**

**37.—**(1) A specified company may adopt as its constitution the whole or any part of the model constitution prescribed under section 36(1) for the type of company to which it belongs.

[36/2014]

(2) A specified company may in its constitution adopt the whole model constitution for the type of company to which it belongs by reference to the title of the model constitution.

[36/2014]

(3) Where a specified company adopts the whole model constitution for the type of company to which it belongs, the specified company may choose —

- (a) to adopt the model constitution as in force at the time of adoption; or
- (b) to adopt the model constitution as may be in force from time to time, in which case the model constitution for the type of company to which the specified company belongs that is for the time being in force is, so far as applicable, the constitution for that specified company.

[36/2014]

(4) A copy of the constitution of a specified company must be submitted to the Registrar, in accordance with section 19(1), where the specified company —

- (a) adopts only part of the model constitution for the type of company to which it belongs;

- (b) includes provisions additional to those in the model constitution; or
- (c) includes object clauses as part of its constitution.

[36/2014]

### **As to constitution of companies limited by guarantee**

**38.**—(1) In the case of a company limited by guarantee, every provision in the constitution or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company, otherwise than as a member, is void.

[36/2014]

(2) For the purposes of the provisions of this Act relating to the constitution of a company limited by guarantee and of this section, every provision in the constitution or in any resolution of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests is to be treated as a provision for a share capital even though the number of the shares or interests is not specified thereby.

[36/2014]

### **Effect of constitution**

**39.**—(1) Subject to this Act, the constitution of a company, when registered, binds the company and the members thereof to the same extent as if it respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.

[36/2014]

(2) All money payable by any member to the company under the constitution is a debt due from the member to the company.

[36/2014]

### **As to effect of alterations on members who do not consent**

(3) Despite anything in the constitution of a company, no member of the company, unless either before or after the alteration is made the member agrees in writing to be bound thereby, is bound by an alteration made in the constitution after the date on which the member became a member so far as the alteration requires the member to take or subscribe for more shares than the number held by the member at

the date on which the alteration is made or in any way increases the member's liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

[36/2014]

### **Copies of constitution**

**40.**—(1) A company must, on being so required by any member, send to the member a copy of the constitution (if any) subject to payment of \$5 or such lesser sum as is fixed by the directors.

[36/2014]

(2) Where an alteration is made in the constitution of a company, a copy of the constitution must 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 order or resolution making the alteration is annexed to the copy of the constitution and the particular clauses affected are indicated in ink.

[36/2014]

(3) [Omitted in 2006 Revised Edition]

(4) 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.

### **Ratification by company of contracts made before incorporation**

**41.**—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company becomes bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company the person or persons who purported to act in the name or on behalf of the company are, in the absence of express agreement to the contrary, personally bound by the contract or other transaction and entitled to the benefit thereof.

**Form of contract**

- (3) Contracts on behalf of a corporation 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 corporation in writing under the common seal of the corporation;
  - (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 corporation in writing signed by any person acting under its authority, express or implied;
  - (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 corporation by any person acting under its authority, express or implied,

and any contract so made is effectual in law and binds the corporation and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorised to be made.

**Authentication of documents**

(4) A document or proceeding requiring authentication by a corporation may be signed by an authorised officer of the corporation and need not be under its common seal.

**Execution of deeds**

(5) A corporation 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 the corporation and under his or her seal, or, subject to subsection (7), under the appropriate official seal of the corporation binds the corporation and has the same effect as if it were under its common seal.

(6) The authority of any such agent or attorney continues, as between the corporation and any person dealing with him or her,

during the period (if any) mentioned in the instrument conferring the authority, or if no period is therein mentioned then until notice of the revocation or determination of his or her authority has been given to the person dealing with him or her.

### **Official seal for use abroad**

(7) A corporation whose objects require or comprise the transaction of business outside Singapore may, if authorised by its constitution, have for use in any place outside Singapore an official seal, which must be a facsimile of the common seal of the corporation with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal must, in writing under his or her hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

[36/2014]

### **Authority of agent of a corporation need not be under seal, unless seal required by law of foreign state**

(8) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a corporation is not under seal does not, if such power of attorney or document of authorisation is valid as a power of attorney or document of authorisation in accordance with the laws of the country under which such corporation is incorporated, affect for any purpose intended to be effected in Singapore the validity or effect of any instrument under seal executed on behalf of that corporation by such donee of the power or agent, which is for all such purposes whatsoever as valid as if such authority had been under seal.

### **Retrospective application**

(9) Subsection (8) also applies to every instrument under seal executed before 15 May 1987 on behalf of any corporation by a donee of a power or an agent of that corporation whose authority was not under seal.

**Common seal**

**41A.**—(1) A company may have a common seal but need not have one.

[15/2017]

(2) Sections 41B and 41C apply whether a company has a common seal or not.

[15/2017]

**Execution of deeds by company**

**41B.**—(1) A company may execute a document described or expressed as a deed without affixing a common seal onto the document by signature —

- (a) on behalf of the company by a director of the company and a secretary of the company;
- (b) on behalf of the company by at least 2 directors of the company; or
- (c) on behalf of the company by a director of the company in the presence of a witness who attests the signature.

[15/2017]

(2) A document mentioned in subsection (1) that is signed on behalf of the company in accordance with that subsection has the same effect as if the document were executed under the common seal of the company.

[15/2017]

(3) Where a document is to be signed by a person on behalf of more than one company, the document is not considered to be signed by that person for the purposes of subsection (1) or (2) unless the person signs the document separately in each capacity.

[15/2017]

(4) This section applies in the case of a document mentioned in subsection (1) that is executed by the company in the name or on behalf of another person, whether or not that person is also a company.

[15/2017]

**Alternative to sealing**

**41C.** Where any written law or rule of law requires any document to be under or executed under the common seal of a company, or provides for certain consequences if it is not, a document satisfies that written law or rule of law if the document is signed in the manner set out in section 41B(1)(a), (b) or (c) and (3).

[15/2017]

**42.** [Repealed by Act 5 of 2004]

**Company or foreign company with a charitable purpose which contravenes Charities Act 1994 or regulations made thereunder may be wound up or struck off register**

**42A.**—(1) This section applies to a company or a foreign company —

- (a) that is registered under the Charities Act 1994; or
- (b) that has as its sole object or one of its principal objects a charitable purpose connected with persons, events or objects outside Singapore.

(2) A company or foreign company to which this section applies that is convicted of an offence under the Charities Act 1994 or any regulations made thereunder is deemed to be a company or foreign company (as the case may be) that is being used for purposes prejudicial to public welfare and may be liable, in the case of a company, to be wound up by the Court under section 125(1)(n) of the Insolvency, Restructuring and Dissolution Act 2018 or, in the case of a foreign company, to have its name struck off the register by the Registrar under section 377(8).

[40/2018]

(3) In this section, “charitable purpose” means any charitable purpose or object or any other religious, public or social purpose or object, whether or not charitable under the law of Singapore.

## PART 4

## SHARES, DEBENTURES AND CHARGES

*Division 1 — [Repealed by S 236/2002]*

**43. to 56.** *[Repealed by S 236/2002]*

*Division 2 — Restrictions on allotment and commencement of business*

**57.** *[Repealed by S 236/2002]*

**58.** *[Repealed by S 236/2002]*

**Restriction on allotment in certain cases**

**59.—**(1) A public company having a share capital which does not issue a prospectus on or with reference to its formation must not allot any of its shares or debentures unless, at least 3 days before the first allotment of either shares or debentures, there has been lodged with the Registrar a statement in lieu of prospectus which complies with the requirements of this Act.

(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 and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(3) Every director of a company who knowingly contravenes or permits or authorises the contravention of subsection (1) shall —

(a) be guilty of an offence; and

(b) be liable in addition to the penalty or punishment for the offence to compensate the company and allottee respectively for any loss, damages or costs which the company or allottee has sustained or incurred thereby.

(4) No proceedings for the recovery of any compensation referred to in subsection (3)(b) may be commenced after the expiration of 2 years from the date of the allotment.

**Requirements as to statements in lieu of prospectus**

**60.**—(1) To comply with the requirements of this Act, a statement in lieu of prospectus lodged by or on behalf of a company —

- (a) must be signed by every person who is named therein as a director or a proposed director of the company or by the person's agent authorised in writing;
- (b) must, subject to Part 3 of the Sixth Schedule, be in the form of and state the matters specified in Part 1 of that Schedule and set out the reports specified in Part 2 of that Schedule; and
- (c) must, where the persons making any report specified in Part 2 of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part 3 of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The Registrar must not accept for registration any statement in lieu of prospectus unless it appears to the Registrar to comply with the requirements of this Act.

(3) Where in any statement in lieu of prospectus there is any untrue statement or wilful non-disclosure, any director who signed the statement in lieu of prospectus shall, unless he or she proves either that the untrue statement or non-disclosure was immaterial or that he or she had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true or the non-disclosure immaterial, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

**Restrictions on commencement of business in certain circumstances**

**61.**—(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company

must not commence any business or exercise any borrowing power —

(a) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any securities exchange; or

(b) unless —

(i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(ii) every director has paid to the company on each of the shares taken or contracted to be taken by him or her, and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(iii) there has been lodged with the Registrar a declaration in the prescribed form by —

(A) the secretary or one of the directors of the company; or

(B) a registered qualified individual authorised by the company,

verifying that sub-paragraphs (i) and (ii) have been complied with.

[36/2014]

(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company must not commence any business or exercise any borrowing power unless —

(a) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the provisions of this Act;

- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him or her, and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been lodged with the Registrar a declaration in the prescribed form by —
  - (i) the secretary or one of the directors of the company; or
  - (ii) a registered qualified individual authorised by the company,

verifying that paragraph (b) has been complied with.

[36/2014]

(3) The Registrar must, on the lodgment of the declaration under subsection (1)(b)(iii) or (2)(c) (as the case may be), issue a notice in the prescribed form that the company is entitled to commence business and to exercise its borrowing powers; and that notice is conclusive evidence of the matters stated in it.

(4) Any contract made by a company before the date on which it is entitled to commence business is provisional only and is not binding on the company until that date, and on that date it becomes binding.

(5) Where shares and debentures are offered simultaneously by a company for subscription, nothing in this section prevents the receipt by the company of any money payable on application for the debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250.

(7) Upon the application of a company which has received a notice under subsection (3) and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming that the company is entitled to commence business and to exercise its borrowing

powers, and that certificate is conclusive evidence of the matters stated in it.

### **Restriction on varying contracts referred to in prospectus, etc.**

**62.** A company must not before the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, unless the variation is made subject to the approval of the statutory meeting.

### *Division 3 — Shares*

#### **No par value shares**

**62A.**—(1) Shares of a company have no par or nominal value.

(2) Subsection (1) applies to all shares, whether issued before, on or after 30 January 2006.

#### **Transitional provisions for section 62A**

**62B.**—(1) For the purpose of the operation of this Act on or after 30 January 2006 in relation to a share issued before that date —

- (a) the amount paid on the share is the sum of all amounts paid to the company at any time for the share (but not including any premium); and
- (b) the amount unpaid on the share is the difference between the price of issue of the share (but not including any premium) and the amount paid on the share.

(2) On 30 January 2006, any amount standing to the credit of a company's share premium account and any amount standing to the credit of a company's capital redemption reserve becomes part of the company's share capital.

(3) Despite subsection (2), a company may use the amount standing to the credit of its share premium account immediately before 30 January 2006 to —

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before that date;

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

(4) Despite subsection (2), if the company carries on insurance business in Singapore immediately before 30 January 2006, it may also apply the amount standing to the credit of its share premium account immediately before that date by appropriation or transfer to any fund established and maintained pursuant to the Insurance Act 1966.

(5) Despite subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before 30 January 2006 (whether on account of the par value of the shares or by way of premium) is not affected by the shares ceasing to have a par value.

(6) For the purpose of interpreting and applying, on or after 30 January 2006, a contract (including the constitution of the company) entered into before that date or a trust deed or other document executed before that date —

- (a) a reference to the par or nominal value of a share is a reference to —

- (i) if the share is issued before that date — the par or nominal value of the share immediately before that date;
- (ii) if the share is issued on or after that date but shares of the same class were on issue immediately before that date — the par or nominal value that the share would have had if it had been issued then; or
- (iii) if the share is issued on or after that date and shares of the same class were not on issue immediately before that date — the par or nominal value determined by the directors,

and a reference to share premium is a reference to any residual share capital in relation to the share;

- (b) a reference to a right to a return of capital on a share is a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value; and
- (c) a reference to the aggregate par or nominal value of the company's issued share capital is a reference to that aggregate as it existed immediately before that date as —
  - (i) increased to take account of the par or nominal value as defined in paragraph (a) of any shares issued on or after that date; and
  - (ii) reduced to take account of the par or nominal value as defined in paragraph (a) of any shares cancelled on or after that date.

[36/2014]

(7) A company may —

- (a) at any time before —
  - (i) the date it is required under section 197(4) in force immediately before 3 January 2016 to lodge its first annual return after 30 January 2006; or
  - (ii) the expiry of 6 months from 30 January 2006,whichever is the earlier; or

(b) within such longer period as the Registrar may, if he or she thinks fit in the circumstances of the case, allow, file with the Registrar a notice in the prescribed form of its share capital.

[36/2014]

(8) Unless a company has filed a notice of its share capital under subsection (7), the Registrar may for the purposes of the records maintained by the Authority adopt, as the share capital of the company, the aggregate nominal value of the shares issued by the company as that value appears in the Authority's records immediately before 30 January 2006.

### **Return as to allotments by private companies**

**63.**—(1) A private company may allot new shares, other than a deemed allotment, by lodging with the Registrar a return of the allotment in the prescribed form, which must include the following particulars:

- (a) the number of the shares comprised in the allotment;
- (b) the amount (if any) paid or deemed to be paid on the allotment of each share;
- (c) the amount (if any) unpaid on each share referred to in paragraph (b);
- (d) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and
- (e) the full name, identification, nationality (if such identification or nationality, as the case may be, is required by the Registrar) and address of, and the number and class of shares held by each of its members.

[36/2014]

(2) An allotment of shares, other than a deemed allotment, by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(3) In this section and section 63A, “deemed allotment” means an issue of shares without formal allotment to subscribers to the constitution.

[36/2014]

### **Return as to allotments by public companies**

**63A.**—(1) Where a public company makes any allotment of its shares, other than a deemed allotment, the company must within 14 days thereafter lodge with the Registrar a return of the allotments stating —

- (a) the number of the shares comprised in the allotment;
- (b) the amount (if any) paid or deemed to be paid on the allotment of each share;
- (c) the amount (if any) unpaid on each share referred to in paragraph (b);
- (d) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and
- (e) the full name, identification, nationality (if such identification or nationality, as the case may be, is required by the Registrar) and address of, and the number and class of shares held by each of the 50 members who, following the allotment, hold the most number of shares in the company (excluding treasury shares).

[36/2014]

(2) A return of allotment mentioned in subsection (1) by a public company, the shares of which are listed on an approved exchange in Singapore or any securities exchange outside Singapore, need not state the particulars specified in subsection (1)(e).

[36/2014; 4/2017]

(3) If default is made in complying with this section, every officer of the public company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250.

[36/2014]

**Lodgment of documents in relation to allotment**

**63B.**—(1) Where shares are allotted by a company as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company must lodge with the return of allotment the contract evidencing the entitlement of the allottee or a copy of any such contract certified as prescribed.

[36/2014]

(2) If a certified copy of a contract is lodged, the original contract duly stamped must if the Registrar so requests be produced at the same time to the Registrar.

[36/2014]

(3) Where shares are allotted as fully or partly paid up otherwise than in cash and the allotment is made —

- (a) pursuant to a contract not reduced to writing;
- (b) pursuant to a provision in the constitution; or
- (c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders, or in pursuance of the application of moneys held by the company in an account or reserve in paying up unissued shares to which the shareholders have become entitled,

the company must lodge with the Registrar the document specified in subsection (4) within the time specified in subsection (5).

[36/2014]

(4) The document referred to in subsection (3) is —

- (a) a statement of prescribed particulars; or
- (b) in lieu of the statement, where the shares are allotted pursuant to a scheme of arrangement approved by the Court under section 210, a copy of the order of the Court.

[36/2014]

(5) The company must lodge the document specified in subsection (4) at the same time and together with the return of allotment.

[36/2014]

(6) If default is made in complying with this section, every officer of a company who is in default shall each be guilty of an offence and

shall each be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250.

[36/2014]

### **Notice of increase in total amount paid up on shares**

**63C.** Where a private company issues any partly paid or unpaid share of any class and the company subsequently receives all or any part of the unpaid amount with respect to the share, the company must lodge with the Registrar a notice in the prescribed form with respect to the total amount of such payments and the increase in the total amount paid up on the relevant class of shares within 14 days after the payment.

[36/2014]

### **Rights and powers attaching shares**

**64.—**(1) Subject to subsections (2) and (3), sections 21 and 76J, and any written law to the contrary, a share in a company confers on the holder of the share the right to one vote on a poll at a meeting of the company on any resolution.

[36/2014]

(2) A company's constitution may provide that a member is not entitled to vote unless all calls or other sums personally payable by the member in respect of shares in the company have been paid.

[36/2014]

(3) Subject to subsection (4) and section 64A, a right specified in subsection (1) may be negated, altered, or added to by the constitution of the company.

[36/2014]

(4) Despite subsection (3), the right of a holder of a specified share of a company to at least one vote on a poll at a meeting of the company on the following resolutions may not be negated or altered:

- (a) a resolution to wind up the company voluntarily under section 160 of the Insolvency, Restructuring and Dissolution Act 2018; or
- (b) a resolution to vary any right attached to a specified share and conferred on the holder.

[36/2014; 40/2018]

(5) In subsection (4), “specified share” means a share in the company, by whatever name called which, but for that subsection, does not entitle the holder thereof to the right to vote at a general meeting of the company.

[36/2014]

(6) This section does not operate so as to limit or derogate from the rights of any person under section 74.

[36/2014]

### **Issue of shares with different voting rights by public company**

**64A.**—(1) Different classes of shares in a public company may be issued only if —

- (a) the issue of the class or classes of shares is provided for in the constitution of the public company; and
- (b) the constitution of the public company sets out in respect of each class of shares the rights attached to that class of shares.

[36/2014]

(2) Without limiting subsection (1) but subject to the conditions of subsection (1)(a) and (b), shares in a public company may —

- (a) confer special, limited, or conditional voting rights; or
- (b) not confer voting rights.

[36/2014]

(3) Despite anything in subsection (1) or (2), a public company must not undertake any issuance of shares in the public company that confers special, limited or conditional voting rights, or that confers no voting rights unless it is approved by the members of the public company by special resolution.

[36/2014]

(4) Where a public company has one or more classes of shares that confer special, limited or conditional voting rights, or that confer no voting rights, the notice of any general meeting required to be given to a person entitled to receive notice of the meeting must specify the special, limited or conditional voting rights, or the absence of voting rights, in respect of each such class of shares.

[36/2014]

(5) This section does not operate so as to limit or derogate from the rights of any person under section 74.

[36/2014]

(6) Nothing in this section affects the right of a private company, subject to its constitution, to issue shares of different classes, including shares conferring special, limited or conditional voting rights or no voting rights, as the case may be.

[36/2014]

### **Differences in calls and payments, etc.**

**65.**—(1) A company if so authorised by its constitution 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 a 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.

[36/2014]

### **Reserve liability**

(2) A limited company may by special resolution determine that any portion of its share capital which has not been already called up is not capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital is not capable of being called up except in the event and for the purposes of the company being wound up, but no such resolution affects the rights of any person acquired before the passing of the resolution.

### **Share warrants**

**66.**—(1) A company must not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant.

(2) The bearer of a share warrant issued before 29 December 1967 is, in the 2-year period after 1 July 2015, entitled to surrender it for cancellation and to have the bearer's name entered in the register of members.

[36/2014]

(3) The company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant issued before 29 December 1967 in respect of the shares therein specified without the warrant being surrendered and cancelled.

[36/2014]

(4) A company must cancel any share warrant which is issued by a company before 29 December 1967 that is unaccounted for by the expiry of the 2-year period mentioned in subsection (2), and the company is not responsible for any loss incurred by any person by reason of such cancellation.

[36/2014]

### **Use of share capital to pay expenses incurred in issue of new shares**

**67.**—(1) A company may use its share capital to pay any expenses (including brokerage or commission) incurred directly in the issue of new shares.

[36/2014]

(2) A payment made under subsection (1) is not to be taken as reducing the amount of share capital of the company.

[36/2014]

### **Issue of shares for no consideration**

**68.** A company having a share capital may issue shares for which no consideration is payable to the issuing company.

[36/2014]

**69. to 69F.** [Repealed by Act 21 of 2005]

### **Redeemable preference shares**

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

redeemed and the redemption may be effected only on such terms and in such manner as is provided by the constitution.

[36/2014]

(2) [*Deleted by Act 36 of 2014*]

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

(4) The shares must not be redeemed out of the capital of the company unless —

(a) all the directors have made a solvency statement in relation to such redemption; and

(b) the company has lodged a copy of the statement with the Registrar.

(5) To avoid doubt, shares redeemed out of proceeds of a fresh issue of shares issued for the purpose of redemption are not to be treated as having been redeemed out of the capital of the company.

[36/2014]

(6) A private company may redeem any redeemable preference shares by lodging a prescribed notice of redemption with the Registrar.

[36/2014]

(7) A redemption of any redeemable preference shares by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(8) If a public company redeems any redeemable preference shares, it must within 14 days after doing so give notice thereof to the Registrar specifying the shares redeemed.

[36/2014]

### **Power of company to alter its share capital**

**71.**—(1) Subject to subsections (1B) and (1C), a company, if so authorised by its constitution, may in general meeting alter its share capital in any one or more of the following ways:

(a) [*Deleted by Act 21 of 2005*]

(b) consolidate and divide all or any of its share capital;

- (c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares;
- (d) subdivide its shares or any of them, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel the number of 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 person or which have been forfeited and diminish the amount of its share capital by the number of the shares so cancelled.

[36/2014]

(1A) A public company which alters its share capital may lodge with the Registrar a notice of the alteration in the prescribed form.

[36/2014]

(1B) A private company may alter its share capital by lodging a notice of alteration in the prescribed form with the Registrar.

[36/2014]

(1C) An alteration of share capital of a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

## **Cancellations**

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

## **As to share capital of unlimited company on re-registration**

(3) An unlimited company having a share capital may by any resolution passed for the purposes of section 30(1) —

- (a) increase the amount of its share capital by increasing the issue price of each of its shares, but subject to the condition that no part of the increased capital is capable of being called up except in the event and for the purposes of the company being wound up; and

- (b) in addition or alternatively, provide that a specified portion of its uncalled share capital is not capable of being called up except in the event and for the purposes of the company being wound up.

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

**72.** Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other written law or of the constitution of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Court may, upon application made 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 to do so, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both and upon a copy of the order being lodged with the Registrar those shares are deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

[36/2014]

### **Redenomination of shares**

**73.—(1)** A company having a share capital may by ordinary resolution convert its share capital or any class of shares from one currency to another currency.

[36/2014]

(2) A resolution under this section may authorise a company having a share capital to redenominate its share capital —

- (a) on more than one occasion; and  
(b) at a specified time or under specified circumstances.

[36/2014]

(3) The redenomination must be made at a spot rate of exchange specified in the resolution.

[36/2014]

(4) The rate mentioned in subsection (3) must be either —

- (a) a rate prevailing on a day specified in the resolution; or

- (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.

[36/2014]

(5) The day or period specified for the purposes of subsection (4) must be within the period of 28 days ending on the day before the resolution is passed.

[36/2014]

(6) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

[36/2014]

(7) Redenomination in accordance with a resolution under this section takes effect —

- (a) on the day on which the resolution is passed; or  
(b) on such later day as may be determined in accordance with the resolution.

[36/2014]

(8) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.

[36/2014]

(9) A company's constitution may exclude or restrict the exercise of a power conferred by this section.

[36/2014]

(10) In this section and sections 73A and 73B, "redenomination" means the conversion of share capital or any class of shares from one currency to another.

[36/2014]

### **Effect of redenomination**

**73A.**—(1) A redenomination of shares does not affect —

- (a) any rights or obligations of members under the company's constitution or any restrictions affecting members under the company's constitution; or  
(b) any entitlement to dividends (including any entitlement to dividends in a particular currency), voting rights and

liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).

[36/2014]

(2) For the purposes of subsection (1), the reference to a company's constitution includes the terms on which any shares of the company are allotted or held.

[36/2014]

### **Notice of redenomination**

**73B.**—(1) Within 14 days after passing a resolution under section 73, a company must deliver a notice in the specified form to the Registrar for registration in relation to the redenomination.

[36/2014]

(2) The notice must include the following information with respect to the company's share capital as redenominated by the resolution:

- (a) the total number of issued shares in the company;
- (b) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid on the total number of issued shares in the company;
- (c) the total amount of the company's issued share capital; and
- (d) for each class of shares —
  - (i) the particulars specified in subsection (3);
  - (ii) the total number of issued shares in the class;
  - (iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid on the total number of issued shares in the class; and
  - (iv) the total amount of issued share capital of the class.

[36/2014]

(3) The particulars referred to in subsection (2)(d)(i) are —

- (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
- (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;

(c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up of the company); and

(d) whether or not shares in the class are redeemable shares.

[36/2014]

(4) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250.

[36/2014]

### **Rights of holders of classes of shares**

**74.**—(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the constitution for authorising the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and pursuant to that provision, the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 5% of the total number of issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation does not have effect until confirmed by the Court.

[36/2014]

(1A) For the purposes of subsection (1), any of the company's issued shares held as treasury shares is to be disregarded.

[36/2014]

(2) An application is not invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.

(3) The application must be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made on behalf of the

shareholders entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(4) On the application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation, as the case may be, and must, if not so satisfied, confirm it and the decision of the Court is final.

(5) The company must, within 14 days after the making of an order by the Court on any such application, lodge a copy of the order with the Registrar and if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(6) The issue by a company of preference shares ranking *pari passu* with existing preference shares issued by the company is deemed to be a variation of the rights attached to those existing preference shares unless the issue of the firstmentioned shares was authorised by the terms of issue of the existing preference shares or by the constitution of the company in force at the time the existing preference shares were issued.

[36/2014]

(7) For the purposes of this section, the alteration of any provision in the constitution of a company which affects or relates to the manner in which the rights attaching to the shares of any class may be varied or abrogated is deemed to be a variation or abrogation of the rights attached to the shares of that class.

[36/2014]

(8) This section does not operate so as to limit or derogate from the rights of any person to obtain relief under section 216.

### **Conversion of shares**

**74A.**—(1) Subject to this section and sections 64A and 75, a company the share capital of which is divided into different classes of

shares may make provision in its constitution to authorise the conversion of one class of shares into another class of shares.

[36/2014]

(2) A public company may convert one class of shares (*A*) into another class of shares (*B*) by special resolution only if the constitution of the public company —

(a) permits *B* to be issued; and

(b) sets out the rights attached to *B*.

[36/2014]

(3) A private company may convert shares from one class to another by lodging a notice of conversion in the prescribed form with the Registrar.

[36/2014]

(4) A conversion of shares by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(5) Section 74 applies where a conversion of shares undertaken by a company involves a variation or an abrogation of the rights attached to any class of shares in the company.

[36/2014]

(6) Despite anything in this section, a share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

[36/2014]

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

**75.**—(1) No company may allot any preference shares or convert any issued shares into preference shares unless there are set out in its constitution the rights of the holders of those shares with respect to 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.

[36/2014]

(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 and shall be liable on conviction to a fine not exceeding \$2,000.

### **Company financing dealings in its shares, etc.**

**76.**—(1) Except as otherwise expressly provided by this Act, a public company or a company whose holding company or ultimate holding company is a public company must not, whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —

- (a) the acquisition by any person, whether before or at the same time as the giving of financial assistance, of —
  - (i) shares or units of shares in the company; or
  - (ii) shares or units of shares in a holding company or ultimate holding company (as the case may be) of the company; or
- (b) the proposed acquisition by any person of —
  - (i) shares or units of shares in the company; or
  - (ii) shares or units of shares in a holding company or ultimate holding company (as the case may be) of the company.

[36/2014]

(1A) Except as otherwise expressly provided by this Act, a company must not —

- (a) whether directly or indirectly, in any way —
  - (i) acquire shares or units of shares in the company; or
  - (ii) purport to acquire shares or units of shares in a holding company or ultimate holding company, as the case may be, of the company; or
- (b) whether directly or indirectly, in any way, lend money on the security of —
  - (i) shares or units of shares in the company; or

- (ii) shares or units of shares in a holding company or ultimate holding company, as the case may be, of the company.

[36/2014]

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt or otherwise.

(3) For the purposes of this section, a company is taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in subsection (1) (called in this subsection the relevant purpose) if —

- (a) the company gave the financial assistance for purposes that included the relevant purpose; and
- (b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

[36/2014]

(4) For the purposes of this section, a company is taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in subsection (1) if, when the financial assistance was given to a person, the company was aware that the financial assistance would financially assist —

- (a) the acquisition by a person of shares or units of shares in the company; or
- (b) where shares in the company had already been acquired — the payment by a person of any unpaid amount of the subscription payable for the shares, or the payment of any calls on the shares.

[36/2014]

(5) If a company contravenes subsection (1) or (1A), the company shall not be guilty of an offence, despite section 407, but each officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both.

[36/2014]

(6) Where a person is convicted of an offence under subsection (5) and the Court by which the person is convicted is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence, that Court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or other person (as the case may be) of such amount as the Court specifies, and any such order may be enforced as if it were a judgment of the Court.

(7) The power of a Court under section 391 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (6) from the liability to have such an order made against the person.

(8) Nothing in subsection (1) or (1A) prohibits —

- (a) a distribution of a company's assets by way of dividends lawfully made;
- (aa) a distribution in the course of a company's winding up;
- (b) a payment made by a company pursuant to a reduction of capital in accordance with Division 3A of this Part;
- (c) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;
- (d) anything done pursuant to an order of Court made under section 210;
- (e) anything done under an arrangement made pursuant to section 178 of the Insolvency, Restructuring and Dissolution Act 2018;
- (f) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of section 187 of the Insolvency, Restructuring and Dissolution Act 2018;

- (g) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it —
  - (i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by any charge over the property of that company; or
  - (ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;
- (ga) the giving by a company in good faith and in the ordinary course of commercial dealing of any representation, warranty or indemnity in relation to an offer to the public of, or an invitation to the public to subscribe for or purchase, shares or units of shares in that company;
- (h) the purchase by a company of shares in the company pursuant to an order of a Court;
- (i) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for any amount payable to the company in respect of the shares;
- (j) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company permitting the subscriber to make payments for the shares by instalments;
- (k) an allotment of bonus shares;
- (l) a redemption of redeemable shares of a company in accordance with the company's constitution; or
- (m) the payment of some or all of the costs by a company listed on an approved exchange in Singapore or any securities

exchange outside Singapore associated with a scheme, an arrangement or a plan under which any shareholder of the company may purchase or sell shares for the sole purpose of rounding off any odd-lots which the shareholder owns,

but nothing in this subsection —

- (n) is to be construed as implying that a particular act of a company would, but for this subsection, be prohibited by subsection (1) or (1A); or
- (o) is to be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares or units of shares.

[36/2014; 4/2017; 40/2018]

(8A) For the purposes of subsection (8)(m) —

- (a) an “odd-lot” means any amount of shares in the company which is less than the amount of shares constituting a board lot;
- (b) a “board lot” means a standard unit of trading of the securities exchange on which the company is listed; and
- (c) the reference to “rounding off any odd-lots” includes an act by a shareholder, who owns only odd-lots in a company, disposing all such odd-lots.

[36/2014]

(9) Nothing in subsection (1) or (1A) prohibits —

- (a) the making of a loan, or the giving of a guarantee or the provision of security in connection with one or more loans made by one or more other persons, by a company in the ordinary course of its business where the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore and where —
  - (i) the lending of money, or the giving of guarantees or the provision of security in connection with loans

made by other persons, is done in the course of such activities; and

- (ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, that loan is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise;
- (b) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company to be held by or for the benefit of employees of the company or of a corporation that is related to the company, including any director holding a salaried employment or office in the company or in the corporation; or
- (c) the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.

[36/2014]

(9A) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

- (a) the amount of the financial assistance, together with any other financial assistance given by the company under this subsection repayment of which remains outstanding, would not exceed 10% of the aggregate of —
  - (i) the total paid-up capital of the company; and
  - (ii) the reserves of the company,as disclosed in the most recent financial statements of the company that comply with section 201;

- (b) the company receives fair value in connection with the financial assistance;
- (c) the board of directors of the company passes a resolution that —
  - (i) the company should give the assistance;
  - (ii) giving the assistance is in the best interests of the company; and
  - (iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;
- (d) the resolution sets out in full the grounds for the directors' conclusions;
- (e) all the directors of the company make a solvency statement in relation to the giving of the financial assistance;
- (f) within 10 business days of providing the financial assistance, the company sends to each member a notice containing particulars of —
  - (i) the class and number of shares or units of shares in respect of which the financial assistance was or is to be given;
  - (ii) the consideration paid or payable for those shares or units of shares;
  - (iii) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner; and
  - (iv) the nature and, if quantifiable, the amount of the financial assistance; and
- (g) not later than the business day next following the day when the notice mentioned in paragraph (f) is sent to members of the company, the company lodges with the Registrar a copy of that notice and a copy of the solvency statement mentioned in paragraph (e).

[36/2014]

(9B) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

- (a) the board of directors of the company passes a resolution that —
  - (i) the company should give the assistance;
  - (ii) giving the assistance is in the best interests of the company; and
  - (iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;
- (b) the resolution sets out in full the grounds for the directors' conclusions;
- (c) all the directors of the company make a solvency statement in relation to the giving of the financial assistance;
- (d) not later than the business day next following the day when the resolution mentioned in paragraph (a) is passed, the company sends to each member having the right to vote on the resolution mentioned in paragraph (a) a notice containing particulars of —
  - (i) the directors' resolution mentioned in paragraph (a);
  - (ii) the class and number of shares or units of shares in respect of which the financial assistance is to be given;
  - (iii) the consideration payable for those shares or units of shares;
  - (iv) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner;
  - (v) the nature and, if quantifiable, the amount of the financial assistance; and

- (vi) such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the company and its members of the proposed transaction;
- (e) a resolution is passed —
  - (i) by all the members of the company present and voting either in person or by proxy at the relevant meeting; or
  - (ii) if the resolution is proposed to be passed by written means under section 184A, by all the members of the company,to give that assistance;
- (f) not later than the business day next following the day when the resolution mentioned in paragraph (e) is passed, the company lodges with the Registrar a copy of that resolution and a copy of the solvency statement mentioned in paragraph (c); and
- (g) the financial assistance is given not more than 12 months after the resolution mentioned in paragraph (e) is passed.

[36/2014]

(9BA) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

- (a) giving the assistance does not materially prejudice —
  - (i) the interests of the company or its shareholders; or
  - (ii) the company's ability to pay its creditors;
- (b) the board of directors of the company passes a resolution that —
  - (i) the company should give the assistance; and

- (ii) the terms and conditions under which the assistance is proposed to be given are fair and reasonable to the company;
- (c) the resolution sets out in full the grounds for the directors' conclusions; and
- (d) the company lodges with the Registrar a copy of the resolution mentioned in paragraph (b).

[36/2014]

(9C) A company must not give financial assistance under subsection (9A) or (9B) if, before the assistance is given —

- (a) any of the directors who voted in favour of the resolution under subsection (9A)(c) or (9B)(a), respectively —
  - (i) ceases to be satisfied that the giving of the assistance is in the best interests of the company; or
  - (ii) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company; or
- (b) any of the directors no longer has reasonable grounds for any of the opinions expressed in the solvency statement.

(9CA) A company must not give financial assistance under subsection (9BA) if, before the assistance is given, any of the directors who voted in favour of the resolution under subsection (9BA)(b) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company.

[36/2014]

(9D) A director of a company is not relieved of any duty to the company under section 157 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company, by —

- (a) the passing of a resolution by the board of directors of the company under subsection (9A) or (9BA) for the giving of the financial assistance; or
- (b) the passing of a resolution by the board of directors of the company, and the passing of a resolution by the members of the company, under subsection (9B) for the giving of the financial assistance.

[36/2014]

(10) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company if —

- (a) the company, by special resolution, resolves to give financial assistance for the purpose of or in connection with, that acquisition;
- (b) where —
  - (i) the company is a subsidiary of a listed corporation;  
or
  - (ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Singapore,  
the listed corporation or the ultimate holding company (as the case may be) has, by special resolution, approved the giving of the financial assistance;
- (c) the notice specifying the intention to propose the resolution referred to in paragraph (a) as a special resolution sets out —
  - (i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and
  - (ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of

corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations,

and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or any class of those creditors or members;

- (d) the notice specifying the intention to propose the resolution referred to in paragraph (b) as a special resolution is accompanied by a copy of the notice, and a copy of the statement, mentioned in paragraph (c);
- (e) not later than the day next following the day when the notice mentioned in paragraph (c) is despatched to members of the company there is lodged with the Registrar a copy of that notice and a copy of the statement that accompanied that notice;
- (f) the notice mentioned in paragraph (c) and a copy of the statement mentioned in that paragraph are sent to —
  - (i) all members of the company;
  - (ii) all trustees for debenture holders of the company;  
and
  - (iii) if there are no trustees for, or for a particular class of, debenture holders of the company — all debenture holders, or all debenture holders of that class (as the case may be) of the company whose names are, at the

time when the notice is despatched, known to the company;

- (g) the notice mentioned in paragraph (d) and the accompanying documents are sent to —
- (i) all members of the listed corporation or of the ultimate holding company;
  - (ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company; and
  - (iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company — all debenture holders or debenture holders of that class (as the case may be) of the listed corporation or of the ultimate holding company whose names are, at the time when the notice is despatched, known to the listed corporation or the ultimate holding company;
- (h) within 21 days after the date on which the resolution mentioned in paragraph (a) is passed or, in a case to which paragraph (b) applies, the date on which the resolution referred to in that paragraph is passed, whichever is the later, a notice —
- (i) setting out the terms of the resolution mentioned in paragraph (a); and
  - (ii) stating that any of the persons referred to in subsection (12) may, within the period mentioned in that subsection, make an application to the Court opposing the giving of the financial assistance,
- is published in a daily newspaper circulating generally in Singapore;
- (i) no application opposing the giving of the financial assistance is made within the period mentioned in subsection (12) or, if such an application or applications has or have been made, the application or each of the

applications has been withdrawn or the Court has approved the giving of the financial assistance; and

- (j) the financial assistance is given in accordance with the terms of the resolution mentioned in paragraph (a) and not earlier than —
  - (i) in a case to which sub-paragraph (ii) does not apply — the expiration of the period mentioned in subsection (12); or
  - (ii) if an application or applications has or have been made to the Court within that period —
    - (A) where the application or each of the applications has been withdrawn — the withdrawal of the application or of the last of the applications to be withdrawn; or
    - (B) in any other case — the decision of the Court on the application or applications.

[36/2014]

(10A) If the resolution mentioned in subsection (10)(a) or (b) is proposed to be passed by written means under section 184A, subsection (10)(f) or (g) (as the case may be) must be complied with at or before the time —

- (a) agreement to the resolution is sought in accordance with section 184C; or
- (b) documents referred to in section 183(3A) in respect of the resolution are served on or made accessible to members of the company in accordance with section 183(3A),

as the case may be.

(11) Where, on application to the Court by a company, the Court is satisfied that the provisions of subsection (10) have been substantially complied with in relation to a proposed giving by the company of financial assistance of a kind mentioned in that subsection, the Court may, by order, declare that the provisions of that subsection have been complied with in relation to the proposed giving by the company of financial assistance.

(12) Where a special resolution mentioned in subsection (10)(a) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice mentioned in subsection (10)(h) —

- (a) by a member of the company;
- (b) by a trustee for debenture holders of the company;
- (c) by a debenture holder of the company;
- (d) by a creditor of the company;
- (e) if subsection (10)(b) applies by —
  - (i) a member of the listed corporation or ultimate holding company that passed a special resolution mentioned in that subsection;
  - (ii) a trustee for debenture holders of that listed corporation or ultimate holding company;
  - (iii) a debenture holder of that listed corporation or ultimate holding company; or
  - (iv) a creditor of that listed corporation or ultimate holding company; or
- (f) by the Registrar.

(13) Where an application or applications opposing the giving of financial assistance by a company in accordance with a special resolution passed by the company is or are made to the Court under subsection (12), the Court —

- (a) must, in determining what order or orders to make in relation to the application or applications, have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors of the company or of any class of them; and
- (b) must not make an order approving the giving of the financial assistance unless the Court is satisfied that —

- (i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance; and
- (ii) the proposed financial assistance would not, after taking into account the financial position of the company (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the company or of any class of those creditors or members,

and may do all or any of the following:

- (iii) if it thinks fit, make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;
- (iv) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by a subsidiary of the company) of the interests of dissentient members;
- (v) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks expedient;
- (vi) make an order disapproving the giving of the financial assistance or, subject to paragraph (b), an order approving the giving of the financial assistance.

(14) Where the Court makes an order under this section in relation to the giving of financial assistance by a company, the company must, within 14 days after the order is made, lodge with the Registrar a copy of the order.

(15) The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company, and the approval by the Court of the

giving of the financial assistance, do not relieve a director of the company of any duty to the company under section 157 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

(16) A reference in this section to an acquisition or proposed acquisition of shares or units of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

(17) This section does not apply in relation to the doing of any act or thing pursuant to a contract entered into before 15 May 1987 if the doing of that act or thing would have been lawful if this Act had not been enacted.

### **Consequences of company financing dealings in its shares, etc.**

**76A.**—(1) The following contracts or transactions made or entered into in contravention of section 76 are void:

- (a) a contract or transaction by which a company acquires or purports to acquire its own shares or units of its own shares, or shares or units of shares in its holding company or ultimate holding company, as the case may be;
- (b) a contract or transaction by which a company lends money on the security of its own shares or units of its own shares, or on the security of shares or units of shares in its holding company or ultimate holding company, as the case may be.

*[36/2014]*

(1A) Subsection (1) does not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1).

*[36/2014]*

(2) Subject to subsection (1), a contract or transaction made or entered into in contravention of section 76, or a contract or transaction related to such contract or transaction, is voidable at the option of the company. The company may, subject to the following provisions of this section, avoid any contract or transaction to which

this subsection applies by giving written notice to the other party or parties to the contract or transaction.

(3) The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorise the member, holder of debentures, trustee or director to give a notice or notices under subsection (2) in the name of the company.

(4) Where —

- (a) a company makes or performs a contract, or engages in a transaction;
- (b) the contract is made or performed, or the transaction is engaged in, in contravention of section 76 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and
- (c) the Court is satisfied, on the application of the company or of any other person, that the company or that other person has suffered, or is likely to suffer, loss or damage as a result of —
  - (i) the making or performance of the contract or the engaging in of the transaction;
  - (ii) the making or performance of a related contract or the engaging in of a related transaction;
  - (iii) the contract or transaction being void by reason of subsection (1) or avoided under subsection (2); or
  - (iv) a related contract or transaction being void by reason of subsection (1) or avoided under subsection (2),

the Court may make such order or orders as it thinks just and equitable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the company or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way,

directly or indirectly, knowingly concerned in or party to the contravention.

- (5) The orders that may be made under subsection (4) include —
- (a) an order directing a person to refund money or return property to the company or to another person;
  - (b) an order directing a person to pay to the company or to another person a specified amount of the loss or damage suffered by the company or other person; and
  - (c) an order directing a person to indemnify the company or another person against any loss or damage that the company or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

(6) If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units in the company or in a holding company or ultimate holding company (as the case may be) of the company is given to a person —

- (a) the person to whom the certificate is given is not under any liability to have an order made against the person under subsection (4) by reason of any contract made or performed, or any transaction engaged in, by the person in reliance on the certificate; and
- (b) any such contract or transaction is not invalid, and is not voidable under subsection (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 76 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

[36/2014]

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or

transaction if the Court, on application by the company concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be) had not been complied with in relation to the financial assistance to which the certificate related.

[36/2014]

(8) For the purposes of subsection (7), a person is, in the absence of proof to the contrary, deemed to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In any proceeding, a document purporting to be a certificate given under subsection (6) is, in the absence of proof to the contrary, deemed to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under subsection (6) is, in the absence of proof to the contrary, deemed to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be) have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

[36/2014]

(12) It is a defence to a prosecution for an offence under subsection (11) if the defendant proves that at the time when the defendant signed the certificate he or she believed on reasonable grounds that all the requirements of section 76(9A), (9B), (9BA) or (10) (as the case may be) had been complied with in respect of the

proposed giving of financial assistance to which the certificate relates.

[36/2014]

(13) The power of a Court under section 391 to relieve a person to whom that section applies, wholly or partly and on such terms as the Court thinks fit, from a liability mentioned in that section extends to relieving a person against whom an order may be made under subsection (4) from the liability to have such an order made against the person.

(14) If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in section 76(1) or lends money as mentioned in section 76(1A)(b), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money is deemed for the purposes of this section to be related to the firstmentioned contract or transaction.

[36/2014]

(15) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court prevails.

### **Company may acquire its own shares**

**76B.**—(1) Despite section 76, a company may, in accordance with this section and sections 76C to 76G, purchase or otherwise acquire shares issued by it if it is expressly permitted to do so by its constitution.

[36/2014]

(2) This section and sections 76C to 76G apply to ordinary shares, stocks and preference shares.

(3) The total number of ordinary shares and stocks in any class that may be purchased or acquired by a company during the relevant

period must not exceed 20% (or such other percentage as the Minister may by notification prescribe) of the total number of ordinary shares and stocks of the company in that class ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E unless —

- (a) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or
- (b) the Court has, at any time during the relevant period, made an order under section 78I approving the reduction of share capital of the company.

[36/2014]

(3A) Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, the total number of ordinary shares and stocks of the company in any class is, despite subsection (3)(a) and (b), taken to be the total number of ordinary shares and stocks of the company in that class as altered by the special resolution of the company or the order of the Court, as the case may be.

(3B) The total number of preference shares in any class which are not redeemable under section 70 that may be purchased or acquired by a company during the relevant period must not exceed 20% (or such other percentage as the Minister may by notification prescribe) of the total number of non-redeemable preference shares of the company in that class ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E, unless —

- (a) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or
- (b) the Court has, at any time during the relevant period, made an order under section 78I approving the reduction of share capital of the company.

[36/2014]

(3C) Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, the total number of non-redeemable preference

shares of the company in any class is, despite subsection (3B)(a) and (b), taken to be the total number of non-redeemable preference shares of the company in that class as altered by the special resolution of the company or the order of the Court, as the case may be.

(3D) There is no limit on the number of redeemable preference shares that may be purchased or acquired by a company during the relevant period.

(3E) For the purposes of this section, any of the company's ordinary shares held as treasury shares is to be disregarded.

(4) In subsections (3), (3B) and (3D), "relevant period" means the period —

- (a) commencing from the date of a resolution passed pursuant to section 76C, 76D, 76DA or 76E (as the case may be); and
- (b) expiring on the date the next annual general meeting is or is required by law to be held, whichever is the earlier.

*[36/2014]*

(5) Ordinary shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E are, unless held in treasury in accordance with section 76H, deemed to be cancelled immediately on purchase or acquisition.

(5A) Preference shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E are deemed to be cancelled immediately on purchase or acquisition.

(6) On the cancellation of a share under subsection (5) or (5A), the rights and privileges attached to that share expire.

(7) A private company may purchase or acquire any of its shares under section 76C, 76D, 76DA or 76E by lodging the following with the Registrar:

- (a) a copy of a resolution mentioned in section 76C, 76D, 76DA or 76E;
- (b) a notice of purchase or acquisition in the prescribed form with the following particulars:
  - (i) the date of the purchase or acquisition;

- (ii) the number of shares purchased or acquired;
- (iii) the number of shares cancelled;
- (iv) the number of shares held as treasury shares;
- (v) the company's issued share capital before the purchase or acquisition;
- (vi) the company's issued share capital after the purchase or acquisition;
- (vii) the amount of consideration paid by the company for the purchase or acquisition of the shares;
- (viii) whether the shares were purchased or acquired out of the profits or the capital of the company;
- (ix) such other particulars as may be required in the prescribed form.

[36/2014]

(8) A purchase or acquisition by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(9) Where a public company purchases or acquires shares issued by it under section 76C, 76D, 76DA or 76E —

- (a) within 30 days after the passing of a resolution mentioned in section 76C, 76D, 76DA or 76E (as the case may be) the directors of the company must lodge with the Registrar a copy of the resolution;
- (b) within 30 days after the purchase or acquisition of the shares, the directors of the company must lodge a notice of purchase or acquisition in the prescribed form with the following particulars:
  - (i) the date of the purchase or acquisition;
  - (ii) the number of shares purchased or acquired;
  - (iii) the number of shares cancelled;
  - (iv) the number of shares held as treasury shares;

- (v) the company's issued share capital before the purchase or acquisition;
  - (vi) the company's issued share capital after the purchase or acquisition;
  - (vii) the amount of consideration paid by the company for the purchase or acquisition of the shares;
  - (viii) whether the shares were purchased or acquired out of the profits or the capital of the company;
  - (ix) such other particulars as may be required in the prescribed form; and
- (c) for the purposes of this section, shares are deemed to be purchased or acquired on the date on which the company would, apart from subsection (5), become entitled to exercise the rights attached to the shares.

[36/2014]

(10) Nothing in this section or in sections 76C to 76G is to be construed so as to limit or affect an order of the Court made under any section that requires a company to purchase or acquire its own shares.

### **Authority for off-market acquisition on equal access scheme**

**76C.**—(1) A company, whether or not it is listed on an approved exchange in Singapore or any securities exchange outside Singapore, may make a purchase or acquisition of its own shares otherwise than on an approved exchange in Singapore or any securities exchange outside Singapore (called in this section an off-market purchase) if the purchase or acquisition is made in accordance with an equal access scheme authorised in advance by the company in general meeting.

[36/2014; 4/2017]

(2) The notice specifying the intention to propose the resolution to authorise an off-market purchase must —

- (a) specify the maximum number of shares or the maximum percentage of ordinary shares authorised to be purchased or acquired;

- (b) determine the maximum price which may be paid for the shares;
- (c) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and
- (d) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[36/2014]

(3) The resolution authorising an off-market purchase mentioned in subsection (2) must state the particulars referred to in subsection (2)(a), (b) and (c).

(4) The authority for an off-market purchase referred to in subsection (2) may, from time to time, be varied or revoked by the company in general meeting.

(5) A resolution to confer or vary the authority for an off-market purchase under this section may determine the maximum price for purchase or acquisition by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(6) For the purposes of this section and sections 76D and 76DA, an "equal access scheme" means a scheme which satisfies all the following conditions:

- (a) the offers under the scheme are to be made to every person who holds shares to purchase or acquire the same percentage of their shares;
- (b) all of those persons have a reasonable opportunity to accept the offers made to them;
- (c) the terms of all the offers are the same except that there must be disregarded —

- (i) differences in consideration attributable to the fact that the offers relate to shares with different accrued dividend entitlements;
- (ii) differences in consideration attributable to the fact that the offers relate to shares with different amounts remaining unpaid; and
- (iii) differences in the offers introduced solely to ensure that each member is left with a whole number of shares.

### **Authority for selective off-market acquisition**

**76D.**—(1) A company may make a purchase or acquisition of its own shares otherwise than on a securities exchange and not in accordance with an equal access scheme (called in this section a selective off-market purchase) if the purchase or acquisition is made in accordance with an agreement authorised in advance under subsection (2).

[36/2014]

(2) The terms of the agreement for a selective off-market purchase must be authorised by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons, and subsections (3) to (13) apply with respect to that authority and to resolutions conferring it.

(3) The notice specifying the intention to propose a special resolution to authorise an agreement for a selective off-market purchase must —

- (a) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and
- (b) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

(4) The special resolution authorising a selective off-market purchase mentioned in subsection (2) must state the expiry date referred to in subsection (3)(a).

(4A) If the special resolution mentioned in subsection (2) is proposed to be passed by written means under section 184A —

- (a) a person whose shares are proposed to be purchased or acquired or any of the person's associated persons is not to be regarded as a member having the right to vote on the resolution at a general meeting of the company for the purposes of section 184A;
- (b) subsection (7) does not apply; but all documents referred to in this section must be given to all members having the right to vote on the resolution at a general meeting for the purposes of section 184A at or before the time —
  - (i) agreement to the resolution is sought in accordance with section 184C; or
  - (ii) documents referred to in section 183(3A) in respect of the resolution are served on or made accessible to them in accordance with section 183(3A),

as the case may be.

(5) The authority referred to in subsection (2) may, from time to time, be varied or revoked by a special resolution with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons.

(6) For the purposes of subsections (2) and (5) —

- (a) a member or any of the member's associated persons who holds any of the shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if the member or person votes in respect of them on a poll on the question whether the resolution should be passed, but also if the member or person votes on the resolution otherwise than on a poll;

- (b) despite anything in the company's constitution, any member of the company may demand a poll on that question; and
- (c) a vote and a demand for a poll by a person as proxy for a member or any of the member's associated persons are the same respectively as a vote and a demand by the member.

[36/2014]

(7) The special resolution mentioned in subsection (2) is not effective for the purposes of this section unless (if the proposed agreement is in writing) a copy of the agreement or (if not) a written memorandum of its terms is available for inspection by members of the company both —

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and
- (b) at the meeting itself.

(8) A memorandum of terms so made available must include the names of any members holding shares to which the agreement relates and where a member holds such shares as nominee for another person, the name of that other person; and a copy of the agreement so made available must have annexed to it a written memorandum specifying any such names which do not appear in the agreement itself.

(9) A company may agree to a variation of an existing agreement so approved, but only if the variation is authorised, before it is agreed to, by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons.

(10) Subsections (3) to (7) apply to the authority for a proposed variation as they apply to the authority for a proposed agreement except that a copy of the original agreement or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (7).

(11) The rights of a company under an agreement for a selective off-market purchase approved under this section are not capable of being assigned except by order of the Court made pursuant to any provision of this Act or any other written law.

(12) An agreement by a company to release its rights under an agreement for a selective off-market purchase approved under this section is void unless the terms of the release agreement are approved in advance before the agreement is entered into by a special resolution of the company with no votes being cast by any person whose shares are proposed to be purchased or acquired or by the person's associated persons; and subsections (3) to (7) apply to the approval for a proposed release agreement as they apply to authority for the proposed variation of an existing agreement.

(13) A resolution to confer or vary authority for a selective off-market purchase under this section may determine the maximum price for purchase or acquisition by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(14) In this section, "associated person", in relation to a person, means —

- (a) the person's spouse, child or stepchild; or
- (b) a person who would, by virtue of section 7(5), be treated as an associate of the firstmentioned person.

### **Contingent purchase contract**

**76DA.**—(1) A company may, whether or not it is listed on an approved exchange in Singapore or any securities exchange outside Singapore, make a purchase or acquisition of its own shares under a contingent purchase contract if the proposed contingent purchase contract is authorised in advance by a special resolution of the company.

[36/2014; 4/2017]

(2) Subject to subsection (3), the authority under subsection (1) may, from time to time, be varied or revoked by a special resolution of the company.

(3) The notice specifying the intention to propose a special resolution to authorise a contingent purchase contract must specify a date on which the authority is to expire and that date must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier.

(4) The special resolution mentioned in subsection (1) is invalid for the purposes of this section unless a copy of the proposed contingent purchase contract is available for inspection by members of the company —

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and

(b) at the meeting itself.

(5) A company may agree to a variation of an existing contingent purchase contract so approved if, and only if, the variation is authorised, before it is agreed to, by a special resolution of the company.

(6) Subsections (2), (3) and (4) apply to the authority for a proposed variation as they apply to the authority for a proposed contingent purchase contract, except that a copy of the original contract, together with any variations previously made, must also be available for inspection in accordance with subsection (4).

(7) The company may only make an offer to enter into a contingent purchase contract in accordance with all of the following conditions:

(a) the offer must be made to every person who holds shares of the same class in the company;

(b) the number of shares that a company is obliged or entitled to purchase or acquire under the contract from any person, in relation to the total number of shares of the same class held by that person, must be of the same proportion for

every person who holds shares of that class to whom the offer is made;

(c) the terms of all offers in respect of each class of shares must be the same.

(8) To avoid doubt, the company may purchase or acquire shares under a contingent purchase contract from any person whether or not the offer to enter into the contract was originally made to the person.

(9) In this section, “contingent purchase contract” means a contract entered into by a company and relating to any of its shares —

(a) which does not amount to a contract to purchase or acquire those shares; but

(b) under which the company may (subject to any condition) become entitled or obliged to purchase or acquire those shares.

### **Authority for market acquisition**

**76E.**—(1) A company must not make a purchase or acquisition of its own shares on a securities exchange (called in this section a market purchase) unless the purchase or acquisition has been authorised in advance by the company in general meeting.

(2) The notice specifying the intention to propose the resolution to authorise a market purchase must —

(a) specify the maximum number of shares or the maximum percentage of ordinary shares authorised to be purchased or acquired;

(b) determine the maximum price which may be paid for the shares;

(c) specify a date on which the authority is to expire, being a date that must not be later than the date on which the next annual general meeting of the company is or is required by law to be held, whichever is the earlier; and

- (d) specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.

[36/2014]

(3) The authority for a market purchase may be unconditional or subject to conditions and must state the particulars referred to in subsection (2)(a), (b) and (c).

(4) The authority for a market purchase may, from time to time, be varied or revoked by the company in general meeting but the variation must comply with subsections (2) and (3).

(5) A resolution to confer or vary authority for a market purchase under this section may determine the maximum price for purchase or acquisition by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

### **Payments to be made only if company is solvent**

**76F.**—(1) A payment made by a company in consideration of —

- (a) acquiring any right with respect to the purchase or acquisition of its own shares in accordance with section 76C, 76D, 76DA or 76E;
- (b) the variation of an agreement approved under section 76D or 76DA; or
- (c) the release of any of the company's obligations with respect to the purchase or acquisition of any of its own shares under an agreement approved under section 76D or 76DA,

may be made out of the company's capital or profits so long as the company is solvent.

(1A) A payment referred to in subsection (1)(a) includes any expenses (including brokerage or commission) incurred directly in the purchase or acquisition by the company of its own shares.

[36/2014]

(2) If the requirements in subsection (1) are not satisfied in relation to an agreement —

- (a) in a case within subsection (1)(a) — no purchase or acquisition by the company of its own shares pursuant to that agreement is lawful;
- (b) in a case within subsection (1)(b) — no such purchase or acquisition following the variation is lawful; and
- (c) in a case within subsection (1)(c) — the purported release is void.

(3) Every director or chief executive officer of a company who approves or authorises, the purchase or acquisition of the company's own shares or the release of obligations, knowing that the company is not solvent shall, without affecting any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years.

[36/2014]

(4) For the purposes of this section, a company is solvent if at the date of the payment mentioned in subsection (1) the following conditions are satisfied:

- (a) there is no ground on which the company could be found to be unable to pay its debts;
- (b) if —
  - (i) it is intended to commence winding up of the company within the period of 12 months immediately after the date of the payment, the company will be able to pay its debts in full within the period of 12 months after the date of commencement of the winding up; or
  - (ii) it is not intended so to commence winding up, the company will be able to pay its debts as they fall due

during the period of 12 months immediately after the date of the payment;

- (c) the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed purchase, acquisition, variation or release (as the case may be), become less than the value of its liabilities (including contingent liabilities).

[36/2014]

### **Reduction of capital or profits or both on cancellation of repurchased shares**

**76G.**—(1) Where under section 76C, 76D, 76DA or 76E, shares of a company are purchased or acquired, and cancelled under section 76B(5), the company must —

- (a) reduce the amount of its share capital where the shares were purchased or acquired out of the capital of the company;
- (b) reduce the amount of its profits where the shares were purchased or acquired out of the profits of the company; or
- (c) reduce the amount of its share capital and profits proportionately where the shares were purchased or acquired out of both the capital and the profits of the company,

by the total amount of the purchase price paid by the company for the shares cancelled.

[36/2014]

(2) For the purpose of subsection (1), the total amount of the purchase price referred to in that subsection includes any expenses (including brokerage or commission) incurred directly in the purchase or acquisition of the shares of a company which is paid out of the company's capital or profits under section 76F(1).

[36/2014]

**Treasury shares**

**76H.**—(1) Where ordinary shares or stocks are purchased or otherwise acquired by a company in accordance with sections 76B to 76G, the company may —

- (a) hold the shares or stocks (or any of them); or
- (b) deal with any of them, at any time, in accordance with section 76K.

(2) Where ordinary shares or stocks are held under subsection (1)(a) then, for the purposes of section 190 (Register and index of members) and section 196A (Electronic register of members), the company must be entered in the register as the member holding those shares or stocks.

[36/2014]

**Treasury shares: maximum holdings**

**76I.**—(1) Where a company has shares of only one class, the aggregate number of shares held as treasury shares must not at any time exceed 10% of the total number of shares of the company at that time.

(2) Where the share capital of a company is divided into shares of different classes, the aggregate number of the shares of any class held as treasury shares must not at any time exceed 10% of the total number of the shares in that class at that time.

(3) Where subsection (1) or (2) is contravened by a company, the company must dispose of or cancel the excess shares in accordance with section 76K before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow.

(4) In subsection (3), “the excess shares” means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

**Treasury shares: voting and other rights**

**76J.**—(1) This section applies to shares which are held by a company as treasury shares.

(2) The company must not exercise any right in respect of the treasury shares and any purported exercise of such a right is void.

(3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 210) and for the purposes of this Act, the company is to be treated as having no right to vote and the treasury shares are to be treated as having no voting rights.

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

(5) Nothing in this section is to be taken as preventing —

- (a) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or
- (b) the subdivision or consolidation of any treasury share into treasury shares of a greater or smaller number, if the total value of the treasury shares after the subdivision or consolidation is the same as the total value of the treasury share before the subdivision or consolidation, as the case may be.

[36/2014]

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares are to be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied.

### **Treasury shares: disposal and cancellation**

**76K.**—(1) Subject to subsection (1A), where shares are held by a private company as treasury shares, the company may at any time —

- (a) sell the shares (or any of them) for cash;
- (b) transfer the shares (or any of them) for the purposes of or pursuant to any share scheme, whether for employees, directors or other persons;

- (c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;
- (d) cancel the shares (or any of them); or
- (e) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

[36/2014]

(1A) A private company may cancel or dispose of treasury shares pursuant to subsection (1) by lodging a prescribed notice of the cancellation or disposal of treasury shares with the Registrar together with the prescribed fee.

[36/2014]

(1B) A cancellation or disposal of treasury shares by a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(1C) Where shares are held by a public company as treasury shares, the company may at any time —

- (a) sell the shares (or any of them) for cash;
- (b) transfer the shares (or any of them) for the purposes of or pursuant to any share scheme, whether for its employees, directors or other persons;
- (c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person;
- (d) cancel the shares (or any of them); or
- (e) sell, transfer or otherwise use the treasury shares for such other purposes as the Minister may by order prescribe.

[36/2014]

(1D) Where a public company cancels or disposes treasury shares in accordance with subsection (1C), the directors of the company must lodge with the Registrar a prescribed notice of the cancellation

or disposal of treasury shares together with the prescribed fee within 30 days after the cancellation or disposal of treasury shares.

[36/2014]

(2) In subsections (1)(a) and (1C)(a), “cash”, in relation to a sale of shares by a company, means —

- (a) cash (including foreign currency) received by the company;
- (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid;
- (c) a release of a liability of the company for a liquidated sum; or
- (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

[36/2014]

(3) But if the company receives a notice under section 215 (Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority) that a person desires to acquire any of the shares, the company must not, under subsection (1) or (1C) (as the case may be), sell or transfer the shares to which the notice relates except to that person.

[36/2014]

(4) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) or (1C) (as the case may be) without complying with section 78B (Reduction of share capital by private company), 78C (Reduction of share capital by public company) or 78I (Court order approving reduction).

[36/2014]

### **Options over unissued shares**

77.—(1) An option granted after 29 December 1967 by a public company which enables any person to take up unissued shares of the company after a period of 5 years has elapsed from the date on which the option was granted is void.

(1A) An option granted on or after 18 November 1998 by a public company which enables any employee of that company or its related

corporation (including any director holding a salaried office or employment in that company or corporation) to take up unissued shares of the company after a period of 10 years has elapsed from the date on which the option was granted is void and subsection (1) does not apply to such an option.

(2) Subsection (1) or (1A) does not apply in any case where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures.

### **Power of company to pay interest out of capital in certain cases**

**78.** Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of such share capital (except treasury shares) as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but —

- (a) no such payment may be made unless it is authorised, by the constitution or by special resolution, and is approved by the Court;
- (b) before approving any such payment, the Court may at the expense of the company appoint a person to inquire and report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;
- (c) the payment is to be made only for such period as is determined by the Court, but in no case extending beyond a period of 12 months after the works or buildings have been actually completed or the plant provided;
- (d) the rate of interest must in no case exceed 5% per annum or such other rate as is for the time being prescribed; and
- (e) the payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

[36/2014]

*Division 3A — Reduction of share capital***Preliminary**

**78A.**—(1) A company may reduce its share capital under the provisions of this Division in any way and, in particular, do all or any of the following:

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) cancel any paid-up share capital which is lost or unrepresented by available assets;
- (c) return to shareholders any paid-up share capital which is more than it needs.

(2) A company may not reduce its share capital in any way except by a procedure provided for it by the provisions of this Division.

(3) A company's constitution may exclude or restrict any power to reduce share capital conferred on the company by this Division.

[36/2014]

(4) In this Division —

“reduction information”, in relation to a proposed reduction of share capital by a special resolution of a company, means the following information:

- (a) the amount of the company's share capital that is thereby reduced;
- (b) the number of shares that are thereby cancelled;

“resolution date”, in relation to a resolution, means the date when the resolution is passed.

[36/2014]

(5) This Division does not apply to an unlimited company, and does not preclude such a company from reducing in any way its share capital.

(5A) This Division does not apply to any redemption of preference shares issued by a company under section 70(1) which results in a reduction in the company's share capital.

[36/2014]

(6) This Division does not apply to the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.

### **Reduction of share capital by private company**

**78B.**—(1) A private company limited by shares may reduce its share capital in any way by a special resolution if the company —

- (a) [*Deleted by Act 36 of 2014*]
- (b) meets the solvency requirements; and
- (c) meets such publicity requirements as may be prescribed by the Minister,

but the resolution and the reduction of the share capital take effect only as provided by section 78E.

[36/2014]

(2) Despite subsection (1), the company need not meet the solvency requirements if the reduction of share capital does not involve any of the following:

- (a) a reduction or distribution of cash or other assets by the company;
- (b) a release of any liability owed to the company.

[36/2014]

(3) For the purposes of subsection (1), the company meets the solvency requirements if —

- (a) all the directors of the company make a solvency statement in relation to the reduction of capital; and
- (b) the statement is made —
  - (i) in time for subsection (4)(a) to be complied with; but
  - (ii) not before the beginning of the period of 20 days ending with the resolution date.

[21/2005; 36/2014]

(4) Unless subsection (2) applies, the company —

(a) must —

(i) if the resolution for reducing share capital is a special resolution to be passed by written means under section 184A — ensure that every copy of the resolution served under section 183(3A) or 184C(1) (as the case may be) is accompanied by a copy of the solvency statement; or

(ii) if the resolution is a special resolution to be passed in a general meeting — throughout that meeting make the solvency statement or a copy of it available for inspection by the members at that meeting; and

(b) must, throughout the 6 weeks beginning with the resolution date, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

(5) The resolution does not become invalid by virtue only of a contravention of subsection (4), but every officer of the company who is in default shall be guilty of an offence.

(6) Any requirement under subsection (4)(b) ceases if the resolution is revoked.

### **Reduction of share capital by public company**

**78C.**—(1) A public company may reduce its share capital in any way by a special resolution if the company —

(a) [*Deleted by Act 36 of 2014*]

(b) meets the solvency requirements; and

(c) meets such publicity requirements as may be prescribed by the Minister,

but the resolution and the reduction of the share capital take effect only as provided by section 78E.

(2) Despite subsection (1), the company need not meet the solvency requirements if the reduction of share capital does not involve any of the following:

- (a) a reduction or distribution of cash or other assets by the company;
- (b) a release of any liability owed to the company.

[36/2014]

(3) The company meets the solvency requirements if —

- (a) all the directors of the company make a solvency statement in relation to the reduction of share capital;
- (b) the statement is made —
  - (i) in time for subsection (4)(a) to be complied with; but
  - (ii) not before the beginning of the period of 30 days ending with the resolution date; and

- (c) a copy of the solvency statement is lodged with the Registrar, together with the copy of the resolution required to be lodged with the Registrar under section 186, within 15 days beginning with the resolution date.

[36/2014]

(4) Unless subsection (2) applies, the company must —

- (a) throughout the meeting at which the resolution is to be passed — make the solvency statement or a copy of it available for inspection by the members at the meeting; and
- (b) throughout the 6 weeks beginning with the resolution date — make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

(5) The resolution does not become invalid by virtue only of a contravention of subsection (4), but every officer of the company who is in default shall be guilty of an offence.

(6) Any requirement under subsection (3)(c) or (4)(b) ceases if the resolution is revoked.

**Creditor's right to object to company's reduction**

**78D.**—(1) This section applies where a company has passed a special resolution for reducing share capital under section 78B or 78C.

(2) Any creditor of the company to which this subsection applies may, at any time during the 6 weeks beginning with the resolution date, apply to the Court for the resolution to be cancelled.

(3) Subsection (2) applies to a creditor of the company who, at the date of the creditor's application to 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.

(4) When an application is made under subsection (2) —

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

**Position at end of period for creditor objections**

**78E.**—(1) Where —

- (a) a private company passes a special resolution for reducing its share capital and meets the requirements under section 78B(1)(c) and the solvency requirements under section 78B(3) (if applicable); and
- (b) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

for the reduction of share capital to take effect, the company must lodge with the Registrar —

- (c) a copy of the resolution in accordance with section 186; and
- (d) the following documents after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date:

- (i) a copy of the solvency statement under section 78B(3) (if applicable);
- (ii) a statement made by the directors confirming that the requirements under section 78B(1)(c) and the solvency requirements under section 78B(3) (if applicable) have been complied with, and that no application for cancellation of the resolution has been made;
- (iii) a notice containing the reduction information.

[36/2014]

(2) Where —

- (a) a public company passes a special resolution for reducing its share capital and meets the requirements under section 78C(1)(c) and the solvency requirements (if applicable) under section 78C(3); and
- (b) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

for the reduction of share capital to take effect, the company must lodge with the Registrar the following documents after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date:

- (c) a statement made by the directors confirming that the requirements under section 78C(1)(c) and the solvency requirements under section 78C(3) (if applicable) have been complied with, and that no application for cancellation of the resolution has been made;
- (d) a notice containing the reduction information.

[36/2014]

(3) Where —

- (a) a private company passes a special resolution for reducing its share capital and meets the requirements under section 78B(1)(c) and the solvency requirements under section 78B(3) (if applicable); but

- (b) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

for the reduction of share capital to take effect, the following conditions must be satisfied:

- (c) the company has complied with section 78D(4)(b) (notification to Registrar) in relation to all such applications;
- (d) the proceedings in relation to each such application have been brought to an end —
  - (i) by the dismissal of the application under section 78F; or
  - (ii) without determination (for example, because the application has been withdrawn);
- (e) the company has, within 15 days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (d), lodged with the Registrar —
  - (i) a statement made by the directors confirming that the requirements under section 78B(1)(c), the solvency requirements under section 78B(3) (if applicable) and section 78D(4)(b) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the dismissal of the application or without determination;
  - (ii) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and
  - (iii) a notice containing the reduction information.

[36/2014]

(4) Where —

- (a) a public company passes a special resolution for reducing its share capital and meets the requirements under

section 78C(1)(c) and the solvency requirements under section 78C(3) (if applicable); but

- (b) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

for the reduction of capital to take effect, the following conditions must be satisfied:

- (c) the company has complied with section 78D(4)(b) (notification to Registrar) in relation to all such applications;
- (d) the proceedings in relation to each such application have been brought to an end —
  - (i) by the dismissal of the application under section 78F; or
  - (ii) without determination (for example, because the application has been withdrawn);
- (e) the company has, within 15 days beginning with the date on which the last such proceedings were brought to an end in accordance with paragraph (d), lodged with the Registrar —
  - (i) a statement made by the directors confirming that the requirements under section 78C(1)(c), the solvency requirements under section 78C(3) (if applicable) and section 78D(4) have been complied with, and that the proceedings in relation to each such application have been brought to an end by the dismissal of the application or without determination;
  - (ii) in relation to each such application which has been dismissed by the Court, a copy of the order of the Court dismissing the application; and
  - (iii) a notice containing the reduction information.

[36/2014]

(5) The resolution in a case referred to in subsection (1), (2), (3) or (4), and the reduction of the share capital, take effect when the Registrar has recorded the information lodged with him or her in the appropriate register.

### **Power of Court where creditor objection made**

**78F.**—(1) An application by a creditor under section 78D is to be determined by the Court in accordance with this section.

(2) The Court must make an order cancelling the resolution if, at the time the application is considered, the resolution has not been cancelled previously, any debt or claim on which the application was based is outstanding and the Court is satisfied that —

- (a) the debt or claim has not been secured and the applicant does not have other adequate safeguards for it; and
- (b) it is not the case that security or other safeguards are unnecessary in view of the assets that the company would have after the reduction.

(3) Otherwise, the Court is to dismiss the application.

(4) Where the Court makes an order under subsection (2), the company must send notice of the order to the Registrar within 15 days beginning with the date the order is made.

(5) If a company contravenes subsection (4), every officer of the company who is in default shall be guilty of an offence.

(6) For the purposes of this section, a debt is outstanding if it has not been discharged, and a claim is outstanding if it has not been terminated.

### **Reduction by special resolution subject to Court approval**

**78G.**—(1) A company limited by shares may, as an alternative to reducing its share capital under section 78B or 78C, reduce it in any way by a special resolution approved by an order of the Court under section 78I, but the resolution and the reduction of the share capital do not take effect until —

- (a) that order has been made;

- (b) the company has complied with section 78I(3) (lodgment of information with Registrar); and
- (c) the Registrar has recorded the information lodged with him or her under section 78I(3) in the appropriate register.

(2) [*Deleted by Act 36 of 2014*]

### **Creditor protection**

**78H.**—(1) This section applies if a company makes an application under section 78G(1) and the proposed reduction of share capital involves either —

- (a) a reduction of liability in respect of unpaid share capital; or
- (b) the payment to a shareholder of any paid-up share capital,

and also applies if the Court so directs in any other case where a company makes an application under that section.

(2) Upon the application to the Court, the Court is to settle a list of qualifying creditors.

(3) If the proposed reduction of share capital involves either —

- (a) a reduction of liability in respect of unpaid share capital; or
- (b) the payment to a shareholder of any paid-up share capital,

the Court may, if having regard to any special circumstances of the case it thinks it appropriate to do so, direct that any class or classes of creditors are not qualifying creditors.

(4) For the purpose of settling the list of qualifying creditors, the Court —

- (a) must ascertain, as far as possible without requiring an application from any creditor, the names of qualifying creditors and the nature and amount of their debts or claims; and
- (b) may publish notices fixing a day or days within which creditors not included in the list are to claim to be so included or are to be excluded from the list.

- (5) Any officer of the company who —
- (a) intentionally conceals the name of a qualifying creditor;
  - (b) intentionally misrepresents the nature or amount of the debt or claim of any creditor; or
  - (c) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years.

(6) In this section and section 78I but subject to subsection (3), “qualifying creditor” means a creditor of the company who, at a date 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.

### **Court order approving reduction**

**78I.**—(1) On an application by a company under section 78G(1), the Court may, subject to subsection (2), make an order approving the reduction in share capital unconditionally or on such terms and conditions as it thinks fit.

(2) If, at the time the Court considers the application, there is a qualifying creditor within the meaning of section 78H —

- (a) who is included in the Court’s list of qualifying creditors under that section; and
- (b) whose claim has not been terminated or whose debt has not been discharged,

the Court must not make an order approving the reduction unless satisfied, as respects each qualifying creditor, that —

- (c) the qualifying creditor has consented to the reduction;
- (d) the qualifying creditor’s debt or claim has been secured or the qualifying creditor has other adequate safeguards for it; or

- (e) security or other safeguards are unnecessary in view of the assets the company would have after the reduction.

(3) Where an order is made under this section approving a company's reduction in share capital, the company must (for the reduction to take effect) lodge with the Registrar —

- (a) a copy of the order; and
- (b) a notice containing the reduction information,

within 90 days beginning with the date the order is made, or within such longer period as the Registrar may, on the application of the company and on receiving the prescribed fee, allow.

### **Offences for making groundless or false statements**

**78J.** A director making a statement under section 78E(1)(d)(ii), (2)(c), (3)(e)(i) or (4)(e)(i) shall be guilty of an offence if the statement —

- (a) is false; and
- (b) is not believed by the director to be true.

### **Liability of members on reduced shares**

**78K.** Where a company's share capital is reduced under any provision of this Division, a member of the company (past or present) is not liable in respect of the issue price of any share to any call or contribution greater in amount than the difference (if any) between —

- (a) the issue price of the share; and
- (b) the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.

## *Division 4 — Substantial shareholdings*

### **Application and interpretation of Division**

**79.—**(1) This section has effect for the purposes of this Division but does not affect the operation of any other provision of this Act.

- (2) A reference to a company is a reference —

- (a) [*Deleted by Act 2 of 2009*]

- (b) to a body corporate, being a body incorporated in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division; or
- (c) to a body, not being a body corporate formed in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division.

[2/2009]

(3) In relation to a company the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock is deemed to be an interest in an issued share in the company having attached to it the same rights as are attached to that stock.

(4) A reference in the definition of “voting share” in section 4(1) to a body corporate includes a reference to a body referred to in subsection (2)(c).

### **Persons obliged to comply with Division**

**80.**—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate, whether incorporated or carrying on business in Singapore or not.

(2) This Division extends to acts done or omitted to be done outside Singapore.

(3) The Minister may, by order in the *Gazette*, exempt any person or any class of persons from all or any of the provisions of this Division, subject to such terms or conditions as may be prescribed.

### **Substantial shareholdings and substantial shareholders**

**81.**—(1) For the purposes of this Division, a person has a substantial shareholding in a company if —

- (a) the person has an interest or interests in one or more voting shares in the company; and

- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company.

(2) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into 2 or more classes of shares, if —

- (a) the person has an interest or interests in one or more voting shares included in one of those classes; and
- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares included in that class.

(3) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(4) In this section and section 83, “voting shares” exclude treasury shares.

### **Substantial shareholder to notify company of interests**

**82.**—(1) A person who is a substantial shareholder in a company must give written notice to the company stating the person’s name and address and full particulars (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder) of the voting shares in the company in which the person has an interest or interests and full particulars of each such interest and of the circumstances by reason of which the person has that interest.

- (2) The notice must be given —
  - (a) if the person was a substantial shareholder on 1 October 1971 — within one month after that date; or
  - (b) if the person became a substantial shareholder after that date — within 2 business days after becoming a substantial shareholder.

(3) The notice must be so given even though the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable.

### **Substantial shareholder to notify company of change in interests**

**83.**—(1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a company in voting shares in the company, the substantial shareholder must give written notice to the company stating the information specified in subsection (2) within 2 business days after the substantial shareholder becomes aware of such a change.

(2) The information referred to in subsection (1) is —

- (a) the name and address of the substantial shareholder;
- (b) the date of the change and the circumstances leading to that change; and
- (c) such other particulars as may be prescribed.

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or (as the case may be) immediately after the relevant time as a percentage of the total votes attached to —

- (a) all the voting shares in the company; or
- (b) where the share capital of the company is divided into 2 or more classes of shares, all the voting shares included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

### **Person who ceases to be substantial shareholder to notify company**

**84.**—(1) A person who ceases to be a substantial shareholder in a company must give written notice to the company stating the person’s

name and the date on which the person ceased to be a substantial shareholder and full particulars of the circumstances by reason of which the person ceased to be a substantial shareholder.

(2) The notice must be given within 2 business days after the person ceased to be a substantial shareholder.

### **References to operation of section 7**

**85.** The circumstances required to be stated in the notice under section 82, 83 or 84 include circumstances by reason of which, having regard to section 7 —

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company,

respectively.

### **Persons holding shares as trustees**

**86.—**(1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, must give to the non-resident a notice in the prescribed form as to the requirements of this Division.

(2) The notice must be given —

- (a) if the firstmentioned person holds the shares on 1 October 1971 — within 14 days after that date; or
- (b) if the firstmentioned person did not hold the shares on that date — within 2 days after becoming the holder of the shares.

(2A) This section does not apply to the Depository as the registered holder of a company's shares.

*[36/2014]*

(3) In this section, “non-resident” means a person who is not resident in Singapore or a body corporate that is not incorporated in Singapore.

(4) Nothing in this section affects the operation of section 80.

**Registrar may extend time for giving notice under this Division**

**87.** The Registrar may, on the application of a person who is required to give a notice under this Division, in the Registrar's discretion, extend, or further extend, the time for giving the notice.

**Company to keep register of substantial shareholders**

**88.—(1)** A company must keep a register in which it must immediately enter —

- (a) in alphabetical order the names of persons from whom it has received a notice under section 82; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 83 or 84, the information given in that notice.

(2) The register must be kept at the registered office of the company, or, if the company does not have a registered office, at the principal place of business of the company in Singapore and must be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the company requires.

(3) A person may request the company to furnish the person with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company must send the copy to that person, within 14 days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

(4) The Registrar may at any time in writing require the company to furnish the Registrar with a copy of the register or any part of the register and the company must furnish the copy within 7 days after the day on which the requirement is received by the company.

(5) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction.

(6) A company is not, by reason of anything done under this Division —

(a) to be taken for any purpose to have notice of; or

(b) to be put upon inquiry as to,

a right of a person to or in relation to a share in the company.

### **Offences against certain sections**

**89.** A person who fails to comply with section 82, 83, 84 or 86 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction.

### **Defence to prosecutions**

**90.—(1)** It is a defence to a prosecution for failing to comply with section 82, 83, 84 or 86 if the defendant proves that the defendant's failure was due to the defendant not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) the defendant was not so aware on the date of the summons; or

(b) the defendant became so aware less than 7 days before the date of the summons.

(2) For the purposes of subsection (1), a person is conclusively presumed to have been aware of a fact or occurrence at a particular time —

(a) of which the person would, if the person had acted with reasonable diligence in the conduct of the person's affairs, have been aware at that time; or

(b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her master's or principal's interest or interests in a share or shares in the company concerned, was aware or would, if he or she had acted with reasonable diligence in the

conduct of his or her master's or principal's affairs, have been aware at that time.

### **Powers of Court with respect to defaulting substantial shareholders**

**91.**—(1) Where a person is a substantial shareholder, or at any time after 1 October 1971 has been a substantial shareholder in a company and has failed to comply with section 82, 83 or 84, the Court may, on the application of the Minister, whether or not that failure still continues, make one or more of the following orders:

- (a) an order restraining the person from disposing of any interest in shares in the company in which the person is or has been a substantial shareholder;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (a) from disposing of any interest in those shares;
- (c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;
- (d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;
- (e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the

company or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a share may provide that the sale must be made within such time and subject to such conditions (if any) as the Court thinks fit, including, if the Court thinks fit, a condition that the sale must not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the company.

(4) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the share vests in the Registrar.

(5) The Court must, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court must not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

(a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to the substantial shareholder's inadvertence or mistake or to the substantial shareholder not being aware of a relevant fact or occurrence; and

(b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Section 214 of the Insolvency, Restructuring and Dissolution Act 2018 applies in relation to a share that vests in the Registrar under

this section as it applies in relation to an estate or interest in property vested in the Official Receiver under the firstmentioned section.

[40/2018]

(10) Any person who contravenes or fails to comply with an order made under this section that is applicable to the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine of \$500 for every day during which the offence continues after conviction.

(11) Subsection (10) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

**92.** [*Repealed by Act 2 of 2009*]

#### *Division 5 — Debentures*

### **Register of debenture holders and copies of trust deed**

**93.**—(1) Every company which issues debentures (not being debentures transferable by delivery) must keep a register of holders of the debentures at the registered office of the company or at some other place in Singapore.

(2) Every company must within 7 days after the register is first kept at a place other than the registered office lodge with the Registrar notice of the place where the register is kept and must, within 7 days after any change in the place at which the register is kept, lodge with the Registrar notice of the change.

(3) The register must except when duly closed be open to the inspection of the registered holder of any debentures and of any holder of shares in the company and must contain particulars of the names and addresses of the debenture holders and the amount of debentures held by them.

(4) For the purposes of this section, a register is deemed to be duly closed if closed in accordance with the provisions contained in the constitution or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the

debentures, during such periods (not exceeding in the aggregate 30 days in any calendar year) as is therein specified.

[36/2014]

(5) Every registered holder of debentures and every holder of shares in a company must, at the request of the holder of debentures or shares, be supplied by the company with a copy of the register of the holders of debentures of the company or any part thereof on payment of \$1 for every page or part thereof required to be copied, but the copy need not include any particulars as to any debenture holder other than the debenture holder's name and address and the debentures held by the debenture holder.

(6) A copy of any trust deed relating to or securing any issue of debentures must be forwarded by the company to a holder of those debentures at the holder's request on payment of the sum of \$3 or such less sum as is fixed by the company, or where the copy has to be specially made to meet the request on payment of \$1 for every page or part thereof required to be copied.

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

(8) A company which issues debentures may cause to be kept in any place outside Singapore a branch register of debenture holders which is deemed to be part of the company's register of debenture holders and Division 4 of Part 5 applies with such adaptations as are necessary to and in relation to the keeping of a branch register of debenture holders.

(9) If a 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 and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

**Specific performance of contracts**

**94.** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

**Perpetual debentures**

**95.** A condition in any debenture or in any deed for securing any debentures whether the debenture or deed is issued or made before or after 29 December 1967 is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, despite any rule of law or equity to the contrary.

**Reissue of redeemed debentures**

**96.—(1)** Where a company has redeemed any debentures whether before or after 29 December 1967 —

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

the company has and is deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place but the reissue of a debenture or the issue of one debenture in place of another under this subsection, whether the reissue or issue was made before or after that date, is not to be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

[36/2014]

(2) After the reissue the person entitled to the debentures has and is deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after 29 December 1967 deposited any of its debentures to secure advances on current account

or otherwise, the debentures are not deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remain so deposited.

97. [Repealed by S 236/2002]

98. [Repealed by S 236/2002]

99. [Repealed by S 236/2002]

### **Power of Court in relation to certain irredeemable debentures**

**100.**—(1) Despite anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, immediately or at such other time as the Court directs if on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures the Court is satisfied that —

- (a) at the time of the issue of the debentures the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
  - (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu* if any); and
  - (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.
- (2) Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the

debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

(3) Subsection (1) does not apply in relation to any debenture that is offered to the public for subscription or purchase.

**101. to 106.** [*Repealed by S 236/2002*]

*Division 5A — [Repealed by S 236/2002]*

**106A. to 106L.** [*Repealed by S 236/2002*]

*Division 6 — [Repealed by S 236/2002]*

**107. to 120.** [*Repealed by S 236/2002*]

*Division 7 — Title and transfers*

### **Nature of shares**

**121.** The shares or other interest of any member in a company is movable property, transferable in the manner provided by the constitution, and is not of the nature of immovable property.

[36/2014]

### **Numbering of shares**

**122.—**(1) Each share in a company must be distinguished by an appropriate number.

(2) Despite subsection (1) —

- (a) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally 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 company are evidenced by certificates in accordance with section 123 and each certificate is distinguished by an 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**

**123.**—(1) A certificate under the common or official seal of a company specifying any shares held by any member of the company is prima facie evidence of the title of the member to the shares.

(2) Every share certificate must be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the official seal of the company and must state as at the date of the issue of the certificate —

- (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 Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and
- (c) the class of the shares, whether the shares are fully or partly paid up and the amount (if any) unpaid on the shares.

[36/2014]

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

(4) 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.

### **Company may have duplicate common seal**

**124.** A company may, if authorised by its constitution, have a duplicate common seal which must be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” and a certificate under such duplicate seal is deemed to be sealed with the common seal of the company for the purposes of this Act.

[36/2014]

### **Loss or destruction of certificates**

**125.**—(1) Subject to subsection (2), where a certificate or other document of title to shares or debentures is lost or destroyed, the

company must on payment of a fee not exceeding \$2 issue a duplicate certificate or document in lieu thereof to the owner on the owner's application accompanied by —

- (a) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
- (b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

(2) Where the value of the shares or debentures represented by the certificate or document is greater than \$500 the directors of the company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant —

- (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of 14 days after the publication of the advertisement to apply to the company for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things.

(3) Any duplicate certificate issued on or after 30 January 2006 in respect of a share certificate issued before that date must state, in place of the historical nominal value of the shares, the amount paid on the shares and the amount (if any) unpaid on the shares.

(4) For the purposes of this section in relation to a book-entry security, a reference to an owner therein is to be construed as a reference to the Depository.

*[36/2014]*

(5) Subsection (2) does not apply to documents evidencing title in relation to listed securities which have been deposited with the Depository and registered in its name or its nominee's name.

[36/2014]

### **Transfer of shares in private companies**

**126.**—(1) Despite anything in its constitution, a private company must not lodge a transfer of shares unless a proper instrument of transfer has been delivered to the company, but this section does not affect any power to lodge a notice of transfer of shares in respect of any person to whom the right to any shares of the company has been transmitted by operation of law.

[36/2014]

(2) Where there has been a transfer of shares, a private company must lodge with the Registrar notice of that transfer of shares in the prescribed form.

[36/2014]

(3) A transfer of any share in a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

### **Transfer of debentures in private companies**

**127.** Despite anything in its constitution, a private company must not register a transfer of debentures unless a proper instrument of transfer has been delivered to the company, but this section does not affect any power to register as debenture holder any person to whom the right to any debentures of the company has been transmitted by operation of law.

[36/2014]

### **Registration of transfer at request of transferor by private companies**

**128.**—(1) Subject to section 129, on the request in writing of the transferor of —

- (a) any share in a private company — the company must lodge with the Registrar a notice of transfer of shares in the prescribed form; or
- (b) any debenture or other interest in a private company — the company must enter in such register as the company considers appropriate, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

[36/2014]

(2) The transfer of any share in a private company on or after 3 January 2016 does not take effect until the electronic register of members of the company is updated by the Registrar under section 196A(5).

[36/2014]

(3) On the request in writing of the transferor of a share or debenture, the private company must by written notice require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to deliver or produce it or them to the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified, and the transfer registered (in the case of a transfer of debenture) or otherwise dealt with.

[36/2014]

(4) If any person refuses or neglects to comply with a notice given under subsection (3), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered or produced as required by the notice.

[36/2014]

(5) Upon appearance of a person so summoned the Court may examine the person upon oath and receive other evidence, or if the person does not appear after being duly served with such summons, the Court may receive evidence in the person's absence and in either case the Court may order the person to deliver such documents to the company upon such terms or conditions as to the Court seem fit, and

the costs of the summons and proceedings thereon are in the discretion of the Court.

[36/2014]

(6) Lists of share certificates or debentures called in under this section and not delivered or produced must be exhibited in the office of the company and must be advertised in such newspapers and at such times as the company thinks fit.

[36/2014]

**128A.** [*Repealed by Act 36 of 2014*]

### **Notice of refusal to register transfer by private companies**

**129.**—(1) If a private company refuses to lodge a notice of transfer of any share in the company it must, within 30 days after the date on which the transfer was lodged with it, send to the transferor and the transferee notice of the refusal.

[36/2014]

(2) If a private company refuses to register a transfer of any debenture or other interest in the company it must, within 30 days after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

[36/2014]

(3) Where an application is made to a private company to lodge with the Registrar a notice of transfer in the prescribed form in respect of any share which have been transferred or transmitted to a person by act of parties or operation of law, the company must not refuse to do so by virtue of any discretion in that behalf conferred by the constitution unless it has served on the applicant, within 30 days beginning with the day on which the application was made, a written notice stating the facts which are considered to justify refusal in the exercise of that discretion.

[36/2014]

(4) If default is made in complying with this section, the private company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

**Transfer of shares and debentures in public companies**

**130.**—(1) Despite anything in its constitution, a public company must not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection does not affect any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

[36/2014]

(2) Where there has been a transfer of shares, a public company may lodge with the Registrar a notice of that transfer of shares in the prescribed form.

[36/2014]

(3) The notice must state —

- (a) every other transfer of shares effected prior to the date of the notice, other than a transfer that has been previously notified to the Registrar; or
- (b) the prescribed information in relation to the shares held by each of the 50 members who hold the most number of shares in the public company after the transfer.

[36/2014]

**Registration of transfer at request of transferor by public companies**

**130AA.**—(1) On the request in writing of the transferor of any share, debenture or other interest in a public company the company must enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

[36/2014]

(2) On the request in writing of the transferor of a share or debenture the public company must by written notice require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to deliver or produce it or them to the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture

cancelled or rectified and the transfer registered or otherwise dealt with.

[36/2014]

(3) If any person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered or produced as required by the notice.

[36/2014]

(4) Upon appearance of a person so summoned the Court may examine the person upon oath and receive other evidence, or if the person does not appear after being duly served with such summons, the Court may receive evidence in the person's absence and in either case the Court may order the person to deliver such documents to the company upon such terms or conditions as to the Court seem fit, and the costs of the summons and proceedings thereon are in the discretion of the Court.

[36/2014]

(5) Lists of share certificates or debentures called in under this section and not brought in must be exhibited in the office of the company and must be advertised in such newspapers and at such times as the company thinks fit.

[36/2014]

### **Notice of refusal to register transfer by public companies**

**130AB.**—(1) If a public company refuses to register a transfer of any share, debenture or other interest in the company it must, within 30 days after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

[36/2014]

(2) Where an application is made to a public company for a person to be registered as a member in respect of shares which have been transferred or transmitted to the person by act of parties or operation of law, the company must not refuse registration by virtue of any discretion in that behalf conferred by its constitution unless it has served on the applicant, within 30 days beginning with the day on which the application was made, a written notice stating the facts

which are considered to justify refusal in the exercise of that discretion.

[36/2014]

(3) If default is made in complying with this section, the public company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

### **Transfer by personal representative**

**130AC.**—(1) A transfer of the share, debenture or other interest of a deceased person made by the deceased person's personal representative is, although the personal representative is not himself or herself a member of the company, as valid as if he or she had been such a member at the time of the execution of the instrument of transfer.

[36/2014]

(2) The production to a 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 must be accepted by the company, despite anything in its constitution, as sufficient evidence of the grant.

[36/2014]

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

[36/2014]

### **Certification of prima facie title**

**130AD.**—(1) The certification by a company of any instrument of transfer of shares, debentures or other interests in the company is to be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares, debentures or other interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or other interests.

[36/2014]

(2) Where any person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

[36/2014]

(3) Where any certification by a private company is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable —

- (a) in respect of any transfer of shares after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not been sent to or received by the company under section 126(1) within that period; or
- (b) in respect of the registration of any transfer of debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

[36/2014]

(4) Where any certification by a public company is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

[36/2014]

(5) For the purposes of this section —

- (a) an instrument of transfer is to be treated as certificated if it bears the words “certificate lodged” or words to the like effect;
- (b) the certification of an instrument of transfer is to be treated as made by a company if —

- (i) the person issuing the instrument is a person apparently authorised to issue certificated instruments of transfer on the company's behalf; and
  - (ii) the certification is signed by a person apparently authorised to certificate transfers on the company's behalf or by any officer either of the company or of a corporation so apparently authorised; and
- (c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) is deemed to be signed by the person unless it is shown that the signature or initials were not placed there by the person and were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the company's behalf.

[36/2014]

### **Duties of company with respect to issue of certificates and default in issue of certificates**

**130AE.**—(1) Every public company must within 60 days after the allotment of any of its shares or debentures, and within 30 days 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.

[36/2014]

- (2) Every private company must —
- (a) within 60 days after the allotment of any of its shares or debentures;
  - (b) within 30 days after the date on which a notice of transfer of shares is lodged with the Registrar under section 126(2) or 128(1)(a); and
  - (c) within 30 days 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 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.

[36/2014]

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

(4) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to the person, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application must be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

[36/2014]

*Division 7A — [Repealed by Act 36 of 2014]*

**130A. to 130P.** *[Repealed by Act 36 of 2014]*

*Division 8 — Registration of charges*

**Registration of charges**

**131.**—(1) Subject to this Division, where a charge to which this section applies is created by a company there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the creation of the charge, a statement containing the prescribed particulars of the charge, and if this section is not complied with in relation to the charge the charge is, so far as any security on the company's property or undertaking is thereby conferred, void against the liquidator and any creditor of the company.

[36/2014]

(1A) In connection with the registration of a charge to which this section applies which is created by a company there must be produced to the Registrar, upon the Registrar's request and for the purposes of

inspection, at no cost to the Registrar, the instrument (if any) by which the charge is created or evidenced or a certified true copy thereof.

(2) Nothing in subsection (1) affects any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money secured thereby immediately becomes payable.

(3) This section applies to the following charges that are created on or after 3 January 2016:

- (a) a charge to secure any issue of debentures;
- (b) a charge on uncalled share capital of a company;
- (c) a charge on shares of a subsidiary of a company which are owned by the company;
- (d) a charge created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale;
- (e) a charge on land wherever situate or any interest therein but not including any charge for any rent or other periodical sum issuing out of land;
- (f) a charge on book debts of the company;
- (g) a floating charge on the undertaking or property of a company;
- (h) a charge on calls made but not paid;
- (i) a charge on a ship or aircraft or any share in a ship or aircraft;
- (j) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence to use a trademark, or on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design.

[36/2014]

(3AA) This section also applies to any charge that —

- (a) was a charge to which this section applied under subsection (3) in force immediately before 3 January 2016; and
- (b) was created before that date.

[36/2014]

(3AB) Despite subsection (3), a shipowner's lien created by a company on or after 1 October 2018, whether as a charge on book debts of the company or a floating charge on the undertaking or property of the company, is not a charge to which this section applies.

[35/2018]

(3AC) Despite subsection (3) or (3AA), a shipowner's lien created by a company before 1 October 2018, whether as a charge on book debts of the company or a floating charge on the undertaking or property of the company, is a charge to which this section applies only if, as at that date —

- (a) an order for the winding up of the company has been made;
- (b) a resolution has been passed for the voluntary winding up of the company; or
- (c) a creditor of the company has acquired a proprietary right to or an interest in the subject matter of the lien.

[35/2018]

(3A) The reference to a charge on book debts in subsection (3)(f) does not include a reference to a charge on a negotiable instrument or on debentures issued by the Government.

(3B) A charge mentioned in subsection (3) does not include a charge created at any time on or after 1 May 2009 to the extent that it is capable of being registered under the International Interests in Aircraft Equipment Act 2009.

[5/2009]

(3C) In subsection (3B), “registered” has the meaning given by section 2(1) of the International Interests in Aircraft Equipment Act 2009.

[5/2009]

(4) Where a charge created in Singapore affects property outside Singapore, the statement containing the prescribed particulars of the charge may be lodged for registration under and in accordance with subsection (1) even though further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(5) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it is sufficient if there is lodged with the Registrar for registration within 30 days after the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering instrument (if any) by which the security is created or defined;
- (c) a general description of the property charged;
- (d) the names of the trustee (if any) for the debenture holders.

(6) For the purposes of subsection (5), where more than one issue is made of debentures in the series, there must be lodged within 30 days after each issue particulars of the date and amount of each issue, but an omission to do so does not affect the validity of the debentures issued.

(7) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of the person (whether absolutely or conditionally) subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any debentures, the particulars required to be lodged under this section must include particulars as to the amount or rate per cent of the commission, allowance or discount so paid or made, but omission to do so does not affect the validity of the debentures issued.

(8) The deposit of any debentures as security for any debt of the company is not for the purposes of subsection (7) to be treated as the issue of the debentures at a discount.

(9) No charge or assignment to which this section applies (except a charge or assignment relating to land) need be filed or registered under any other written law.

(10) Where a charge requiring registration under this section is created before the lapse of 30 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge is not operative and does not have any validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

(11) In this section, “shipowner’s lien” means a contractual lien on —

- (a) sub-freights;
- (b) sub-hires; or
- (c) bill of lading freight,

created under a charter (or sub-charter) of a ship for any amount due under the charter (or sub-charter).

[35/2018]

### **Duty to register charges**

**132.**—(1) Documents and particulars required to be lodged for registration in accordance with section 131 may be lodged for registration in the prescribed manner by the company concerned or by any person interested in the documents, but if default is made in complying with that section the company and every officer of the company who is in default shall be guilty of an offence and shall be

liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

(2) Where registration is effected by some person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by the person on the registration.

### **Duty of company to register charges existing on property acquired**

**133.**—(1) Where —

- (a) a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division;
- (b) a foreign company becomes registered in Singapore and has prior to such registration created a charge which if it had been created by the company while it was registered in Singapore would have been required to be registered under this Division; or
- (c) a foreign company becomes registered in Singapore and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in Singapore have been required to be registered under this Division,

the company must cause a statement of the prescribed particulars to be lodged with the Registrar for registration within 30 days after the date on which the acquisition is completed or the date of the registration of the company in Singapore, as the case may be.

(2) If default is made in complying with this section, the company or the foreign company and every officer of the company or foreign company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

**Register of charges to be kept by Registrar**

**134.**—(1) The Registrar must keep a register of all the charges lodged for registration under this Division and must enter in the register with respect to those charges the following particulars:

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled — such particulars as are required to be contained in a statement furnished under section 131(5);
- (b) in the case of any other charge —
  - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company the date of the acquisition of the property;
  - (ii) the amount secured by the charge;
  - (iii) a description sufficient to identify the property charged; and
  - (iv) the name of the person entitled to the charge.

(2) The Registrar must issue a notice to the company concerned of the registration of a charge and the notice is conclusive evidence that the requirements as to registration have been complied with.

(3) Upon the application of the company and payment of the prescribed fee, the Registrar must issue to the company a certificate confirming the registration of the charge and the certificate is conclusive evidence that the requirements as to registration have been complied with.

**Endorsement of certificate of registration on debentures**

**135.**—(1) The company must cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge so registered —

- (a) a copy of the notice of registration; or

- (b) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) does not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

### **Entries of satisfaction and release of property from charge**

**136.**—(1) Where, with respect to any registered charge —

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,

the company may lodge with the Registrar in the prescribed form a statement of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking (as the case may be) and the Registrar must enter particulars of that statement in the register.

(2) The statement must be endorsed with a statement by the chargee of the payment, satisfaction, release or ceasing referred to in subsection (1) (as the case may be) and the second-mentioned statement constitutes sufficient evidence of that payment, satisfaction, release or ceasing.

### **Extension of time and rectification of register of charges**

**137.** The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a statement of

satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

### **Company to keep copies of charging instruments and register of charges**

**138.**—(1) Every company must cause the instrument creating any charge requiring registration under this Division or a copy thereof to be kept at the registered office of the company for as long as the charge to which the instrument relates remains in force, but in the case of a series of debentures the keeping of a copy of one debenture of the series is sufficient for the purposes of this subsection.

[36/2014]

(1A) An instrument creating any charge or a copy thereof, or a copy of the series of debentures, as the case may be, that is required to be kept under subsection (1) —

- (a) is deemed to form part of the records that are required to be kept under section 199(1); and
- (b) for the purposes of section 199(2), must be retained by the company for a period of 5 years after —
  - (i) the date the debt for which the charge was given was paid or satisfied in whole;
  - (ii) the date the property or undertaking charged was released or ceased to form part of the company's property or undertaking; or
  - (iii) where both of the events referred to in sub-paragraphs (i) and (ii) occur in any particular case, the later of the dates.

[36/2014]

(2) Every company must keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge and (except in the case of securities to bearer) the names of the persons entitled thereto.

(3) The instruments or copies thereof and the register of charges kept pursuant to this section must be open to the inspection of any creditor or member of the company without fee, and the register of charges must also be open to the inspection of any other person on payment of such fee not exceeding \$2 for each inspection as is fixed by the company.

(3A) Any person may, on application to a company and on payment of a fee, not exceeding \$1 for every page or part thereof, be furnished with a copy of any instrument or debenture kept by the company pursuant to this section within 3 days of the person making the application.

(4) 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 and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

### **Documents made out of Singapore**

**139.** Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified is, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of Singapore, extended by 7 days or such further periods as the Registrar may from time to time allow.

### **Charges, etc., created before 29 December 1967**

**140.** Except as is otherwise expressly provided, this Division applies to any charge that on 29 December 1967 was registrable under any of the repealed written laws but which at that date was not registered under any of those laws.

## **Application of Division**

**141.** A reference in this Division to a company includes a reference to a foreign company if, and only if, it is registered under Division 2 of Part 11, but nothing in this Division applies to a charge on property outside Singapore of such foreign company.

[36/2014]

## **PART 5**

### **MANAGEMENT AND ADMINISTRATION**

#### *Division 1 — Office and name*

#### **Registered office of company**

**142.—**(1) A company must as from the date of its incorporation have a registered office within Singapore to which all communications and notices may be addressed and which must be open and accessible to the public for not less than 3 hours during ordinary business hours on each business day.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

#### **Office hours**

**143.—**(1) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, must, in the case of a proposed company, be lodged with the Registrar together with its constitution, at the time of lodgment for the incorporation of the proposed company and in the case of any subsequent change of the particulars therein be so lodged within 14 days after any such change, but no notice of the days and hours during which the office is open and accessible to the public is required if the office is open for at least 5 hours during ordinary business hours on each business day.

[36/2014]

(1A) In subsection (1), the word “particulars”, in relation to the situation of the registered office, includes the address and designation of the situation or address of the registered office.

### **Penalty**

(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 and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

### **Publication of name and registration number**

**144.**—(1) The name of a company must appear in legible romanised letters on —

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

[15/2017]

(1A) The registration number of a company must appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.

(1B) A company shall be guilty of an offence if default is made in complying with subsection (1) or (1A).

(2) If an officer of a company or any person on its behalf —

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name does not so appear;
- (b) issues or authorises the issue of any business letter, statement of account, invoice or official notice or publication of the company wherein its name is not so mentioned; or
- (c) signs, issues or authorises to be signed or issued on behalf of the company any bill of exchange, promissory note,

cheque or other negotiable instrument or any indorsement, order, receipt or letter of credit wherein its name is not so mentioned,

he or she shall be guilty of an offence, and where he or she has signed, issued or authorised to be signed or issued on behalf of the company any bill of exchange, promissory note or other negotiable instrument or any indorsement thereon or order wherein that name is not so mentioned, he or she shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the company.

### *Division 2 — Directors and officers*

#### **Directors**

**145.**—(1) Every company must have at least one director who is ordinarily resident in Singapore and, where the company only has one member, that sole director may also be the sole member of the company.

(2) No person other than a natural person who has attained the age of 18 years and who is otherwise of full legal capacity may be a director of a company.

[7/2009]

(3) *[Deleted by Act 12 of 2002]*

(4) Any provision in the constitution of a company which was in force immediately before 29 December 1967 and which operated to constitute a corporation as a director of the company is to be read and construed as if it authorised that corporation to appoint a natural person to be a director of that company.

[36/2014]

(4A) Subject to subsection (5), unless the constitution otherwise provides, a director of a company may resign by giving the company a written notice of his or her resignation.

[36/2014]

(4B) Subject to subsection (5), the resignation of a director is not conditional upon the company's acceptance of his or her resignation.

[36/2014]

(5) Despite anything in this Act or in the constitution of the company, or in any agreement with the company, a director of a company must not resign or vacate his or her office unless there is remaining in the company at least one director who is ordinarily resident in Singapore; and any purported resignation or vacation of office in breach of this subsection is invalid.

[36/2014]

(6) Subsection (5) does not apply where a director of a company is required to resign or vacate his or her office —

- (a) if the director has not within the period referred to in section 147(1) obtained his or her qualification;
- (b) by virtue of his or her disqualification or removal or the revocation of his or her appointment as a director (as the case may be) under section 148, 149, 149A, 154, 155, 155A or 155C of this Act, section 50 or 54 of the Banking Act 1970, section 50 or 54 of the Banking Act 1970 as applied by section 55ZJ of that Act, section 46(7) of the Credit Bureau Act 2016, section 47 of the Finance Companies Act 1967, section 64 of the Financial Advisers Act 2001, section 62 or 63 of the Financial Holdings Companies Act 2013, section 35, 36, 88 or 102(2)(a)(ii) of the Insurance Act 1966, section 40 of the Monetary Authority of Singapore Act 1970, section 35 or 66 of the Payment Services Act 2019, section 43, 46Z, 81P, 81ZJ, 97, 123Y, 123ZU or 292A of the Securities and Futures Act 2001 and section 14 of the Trust Companies Act 2005; or
- (c) if the director, being a director of a Registered Fund Management Company as defined in the Securities and Futures (Licensing and Conduct of Business) Regulations, has been removed by the company as director in accordance with those Regulations.

[36/2014; 27/2016; 4/2017; 31/2017; 2/2019; 1/2020]

(7) If there is a contravention of subsection (1), the Registrar may, either of the Registrar's own motion or on the application of any person, direct the members of the company to appoint a director who

is ordinarily resident in Singapore if the Registrar considers it to be in the interests of the company for such appointment to be made.

(8) If the direction under subsection (7) is not complied with, each member in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

(9) If there is a contravention of subsection (1) and —

(a) the Registrar fails to give the direction under subsection (7); or

(b) such direction has been given but is not complied with,

the Court may, on the application of the Registrar or any person, order the members of the company to make the appointment if it considers it to be in the interests of the company for such appointment to be made.

[40/2019]

(10) If a company carries on business without having at least one director who is ordinarily resident in Singapore for more than 6 months, a person who, for the whole or any part of the period that it so carries on business after those 6 months —

(a) is a member of the company; and

(b) knows that it is carrying on business in that manner,

shall be liable for the payment of all the debts of the company contracted during the period or that part of the period (as the case may be), and may be sued therefor.

### **Restrictions on appointment or advertisement of director**

**146.**—(1) A person must not be named as a director or proposed director in —

(a) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of a company; or

- (b) the register of directors, chief executive officers and secretaries of a company,

unless, before —

- (c) the incorporation of the company; or
- (d) the filing of any return in the prescribed form containing the particulars required to be specified in the register of directors, chief executive officers and secretaries,

as the case may be, the person has complied with the conditions set out in subsection (1A).

*[36/2014]*

(1A) The conditions to be complied with by a person referred to in subsection (1) are the following:

- (a) the person has, by himself or herself or through a registered qualified individual authorised by him or her, filed with the Registrar —
  - (i) a declaration that he or she has consented to act as a director;
  - (ii) a statement in the prescribed form that he or she is not disqualified from acting as a director under this Act; and
  - (iii) a statement in the prescribed form that he or she is not debarred under section 155B from acting as director of the company;
- (b) the person has, by himself or herself or through a registered qualified individual authorised by him or her —
  - (i) filed with the Registrar a declaration that the person has agreed to take a number of shares of the company that is not less than the person's qualification, if any;
  - (ii) filed with the Registrar an undertaking that the person will take from the company and pay for his or her qualification shares, if any;
  - (iii) filed with the Registrar a declaration that a specified number of shares, not less than the person's

qualification (if any), has been registered in the person's name; or

(iv) in the case of a company formed or intended to be formed by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations, filed with the Registrar a declaration that —

(A) the person was a shareholder in that other corporation or in one or more of the corporations of that group; and

(B) as a shareholder the person will be entitled to receive and have registered in his or her name a number of shares not less than his or her qualification, by virtue of the terms of an agreement relating to the reconstruction.

[36/2014]

(2) Where a person has undertaken to the Registrar under subsection (1A)(b)(ii) to take and pay for the person's qualification shares, the person is, as regards those shares, in the same position as if the person had signed the constitution for that number of shares.

[36/2014]

(3) Subsections (1) and (2) (other than the provisions relating to the signing of a consent to act as director) do not apply to —

(a) a company not having a share capital;

(b) a private company; or

(c) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company or to a constitution adopted by a company after the expiration of one year from the date on which the company was entitled to commence business.

[36/2014]

(4) 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 and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

(5) The restrictions in this section on a director or proposed director of a company incorporated under this Act in relation to a prospectus apply in the same manner and extent to a director or proposed director of a foreign company as if the references in subsections (1) and (4) to a company included references to a foreign company.

### **Qualification of director**

**147.**—(1) Without affecting the operation of sections 145 and 146, every director, who is by the constitution required to hold a specified share qualification and who is not already qualified, must obtain his or her qualification within 2 months after his or her appointment or such shorter period as is fixed by the constitution.

*[36/2014]*

(2) Unless otherwise provided by the constitution, the qualification of any director of a company must be held by him or her solely and not as one of several joint holders.

*[36/2014]*

(3) A director must vacate his or her office if he or she has not within the period referred to in subsection (1) obtained his or her qualification or if after so obtaining it he or she ceases at any time to hold his or her qualification.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and also to a default penalty.

(5) A person vacating office under this section is incapable of being re-appointed as director until the person has obtained his or her qualification.

### **Restriction on undischarged bankrupt**

**148.**—(1) Every person who, being an undischarged bankrupt (whether the person was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the permission of the Court or the

written permission of the Official Assignee, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(2) On an application by an undischarged bankrupt under subsection (1) to the Court or the Official Assignee (as the case may be) the Court or the Official Assignee may refuse the application or approve the application subject to such condition as the Court or the Official Assignee (as the case may be) may impose.

(3) The Court must not give permission under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Assignee and the Minister and the Official Assignee or either of them may be represented at the hearing of and may oppose the granting of the application.

[Act 25 of 2021 wef 01/04/2022]

(4) Any person who has been granted permission by the Court or written permission by the Official Assignee under subsection (1) must, within 14 days after the issue of the Court order or written permission, lodge a copy of the order or written permission with the Registrar.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

### **Disqualification of unfit directors of insolvent companies**

**149.**—(1) The Court may —

- (a) on the application of the Minister or the Official Receiver as provided for in subsection (9); and
- (b) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or taking part in, the management of a company, during such period not exceeding 5 years after the date of the order as is specified in the order (called in this section a disqualification order).

(2) The Court must make a disqualification order under subsection (1) if it is satisfied that —

- (a) the person against whom the order is sought has been given not less than 14 days' notice of the application; and
- (b) in respect of the person —
  - (i) he or she is or has been a director of a company which has at any time gone into liquidation (whether while he or she was a director or within 3 years of his or her ceasing to be a director) and was insolvent at that time; and
  - (ii) his or her conduct as director of that company either taken alone or taken together with his or her conduct as a director of any other company or companies makes him or her unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a company.

(3) If in the case of a person who is or has been a director of a company which is —

- (a) being wound up by the Court, it appears to the Official Receiver or to the liquidator (if the liquidator is not the Official Receiver); or
- (b) being wound up otherwise than as mentioned in paragraph (a), it appears to the liquidator,

that the conditions mentioned in subsection (2)(b) are satisfied as respects that person, the Official Receiver or the liquidator (as the case may be) must immediately report the matter to the Minister.

(4) The Minister may require the Official Receiver or the liquidator or the former liquidator of a company —

- (a) to furnish the Minister with such information with respect to any person's conduct as a director of the company; and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister may reasonably require for the purpose of determining whether to exercise, or of exercising, any of the Minister's functions under this section; and if default is made in complying with that requirement the Court may, on the application of the Minister, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(a) a company has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

(ii) where a provisional liquidator was appointed under section 161(1) of the Insolvency, Restructuring and Dissolution Act 2018, at the time when the declaration made under that subsection was lodged with the Registrar; and

(iii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(b) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of that expression in section 125(2) of the Insolvency, Restructuring and Dissolution Act 2018,

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

[40/2018]

(6) In deciding whether a person's conduct as a director of any particular company or companies makes him or her unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)(b), the Court must in relation to his or her conduct as a director of that company or (as the case may be) each of those companies have regard, generally to the matters referred to in paragraph (a), and, in particular, to the matters referred to in

paragraph (b), even though the director has not been convicted or may be criminally liable in respect of any of these matters —

(a) as to —

- (i) whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;
- (ii) whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;
- (iii) the extent of the director's responsibility for any failure by the company to comply with sections 138, 190, 191, 196B, 197, 199 and 201; and

(b) as to —

- (i) the extent of the director's responsibility for the causes of the company becoming insolvent;
- (ii) the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);
- (iii) the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 130(1) of the Insolvency, Restructuring and Dissolution Act 2018;
- (iv) whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

[36/2014; 40/2018]

(7) The Minister may, by notification in the *Gazette*, add to, vary or amend the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

(8) In this section, “company” includes a corporation and a foreign company but does not include a partnership or association to which Division 1 of Part 10 of the Insolvency, Restructuring and Dissolution Act 2018 applies.

[40/2018]

(9) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section is to be made by the Official Receiver but in any other case an application is to be made by the Minister.

(9A) On a hearing of an application under this section —

(a) the Minister or the Official Receiver (as the case may be) must appear and call the attention of the Court to any matter which appears to him or her to be relevant (and for this purpose the Minister may be represented) and may give evidence or call witnesses; and

(b) the person against whom an order is sought may appear and himself or herself give evidence or call witnesses.

(10) This section does not apply unless the company mentioned in subsection (2)(b) has gone into insolvent liquidation on or after 15 August 1984 and the conduct to which the Court is to have regard does not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as judicial manager, receiver or receiver manager shall not be liable to have a disqualification order made against the person in respect of acts done in the person’s capacity as judicial manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(13) Nothing in this section prevents a person who is disqualified pursuant to an order made under subsection (1) from applying for

permission of the Court to be concerned in or take part in the management of a company.

*[Act 25 of 2021 wef 01/04/2022]*

(14) On the hearing of an application made under subsection (13) or (15), the Minister or the Official Receiver must appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him or her to be relevant to the application and may himself or herself give evidence or call witnesses.

(15) Any right to apply for permission of the Court to be concerned or take part in the management of a company that was subsisting immediately before 23 March 1990 is, after that date, to be treated as subsisting by virtue of the corresponding provision made under this section.

*[Act 25 of 2021 wef 01/04/2022]*

### **Disqualification of directors of companies wound up on grounds of national security or interest**

**149A.**—(1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court under section 125(1)(n) of the Insolvency, Restructuring and Dissolution Act 2018 on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, make an order (called in this section a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or foreign company for a period of 3 years from the date of the making of the winding up order.

*[40/2018]*

(2) The Court must not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister's application for the order.

(3) The Court must not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

- (a) the company had been used for purposes against national security or interest without his or her consent or connivance; and
- (b) he or she had exercised such diligence to prevent the company from being so used as he or she ought to have exercised having regard to the nature of his or her function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(5) In this section, “foreign company” means a foreign company to which Division 2 of Part 11 applies.

### **Appointment of directors by ordinary resolution**

**149B.** Unless the constitution otherwise provides, a company may appoint a director by ordinary resolution passed at a general meeting.

*[36/2014]*

### **Appointment of directors to be voted on individually**

**150.**—(1) At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution must not be made unless a resolution that it may be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution passed pursuant to a motion made in contravention of this section is void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment is to apply.

(4) For the purposes of this section, a motion for approving a person’s appointment or for nominating a person for appointment is to be treated as a motion for the person’s appointment.

(5) Nothing in this section —

- (a) applies to a resolution altering the company's constitution;
- (b) prevents the election of 2 or more directors by ballot or poll.

[36/2014]

### **Validity of acts of directors and officers**

**151.** The acts of a director or chief executive officer or secretary are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

[36/2014]

### **Removal of directors**

**152.—(1)** A public company may by ordinary resolution remove a director before the expiration of his or her period of office, despite anything in its constitution or in any agreement between it and the director but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove the director does not take effect until the director's successor has been appointed.

[36/2014]

(2) Special notice is required of any resolution to remove a director of a public company under subsection (1) or to appoint some person in place of a director so removed at the meeting at which the director is removed, and on receipt of notice of an intended resolution to remove a director under subsection (1) the company must immediately send a copy thereof to the director concerned, and the director, whether or not he or she is a member of the company, is entitled to be heard on the resolution at the meeting.

[36/2014]

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the public company, not exceeding a reasonable length, and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so —

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,

and if a copy of the representations is not so sent because they were received too late or because of the company's default the director may, without affecting the director's right to be heard orally, require that the representations must be read out at the meeting.

[36/2014]

(4) Despite subsections (1), (2) and (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the public company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, even though the director is not a party to the application.

[36/2014]

(5) A vacancy created by the removal of a director of a public company under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

[36/2014]

(6) A person appointed director of a public company in place of a person removed under this section is to be treated, for the purpose of determining the time at which he or she or any other director is to retire, as if he or she had become a director on the day on which the person in whose place he or she is appointed was last appointed a director.

[36/2014]

(7) Nothing in subsections (1) to (6) is to be taken as depriving a person removed as a director of a public company thereunder of compensation or damages payable to him or her in respect of the termination of his or her appointment as director or of any

appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

[36/2014]

(8) A director of a public company must not be removed by, or be required to vacate his or her office by reason of, any resolution, request or notice of the directors or any of them despite anything in the constitution or any agreement.

[36/2014]

(9) Subject to any provision to the contrary in the constitution, a private company may by ordinary resolution remove a director before the expiration of his or her period of office despite anything in any agreement between the private company and the director.

[36/2014]

**153.** [*Repealed by Act 36 of 2014*]

### **Disqualification to act as director on conviction of certain offences**

**154.**—(1) A person is subject to the disqualifications provided in subsection (3) if —

- (a) the person is convicted of any of the following offences:
  - (i) any offence, whether in Singapore or elsewhere, involving fraud or dishonesty punishable with imprisonment for 3 months or more;
  - (ii) any offence under Part 12 of the Securities and Futures Act 2001, where the conviction was on or after 1 July 2015; or
- (b) the person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act 2001 on or after 1 July 2015.

[36/2014; 15/2017]

(2) The court may, in addition to any other sentence imposed, make a disqualification order against any person who is convicted in Singapore of any of the following offences:

- (a) any offence in connection with the formation or management of a corporation;

- (b) any offence under section 157 or 396B;
- (c) any offence under section 237 or 239 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(3) Subject to any permission which the Court may give pursuant to an application under subsection (6), a person who —

- (a) is disqualified under subsection (1); or
- (b) has had a disqualification order made against him or her under subsection (2),

must not act as a director, or take part (whether directly or indirectly) in the management of a company, or of a foreign company to which Division 2 of Part 11 applies, during the period of the disqualification or disqualification order.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(4) The disqualifications in subsection (3) —

- (a) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1) or (2) but has not been sentenced to imprisonment — take effect upon conviction and continue for a period of 5 years or for such shorter period as the court may order under subsection (2);
- (b) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1) or (2) and has been sentenced to imprisonment — take effect upon conviction and continue for a period of 5 years after his or her release from prison; or
- (c) in a case where the disqualified person is subject, on or after 1 July 2015, to the imposition of a civil penalty under section 232 of the Securities and Futures Act 2001 — take effect upon the imposition of the civil penalty and continue for a period of 5 years after the imposition of the civil penalty.

[36/2014; 15/2017]

(5) A person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding

\$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(6) A person who —

(a) is disqualified under subsection (1); or

(b) has had a disqualification order made against him or her under subsection (2),

may apply to the Court for permission to act as a director, or to take part (whether directly or indirectly) in the management of a company, or of a foreign company to which Division 2 of Part 11 applies, during the period of the disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of his or her intention to apply for such permission.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(7) On the hearing of any application under subsection (6), the Minister may be represented at the hearing and may oppose the granting of the application.

[36/2014]

(8) Without affecting section 409, a District Court may make a disqualification order under this section.

(9) Any right to apply for permission of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 12 November 1993 is on or after that date to be treated as subsisting by virtue of the corresponding provision made under this section.

[Act 25 of 2021 wef 01/04/2022]

### **Disqualification for persistent default in relation to delivery of documents to Registrar**

**155.**—(1) Where a person has been persistently in default in relation to relevant requirements of this Act and that person, within a period of 5 years after the person has last been adjudged guilty of any offence or has had made against the person an order under section 13 or 399 in relation to any such relevant requirements of this Act, without the permission of the Court, is a director or promoter of, or is

in any way directly or indirectly concerned or takes part in the management of a company, that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

*[Act 25 of 2021 wef 01/04/2022]*

(2) Any provision of this Act which requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar is a relevant requirement of this Act for the purposes of this section.

(3) For the purposes of this section, the fact that a person has been persistently in default in relation to relevant requirements of this Act may, subject to subsection (8), be conclusively proved by showing that, within a period of 5 years, the person has been adjudged guilty of 3 or more offences in relation to any such requirements or has had 3 or more orders made against the person under section 13 or 399 in relation to those requirements.

(4) A person is to be treated as being adjudged guilty of 3 or more offences in relation to any such relevant requirements of this Act for the purpose of subsection (3) if the person is convicted of any 3 or more offences by virtue of any contravention of, or failure to comply with, any such requirements (whether on the person's own part or on the part of any company).

(5) For the purpose of this section, a conviction for an offence under section 154(2)(a) is not to be treated as an offence in relation to a relevant requirement of this Act.

(6) Where a person has had a third or subsequent order made against the person under section 13 or 399 and by virtue of the operation of this section that person is disqualified from being a director or promoter of or from being in any way directly or indirectly concerned or taking part in the management of a company, nothing in this section is to be construed as preventing that person from complying with the order of the Court and for this purpose that person is deemed to have the same status, powers and duties as that person had at the time the act, matter or thing should have been done.

(7) For the purpose of this section, a certificate of the Registrar stating that a person has been adjudged guilty of 3 or more offences or

has had made against the person 3 or more orders under section 13 or 399 in relation to the requirements of this Act shall in all courts be received as prima facie evidence of the facts stated therein.

(8) No account is to be taken for the purposes of this section of any offence which was committed or, in the case of a continuing offence, began before 15 May 1984.

(9) A person intending to apply for permission of the Court under this section must give to the Minister not less than 14 days' notice of the person's intention so to apply.

*[Act 25 of 2021 wef 01/04/2022]*

(10) On the hearing of any application under this section, the Minister may be represented and may oppose the granting of the application.

(11) In this section, company includes an unregistered company within the meaning of section 245(1) of the Insolvency, Restructuring and Dissolution Act 2018.

*[40/2018]*

### **Disqualification for being director in not less than 3 companies which were struck off within 5-year period**

**155A.**—(1) Subject to subsection (5), a person —

- (a) who was a director of a company (Company A) at the time that the name of Company A had been struck off the register under section 344; and
- (b) who, within a period of 5 years immediately before the date on which the name of Company A was struck off the register under section 344 —
  - (i) had been a director of not less than 2 other companies whose names had been struck off the register under section 344; and
  - (ii) was a director of those companies at the time the names of the companies were so struck off the register,

must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any

company or any foreign company to which Division 2 of Part 11 applies for a period of 5 years commencing after the date on which the name of Company A was struck off.

[36/2014]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(3) A person who is subject to a disqualification under subsection (1) may apply to the Court for permission to act as director of, or to take part in or be concerned in the management of, a company or a foreign company to which Division 2 of Part 11 applies during the period of disqualification upon giving the Minister not less than 14 days' notice of the person's intention to apply for such permission.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(4) On the hearing of any application under this section, the Minister may be represented at the hearing and may oppose the granting of the application.

[36/2014]

(5) This section only applies where Company A and the companies referred to in subsection (1)(b)(i) were struck off on or after 3 January 2016.

[36/2014]

### **Debarment for default of relevant requirement of this Act**

**155B.**—(1) Where the Registrar is satisfied that a company is in default in relation to a relevant requirement of this Act, the Registrar may make a debarment order against any person who, at the time the order is made, is a director or secretary of the company.

[36/2014]

(2) Subject to subsection (3), a person who has a debarment order made against him or her must not —

- (a) except in respect of a company of which the person is a director immediately before the order was made — act as director of any company; or
- (b) except in respect of a company of which the person is a secretary immediately before the order was made — act as secretary of any company.

[36/2014]

(3) The debarment order applies from the date that the order is made and continues in force until the Registrar cancels or suspends the order.

[36/2014]

(4) The Registrar may, upon the application of a person who has a debarment order made against the person or on the Registrar's own accord, cancel or suspend such debarment order where the default in relation to the relevant requirements of this Act as at the time the debarment order is made has been rectified or on such other ground as may be prescribed, subject to such conditions as the Registrar may impose.

[36/2014]

(5) Where the Registrar imposes conditions on the suspension of a debarment order under subsection (4), the suspension of the debarment order operates so long as that person fulfils and continues to fulfil all such conditions imposed by the Registrar.

[36/2014]

(6) The Registrar must not make a debarment order under subsection (1) —

- (a) unless the default in relation to a relevant requirement of this Act has persisted for a continuous period of 3 months or more and the person was a director or secretary of the company during that period; and
- (b) unless the Registrar has, not less than 14 days before the order is made, sent the director or secretary concerned a notice of the Registrar's intention to make a debarment order under subsection (1) specifying the default in relation to the relevant requirement of this Act for which the debarment order is proposed to be made and giving the

director or secretary an opportunity to show cause why the debarment order should not be made.

[36/2014]

(7) The Registrar must, in determining whether to make a debarment order, consider any representation from the director or secretary made pursuant to the notice under subsection (6)(b).

[36/2014]

(8) Any person who is aggrieved by a debarment order made under subsection (1), or the Registrar's refusal to cancel or suspend a debarment order under subsection (4), may appeal to the Minister.

[36/2014]

(9) An appeal under subsection (8) does not suspend the effect of the debarment order.

[36/2014]

(10) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(11) The Registrar may from time to time prepare and publish, in such form and manner as the Registrar may decide, the names and particulars of the persons against whom a debarment order has been made and which continues in force.

[36/2014]

(12) In this section —

“debarment order” means a debarment order made under subsection (1);

“relevant requirement of this Act” has the meaning given by section 155(2);

“secretary” means a secretary of the company appointed under section 171.

[36/2014]

### **Disqualification under Limited Liability Partnerships Act 2005**

**155C.**—(1) Subject to any permission which the Court may give pursuant to an application under subsection (3), a person who is

subject to a disqualification or disqualification order under section 59, 60 or 61 of the Limited Liability Partnerships Act 2005 must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any company or any foreign company to which Division 2 of Part 11 applies during the period of disqualification or disqualification order.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(3) A person who is subject to a disqualification or disqualification order under section 59 or 61 of the Limited Liability Partnerships Act 2005 may apply to the Court for permission to act as director of, or to take part in or be concerned in the management of, a company or a foreign company to which Division 2 of Part 11 applies during the period of disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of the person's intention to apply for such permission.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.

[36/2014]

### **Disqualification under VCC Act**

**155D.**—(1) Subject to any permission which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification or disqualification order under section 56, 57, 58, 59 or 60 of the VCC Act must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any company or any foreign

company to which Division 2 of Part 11 applies during the period of the disqualification or disqualification order.

[44/2018; 28/2019]

[Act 25 of 2021 wef 01/04/2022]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[44/2018]

(3) A person who is subject to a disqualification or disqualification order mentioned in sections 56, 58, 59 and 60 of the VCC Act may apply to the Court for permission to act as director of, or to take part in or be concerned in the management of, a company or a foreign company to which Division 2 of Part 11 applies during the period of the disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of the person's intention to apply for such permission.

[44/2018; 28/2019]

[Act 25 of 2021 wef 01/04/2022]

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.

[44/2018]

### **Debarment under VCC Act**

**155E.**—(1) A person who has a debarment order made against him or her under section 59 of the VCC Act must not —

- (a) except in respect of a company of which the person is a director immediately before the order was made — act as director of any company; or
- (b) except in respect of a company of which the person is a secretary immediately before the order was made — act as secretary of any company.

[28/2019]

(2) Subsection (1) applies from the date that the debarment order is made until such time as the Registrar cancels or suspends the order.

[28/2019]

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[28/2019]

**Disclosure of interests in transactions, property, offices, etc.**

**156.**—(1) Subject to this section, every director or chief executive officer of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company must as soon as is practicable after the relevant facts have come to his or her knowledge —

- (a) declare the nature of his or her interest at a meeting of the directors of the company; or
- (b) send a written notice to the company containing details on the nature, character and extent of his or her interest in the transaction or proposed transaction with the company.

[36/2014]

(2) A notice under subsection (1)(b) must be given as soon as is practicable after —

- (a) the date on which the director or chief executive officer became a director or chief executive officer (as the case may be); or
- (b) (if already a director or chief executive officer, as the case may be) the date on which the director or chief executive officer became, directly or indirectly, interested in a transaction or proposed transaction with the company,

as the case requires.

[36/2014]

(3) The requirements of subsection (1) do not apply in any case where the interest of the director or chief executive officer (as the case may be) consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the firstmentioned company if the interest of the

director or chief executive officer (as the case may be) may properly be regarded as not being a material interest.

[36/2014]

(4) A director or chief executive officer of a company is not deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

- (a) in the case where the transaction or proposed transaction relates to any loan to the company — that he or she has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company — that he or she is a director or chief executive officer (as the case may be) of that corporation,

and this subsection has effect not only for the purposes of this Act but also for the purposes of any other law, but does not affect the operation of any provision in the constitution of the company.

[36/2014]

(5) A declaration given by a director or chief executive officer under subsection (1)(a), or a written notice given by a director or chief executive officer under subsection (1)(b), is to be treated as a sufficient declaration or written notice under those provisions in relation to a transaction or proposed transaction if —

- (a) in the case of a declaration, the declaration is given at a meeting of the directors or the director or chief executive officer (as the case may be) takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given;
- (b) the declaration or written notice is to the effect that —
  - (i) he or she is an officer or a member of a specified corporation, a member of a specified firm, or a partner or officer of a specified limited liability partnership; and

- (ii) he or she is to be regarded as interested in any transaction which may, after the date of the declaration or written notice, be made with the specified corporation, firm or limited liability partnership;
- (c) the declaration or written notice specifies the nature and extent of his or her interest in the specified corporation, firm or limited liability partnership; and
- (d) at the time any transaction is made with the specified corporation, firm or limited liability partnership, his or her interest is not different in nature or greater in extent than the nature and extent specified in the declaration or written notice.

[36/2014]

(6) Every director and chief executive officer of a company who holds any office or possess any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with their duties or interests as director or chief executive officer (as the case may be) must —

- (a) declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict; or
- (b) send a written notice to the company setting out the fact and the nature, character and extent of the conflict.

[36/2014]

(7) A declaration under subsection (6)(a) must be made at the first meeting of the directors of the company held —

- (a) after he or she becomes a director or chief executive officer (as the case may be); or
- (b) (if already a director or chief executive officer, as the case may be) after he or she commenced to hold the office or to possess the property,

as the case requires.

[36/2014]

(8) A written notice under subsection (6)(b) must be given as soon as is practicable after —

- (a) the date on which the director or chief executive officer became a director or chief executive officer (as the case may be); or
- (b) (if already a director or chief executive officer, as the case may be) after he or she commenced to hold the office or to possess the property,

as the case requires.

[36/2014]

(9) The company must, as soon as practicable after the receipt of the written notice mentioned in subsection (1)(b) or (6)(b), send a copy of the notice to —

- (a) in the case where the notice is given by a chief executive officer — all the directors; or
- (b) in the case where the notice is given by a director — all the other directors.

[36/2014]

(10) Where a chief executive officer or a director of the company declares an interest or conflict by a written notice mentioned in subsection (1)(b) or (6)(b) (respectively) in accordance with this section —

- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given; and
- (b) the provisions of section 188 (minutes of proceedings) apply as if the declaration had been made at that meeting.

[36/2014]

(11) The secretary of the company must record every declaration under this section in the minutes of the meeting at which it was made and keep records of every written resolution duly signed and returned to the company under this section.

[36/2014]

(12) The directors of a company must permit a chief executive officer of the company who is not a director to attend a meeting of the board of directors where such attendance is necessary for the chief

executive officer to make a declaration for the purpose of complying with this section.

[36/2014]

(13) For the purposes of this section —

- (a) an interest of a member of a director's family is treated as an interest of the director and the words "member of a director's family" include his or her spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter; and
- (b) an interest of a member of a chief executive officer's family is treated as an interest of the chief executive officer and the words "member of the chief executive officer's family" include his or her spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

[36/2014]

(14) Subject to subsection (4), this section is in addition to and not in derogation of the operation of any rule of law or any provision in the constitution restricting a director or chief executive officer from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as a director or chief executive officer (as the case may be).

[36/2014]

(15) Any director or chief executive officer of a company who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

[36/2014]

### **As to the duty and liability of officers**

**157.**—(1) A director must at all times act honestly and use reasonable diligence in the discharge of the duties of his or her office.

(2) An officer or agent of a company must not make improper use of his or her position as an officer or agent of the company or any information acquired by virtue of his or her position as an officer or agent of the company to gain, directly or indirectly, an advantage for

himself or herself or for any other person or to cause detriment to the company.

[36/2014]

(3) An officer or agent who commits a breach of any of the provisions of this section shall be —

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

(b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

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

(5) In this section —

“officer” includes a person who at any time has been an officer of the company;

“agent” includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company.

### **Powers of directors**

**157A.**—(1) The business of a company is to be managed by, or under the direction or supervision of, the directors.

[36/2014]

(2) The directors may exercise all the powers of a company except any power that this Act or the constitution of the company requires the company to exercise in general meeting.

[36/2014]

### **Director declarations where company has one director**

**157B.** Where a company only has one director, that director may make a declaration required or authorised to be made under this Act by recording the declaration and signing the record; and such

recording and signing of the declaration satisfies any requirement in this Act that the declaration be made at a meeting of the directors.

### **Use of information and advice**

**157C.**—(1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
- (c) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) applies to a director only if the director —

- (a) acts in good faith;
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that such reliance is unwarranted.

### **Disclosure of company information by certain directors**

**158.**—(1) A director of a company may disclose information which the director has in his or her capacity as a director or an employee of a company, being information that would not otherwise be available to him or her, to the persons specified in subsection (2) if such disclosure is not likely to prejudice the company and is made with the authorisation of the board of directors.

[36/2014]

(2) The information referred to in subsection (1) may be disclosed to —

- (a) a person whose interests the director represents; or
  - (b) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties.
- (3) The authorisation mentioned in subsection (1) may be conferred in respect of disclosure of —
- (a) all or any class of information; or
  - (b) only such information as may be specified in the authorisation.

[36/2014]

### **Power of directors to have regard to interest of its employees, members and rulings of Securities Industry Council**

**159.** The matters to which the directors of a company are entitled to have regard in exercising their powers include —

- (a) the interests of the company's employees generally, as well as the interests of its members; and
- (b) the rulings of the Securities Industry Council on the interpretation of the principles and rules of and the practice to be followed under the Singapore Code on Take-overs and Mergers.

### **Approval of company required for disposal by directors of company's undertaking or property**

**160.**—(1) Despite anything in a company's constitution, the directors must not carry into effect any proposals for disposing of the whole or substantially the whole of the company's undertaking or property unless those proposals have been approved by the company in general meeting.

[36/2014]

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) is, in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention, as valid as if that subsection had been complied with.

(4) This section does not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or a liquidator of a company appointed in a voluntary winding up.

**160A.** *[Repealed by Act 38 of 1998]*

**160B.** *[Repealed by Act 38 of 1998]*

**160C.** *[Repealed by Act 38 of 1998]*

**160D.** *[Repealed by Act 38 of 1998]*

### **Approval of company required for issue of shares by directors**

**161.**—(1) Despite anything in a company's constitution, the directors must not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.

*[36/2014]*

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section continues in force until —

- (a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or
- (b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares even though an approval for the purposes of this section has ceased to be in force if the shares are issued pursuant to an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 186 applies to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section is void and consideration given for the shares is recoverable accordingly.

(7) Any director who knowingly contravenes, or permits or authorises the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs may be commenced after the expiration of 2 years from the date of the issue.

### **Loans and quasi-loans to directors, credit transactions and related arrangements**

**162.**—(1) For the purposes of this section, a company makes a restricted transaction if it —

- (a) makes a loan or quasi-loan to a director —
  - (i) of the company; or
  - (ii) of a company which by virtue of section 6 is deemed to be related to that company,  
(called in this section a relevant director);
- (b) enters into any guarantee or provides any security in connection with a loan or quasi-loan made to a relevant director by any other person;

- (c) enters into a credit transaction as creditor for the benefit of a relevant director;
- (d) enters into any guarantee or provides any security in connection with a credit transaction entered into by any person for the benefit of a relevant director;
- (e) takes part in an arrangement under which —
  - (i) another person enters into a transaction that, if it had been entered into by the company, would have been a restricted transaction under paragraph (a), (b), (c), (d) or (f); and
  - (ii) that person, pursuant to the arrangement, obtains a benefit from the company or a company which by virtue of section 6 is deemed to be related to that company; or
- (f) arranges the assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have been a restricted transaction under paragraphs (a) to (e).

[36/2014]

(2) Subject to subsections (3) and (4) and sections 163A and 163B, a company (other than an exempt private company) must not make a restricted transaction.

[36/2014]

(3) Subject to subsection (4), nothing in this section applies to any transaction which would otherwise be a restricted transaction that is —

- (a) made to or for the benefit of a relevant director to meet expenditure incurred or to be incurred by him or her for the purposes of the company or for the purpose of enabling him or her to properly perform his or her duties as an officer of the company;
- (b) made to or for the benefit of a relevant director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to the company,

as the case may be, for the purpose of purchasing or otherwise acquiring a home occupied or to be occupied by the director, except that not more than one such restricted transaction may be outstanding at any time;

- (c) made to or for the benefit of a relevant director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to that company (as the case may be) where the company has at a general meeting approved of a scheme for the making of such transaction to or for the benefit of employees of the company and the restricted transaction is in accordance with that scheme; or
- (d) made to or for the benefit of a relevant director in the ordinary course of business of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans, quasi-loans or credit transactions made or entered into by other persons if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

[36/2014]

(4) Subsection (3)(a) or (b) does not authorise the making of any restricted transaction, except —

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount or extent of the restricted transaction are disclosed; or
- (b) on condition that, if the prior approval of the company is not given as aforesaid at or before the next following annual general meeting, the amount of or liability under the restricted transaction must be repaid or discharged (as the case may be) within 6 months from the conclusion of that meeting.

[36/2014]

(5) Where the prior approval of the company is not given as required by the condition mentioned in subsection (4)(b), the directors authorising the making of the restricted transaction are jointly and severally liable to indemnify the company against any loss arising therefrom.

[36/2014]

(6) Where a company contravenes this section, any director who authorises the making of the restricted transaction shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years.

[36/2014]

(7) Nothing in this section operates to prevent the company from recovering the amount of any loan, quasi-loan, credit transaction or arrangement or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

[36/2014]

(8) For the purpose of subsection (1), a reference to a director or relevant director therein includes a reference to the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

[36/2014]

(9) In determining for the purposes of this section whether a transaction is a restricted transaction under subsection (1)(e), the transaction is to be treated as having been entered into on the date of the arrangement.

[36/2014]

(10) For the purposes of this section, a reference to prior approval does not include any approval of the company that is given after the restricted transaction has been made, provided for or entered into (as the case may be).

[36/2014]

(11) In this section and section 163 —

“conditional sale agreement” has the meaning given by section 2 of the Hire-Purchase Act 1969;

“credit transaction” means a transaction under which one party (called in this section and section 163 the creditor) —

- (a) supplies any goods or disposes of any immovable property under a hire-purchase agreement or a conditional sale agreement;
- (b) leases or hires any immovable property or goods in return for periodic payments; or
- (c) otherwise disposes of immovable property or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodic payments or otherwise) is to be deferred;

“quasi-loan” means a transaction under which one party (called in this section and section 163 the creditor) agrees to pay, or pays otherwise than pursuant to an agreement, a sum for another (called in this section the borrower) or agrees to reimburse, or reimburses otherwise than pursuant to an agreement, expenditure incurred by another party for another (called in this section and section 163 the borrower) —

- (a) on terms that the borrower (or a person on the borrower’s behalf) will reimburse the creditor; or
- (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

“services” means any thing other than goods or immovable property.

[36/2014]

(12) For the purposes of subsection (11) —

- (a) a reference to the person to whom a quasi-loan is made is a reference to the borrower;
- (b) the liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower;
- (c) a reference to the person for whose benefit a credit transaction is entered into is a reference to the person to whom goods, immovable property or services are supplied,

sold, leased, hired or otherwise disposed of under the transaction; and

- (d) a reference to the supply of services means the supply of anything other than goods or immovable property and includes the transfer or disposal of choses in action or of intellectual property rights.

**Approval of company required for loans and quasi-loans to, and credit transactions for benefit of, persons connected with directors of lending company, etc.**

**163.**—(1) Subject to this section and sections 163A and 163B, it is not lawful for a company (other than an exempt private company) —

- (a) to make a loan or quasi-loan to another company, a limited liability partnership or a VCC;
- (b) to enter into any guarantee or provide any security in connection with a loan or quasi-loan made to another company, a limited liability partnership or a VCC by a person other than the firstmentioned company;
- (c) to enter into a credit transaction as creditor for the benefit of another company, a limited liability partnership or a VCC; or
- (d) to enter into any guarantee or provide any security in connection with a credit transaction entered into by any person for the benefit of another company, a limited liability partnership or a VCC,

if a director or directors of the firstmentioned company is or together are interested in 20% or more of the total voting power in the other company, the limited liability partnership or the VCC (as the case may be), unless there is prior approval by the company in general meeting for the making of, provision for or entering into the loan, quasi-loan, credit transaction, guarantee or security (as the case may be) at which the interested director or directors, and his, her or their family members, abstained from voting.

[36/2014; 44/2018]

(2) Subsection (1) also applies to —

- (a) a loan or quasi-loan made by a company (other than an exempt private company) to another company or a limited liability partnership;
- (b) a credit transaction made by a company (other than an exempt private company) for the benefit of another company or to a limited liability partnership; and
- (c) a guarantee entered into or security provided by a company (other than an exempt private company) in connection with a loan or quasi-loan made to another company or a limited liability partnership by a person other than the firstmentioned company or with a credit transaction made for the benefit of another company or a limited liability partnership entered into by a person other than the firstmentioned company,

where such other company or such limited liability partnership is incorporated or formed (as the case may be) outside Singapore, if a director or directors of the firstmentioned company have an interest in the other company or the limited liability partnership, as the case may be.

[36/2014]

(3) For the purposes of subsection (2), a director or directors of a company —

- (a) have an interest in the other company if —
  - (i) in the case of a company with a share capital — the director or directors is or together are interested in 20% or more of the total voting power in the other company; or
  - (ii) in the case of a company without a share capital — the director or directors exercises or together exercise control over the other company (whether by reason of having the power to appoint directors or otherwise); or
- (b) have an interest in a limited liability partnership if the director or directors is or together are interested in 20% or

more of the total voting power in the limited liability partnership.

[36/2014]

(3A) Subject to this section and sections 163A and 163B, a company (other than an exempt private company) must not —

- (a) take part in an arrangement under which —
  - (i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under this section; and
  - (ii) that person, pursuant to the arrangement, obtains a benefit from the company or a related company; or
- (b) arrange the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval,

unless there is prior approval by the company in general meeting for taking part in such an arrangement or for arranging the assignment or assumption of rights, obligations or liabilities under such a transaction at which the interested director or directors, or his, her or their family members, abstained from voting.

[36/2014]

(3B) In determining for the purposes of subsection (3A) whether a transaction is one that would have required approval under this section if it had been entered into by the company, the transaction is to be treated as having been entered into on the date of the arrangement.

[36/2014]

(3C) The requirement in subsections (1) and (3A) that the interested director or directors, or his, her or their family members, abstain from voting at the general meeting of the company does not apply where all the shareholders of the company have each voted to approve the arrangement.

[36/2014]

(3D) For the purposes of this section —

- (a) where a company makes a loan or quasi-loan to another company or VCC, enters into a credit transaction for the

benefit of another company or VCC, gives a guarantee or provides security in connection with a loan, quasi-loan or credit transaction made to or entered into for the benefit of another company or VCC, or enters into an arrangement referred to in subsection (3A), a director or directors of the firstmentioned company are not to be taken to have an interest in shares in that other company or VCC by reason only that the firstmentioned company has an interest in shares in that other company or VCC and a director or directors have an interest in shares in the firstmentioned company;

- (b) the expression “interest in shares”, in relation to a company, has the meaning assigned to it in section 7 and, in relation to a VCC, has the meaning assigned to it in section 7 as applied by section 2(6) of the VCC Act and read with section 2(7) of that Act;
- (c) a person who has an interest in a share of a company or a VCC is to be treated as having an interest in the voting power conferred on the holder by that share;
- (d) a reference to prior approval of the company in subsection (1) does not include any approval of the company that is given after the loan, quasi-loan, credit transaction, guarantee or security mentioned in that subsection has been made, provided for or entered into (as the case may be); and
- (e) a reference to prior approval of the company in subsection (3A) does not include any approval of the company that is given after the arrangement referred to in that subsection has been entered into.

[36/2014; 44/2018]

(4) This section does not apply —

- (a) to anything done by a company where the other company (whether that company is incorporated in Singapore or otherwise) or VCC is its subsidiary or holding company or a subsidiary of its holding company; or

- (b) to a company, whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

[44/2018]

(5) For the purposes of this section —

- (a) an interest of a member of a director's family is treated as the interest of the director; and
- (b) a reference to a member of a director's family includes the director's spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

[36/2014]

(6) Nothing in this section operates to prevent the recovery of the amount of any loan, quasi-loan, credit transaction or arrangement or the enforcement of any guarantee or security whether made or given by the company or any other person.

[36/2014]

(7) Where a company contravenes this section, any director who authorises the making of any loan or quasi-loan, the entering into of any credit transaction, the entering into of any guarantee, the providing of any security or the entering into of any arrangement contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years.

[36/2014]

### **Exception for expenditure on defending proceedings, etc.**

**163A.**—(1) Sections 162 and 163 do not apply to anything done by a company —

- (a) to provide a director of the company with funds by way of any loan to meet expenditure incurred or to be incurred by the director —

- (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company; or
  - (ii) in connection with an application for relief; or
- (b) to enable any such director to avoid incurring such expenditure,
- if it is done on the terms provided in subsection (2).

[36/2014]

(2) The terms referred to in subsection (1) are —

- (a) that the loan is to be repaid, or (as the case may be) any liability of the company incurred under any transaction connected with the thing done is to be discharged, in the event of —
  - (i) the director being convicted in the proceedings;
  - (ii) judgment being given against the director in the proceedings; or
  - (iii) the court refusing to grant the director relief on the application; and
- (b) that it is to be repaid or discharged not later than 14 days after —
  - (i) the date when the conviction becomes final;
  - (ii) the date when the judgment becomes final; or
  - (iii) the date when the refusal of relief becomes final.

[36/2014]

(3) For the purposes of this section —

- (a) a conviction, judgment or refusal of relief becomes final —
  - (i) if it is not appealed against, at the end of the period for bringing an appeal; or
  - (ii) if it is appealed against, when the appeal (or any further appeal) is disposed of;

- (b) an appeal or further appeal is disposed of —
- (i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or
  - (ii) if it is abandoned or otherwise ceases to have effect; and
- (c) a reference to the repayment of a loan includes the payment of any interest which is chargeable under the terms on which the loan was given.

[36/2014]

(4) The reference in this section to an application for relief is to an application for relief under section 76A(13) or 391.

[36/2014]

### **Exception for expenditure in connection with regulatory action or investigation**

**163B.** Sections 162, 163 and 172 do not apply to anything done by a company —

- (a) to provide a director of the company with funds by way of any loan to meet expenditure incurred or to be incurred by the director in defending himself or herself —
- (i) in an investigation by a regulatory authority; or
  - (ii) against any action proposed to be taken by a regulatory authority,

in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company; or

- (b) to enable any such director to avoid incurring such expenditure.

[36/2014]

### **Register of director's and chief executive officer's shareholdings**

**164.**—(1) A company must keep a register showing with respect to each director of the company particulars of —

- (a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he or she has an interest and the nature and extent of that interest;
- (b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he or she has an interest and the nature and extent of that interest;
- (c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and
- (d) contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

[36/2014]

(1A) A company must keep a register showing with respect to each chief executive officer of the company particulars of —

- (a) shares in that company, being shares of which the chief executive officer is their registered holder or in which he or she has an interest and the nature and extent of that interest;
- (b) debentures of the company which are held by the chief executive officer or in which he or she has an interest and the nature and extent of that interest;
- (c) rights or options of the chief executive officer or of the chief executive officer and another person or other persons in respect of the acquisition or disposal of shares in the company; and
- (d) contracts to which the chief executive officer is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company.

[36/2014]

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company is deemed to have complied with this section in relation to a director or chief executive officer of that other company (whether or not he or she is also a director of that company) if the particulars required by this section to be shown in the registers of the firstmentioned company with respect to the director or chief executive officer (as the case may be) are shown in the registers of the second-mentioned company.

[36/2014]

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the firstmentioned company is a person other than —

- (a) the second-mentioned company;
- (b) a nominee of the second-mentioned company;
- (c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or
- (d) a nominee of such a subsidiary.

(5) A company must, within 3 days after receiving notice from a director or chief executive officer under section 165(1)(a) of this Act or section 133(1)(a), (b), (c), (d) or (e) of the Securities and Futures Act 2001, enter in its register in relation to the director or chief executive officer (as the case may be) the particulars referred to in subsection (1) or (1A) (as the case may be) including the number and description of shares, debentures, participatory interests (if applicable), rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests (if applicable), rights or options acquired or contracts entered into after he or she became a director or chief executive officer (as the case may be) —

- (a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section; and
- (b) the date of —
  - (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
  - (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

[36/2014]

(6) A company must, within 3 days after receiving a notice from a director or chief executive officer (as the case may be) under section 165(1)(b) of this Act or section 133(1)(g) (in respect of a change in the particulars of any matter referred to in section 133(1)(a) to (e)) of the Securities and Futures Act 2001, enter in its register the particulars of the change referred to in the notice.

[2/2009; 36/2014]

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of or participatory interest made available by the company.

(8) A company must, subject to this section, keep its register at the registered office of the company and the register must be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$3 or such lesser sum as the company requires.

(9) A person may request a company to furnish the person with a copy of its register or any part thereof on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company must send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

(10) The Registrar may by written notice require a company to send to the Registrar within such time as may be specified in the notice a copy of its register or any part thereof.

(11) A company must produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(12) It is a defence to a prosecution for failing to comply with subsection (1), (1A) or (5) in respect of particulars relating to a director or chief executive officer if the defendant proves that the failure was due to the failure of the director or chief executive officer to comply with section 165 of this Act, or (as the case may be) section 133 of the Securities and Futures Act 2001 with respect to those particulars.

[36/2014]

(13) In this section —

- (a) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001; and
- (b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(14) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share is a reference to a debenture or participatory interest.

(15) For the purposes of the application of this section —

- (a) a director or chief executive officer of a company is deemed to hold or have an interest or a right in or over any shares or debentures if —

- (i) a wife or husband of the director or chief executive officer (as the case may be) (not being herself or himself a director or chief executive officer thereof) holds or has an interest or a right in or over any shares or debentures; or
  - (ii) a child of less than 18 years of age of that director or chief executive officer (as the case may be) (not being himself or herself a director or chief executive officer) holds or has an interest in shares or debentures; and
- (b) any contract, assignment or right of subscription is deemed to have been entered into or exercised or made by, or a grant is deemed as having been made to, the director or chief executive officer (as the case may be) if —
- (i) the contract, assignment or right of subscription is entered into, exercised or made by, or a grant is made to, the wife or husband of a director or chief executive officer of a company (not being herself or himself a director or chief executive officer thereof); or
  - (ii) the contract, assignment or right of subscription is entered into, exercised or made by, or a grant is made to, a child of less than 18 years of age of a director or chief executive officer of a company (not being himself or herself a director or chief executive officer thereof).

[36/2014]

(16) In subsection (15), “child” includes stepson, adopted son, stepdaughter and adopted daughter.

[36/2014]

(17) 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 and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

**Power to require disclosure of directors' emoluments**

**164A.**—(1) If a company is served with a notice sent by or on behalf of —

- (a) at least 10% of the total number of members of the company (excluding the company itself if it is registered as a member); or
- (b) a member or members with at least 5% of the total number of issued shares of the company (excluding treasury shares),

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company must —

- (c) within 14 days or such longer period as the Registrar may allow, prepare or cause to be prepared and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary; including any amount paid by way of salary, for the financial year immediately preceding the service of the notice;
- (d) when the statement mentioned in paragraph (c) has been audited, within 14 days send a copy of the statement to all persons entitled to receive notice of general meetings of the company; and
- (e) lay the statement before the next general meeting of the company held after the statement is audited.

(2) If default is made in complying with this section, the company and every director of the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

**General duty to make disclosure**

**165.**—(1) Every director and chief executive officer of a company must give written notice to the company —

- (a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the firstmentioned company with section 164 that are applicable in relation to him or her;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration (if any) received as a result of the event giving rise to the change; and
- (c) of such events and matters affecting or relating to himself or herself as are necessary for the purposes of compliance by the company with section 173A that are applicable in relation to him or her.

[36/2014]

(2) A notice under subsection (1) must be given —

- (a) in the case of a notice under subsection (1)(a), within 2 business days after —
  - (i) the date on which the director became a director or the chief executive officer became a chief executive officer, as the case may be; or
  - (ii) the date on which the director or chief executive officer (as the case may be) became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs; and

- (b) in the case of a notice under subsection (1)(b), within 2 business days after the occurrence of the event giving rise to the change mentioned in that paragraph.

[36/2014]

(3) A company must, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors or chief executive officers of the company.

[36/2014]

(4) It is a defence to a prosecution for failing to comply with subsection (1)(a) or (b) or with subsection (2) if the defendant proves that his or her failure was due to his or her not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

- (a) he or she was not so aware on the date of the information or summons; or
- (b) he or she became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person is conclusively presumed to have been aware at a particular time of a fact or occurrence —

- (a) of which the person would, if the person had acted with reasonable diligence in the conduct of his or her affairs, have been aware at that time; or
- (b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his or her master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he or she had acted with reasonable diligence in the conduct of his or her master's or principal's affairs, have been aware at that time.

(6) In this section —

- (a) a reference to a participatory interest is a reference to a unit in a collective investment scheme within the meaning of section 2 of the Securities and Futures Act 2001; and
- (b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

(7) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share is a reference to a debenture or participatory interest.

(8) Nothing in section 164 or this section requires a company to enter in its register or requires a director to give notice to the company of matters that are shown in the register kept by the company in accordance with the repealed section 134 as in force immediately before 5 October 1973.

(9) Any director or chief executive officer who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

[36/2014]

(10) Subsection (1)(a) and (b) does not apply to a person —

(a) who is a director or chief executive officer of a listed company; and

(b) who is required to make disclosure of the matters referred to in subsection (1)(a) and (b) of this section under section 133 of the Securities and Futures Act 2001.

[2/2009; 36/2014]

**166.** [Repealed by Act 2 of 2009]

**167.** [Repealed by Act 13 of 1987]

### **Payments to director for loss of office, etc.**

**168.—**(1) It is not lawful —

(a) for a company to make to any director any payment by way of compensation for loss of office as an officer of the company or of a subsidiary of the company or as consideration for or in connection with his or her retirement from any such office; or

- (b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director is deemed to have been received by him or her in trust for the company.

(1A) The requirement for approval by the company in subsection (1) does not apply in respect of any payment to a director holding a salaried employment or office in the company by way of compensation for termination of employment pursuant to an existing legal obligation arising from an agreement made between the company and the director if —

- (a) the amount of the payment does not exceed the total emoluments of the director for the year immediately preceding his or her termination of employment; and
- (b) the particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company upon or prior to the payment.

[36/2014]

(1B) For the purposes of subsection (1A) —

- (a) an existing legal obligation is an obligation of the company, or any corporation which is by virtue of section 6 deemed to be related to the company, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office; and
- (b) if paragraph (a) or (b) of that subsection is not complied with, the amount received by the director is deemed to have been received by him or her on trust for the company.

[36/2014]

(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director

must take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, are included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of any requirement of law relating to take-over offers or any requirement of the Take-over Code mentioned in section 139 of the Securities and Futures Act 2001.

(3) A director who fails to comply with subsection (2) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails to do so shall be guilty of an offence, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment is deemed to have been received by him or her in trust for any person who has sold the person's shares as a result of the offer made.

(4) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration (as the case may be) is for the purposes of this section deemed to have been a payment made to the director by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

### **As to payments to directors**

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office does not include —

- (a) any payment under an agreement entered into before 1 January 1967;
- (b) any payment under an agreement particulars of which have been disclosed to and approved by special resolution of the company;

- (c) any bona fide payment by way of damages for breach of contract;
- (d) any bona fide payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment, except insofar as it is attributable to contributions made by the director, does not exceed the total emoluments of the director in the 3 years immediately preceding his or her retirement or death; or
- (e) any payment to a director pursuant to an agreement made between the company and him or her before he or she became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(6) This section is in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

(7) In this section, “director” includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company.

### **Provision and improvement of director’s emoluments**

**169.**—(1) A company must not at any meeting or otherwise provide emoluments or improve emoluments for a director of a company in respect of his or her office as such unless the provision is approved by a resolution that is not related to other matters and any resolution passed in breach of this section is void.

(2) In this section, “emoluments” in relation to a director includes fees and percentages, any sums paid by way of expenses allowance insofar as those sums are charged to income tax in Singapore, any contribution paid in respect of a director under any pension scheme and any benefits received by him or her otherwise than in cash in respect of his or her services as director.

**170.** [*Repealed by Act 36 of 2014*]**Secretary**

**171.**—(1) Every company must have one or more secretaries each of whom must be a natural person who has his or her principal or only place of residence in Singapore and who is not debarred under section 155B from acting as secretary of the company.

[36/2014]

(1A) It is the duty of the directors of a company to take all reasonable steps to secure that each secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

(1AA) In addition, it is the duty of the directors of a public company to take all reasonable steps to secure that each secretary of the company is a person who —

- (a) on 15 May 1987 held the office of secretary in that company and continued to hold that office on 15 May 2003; or
- (b) satisfies such requirements relating to experience, professional and academic requirements and membership of professional associations, as may be prescribed.

[36/2014]

(1AB) The Registrar may require a private company to appoint a person who satisfies subsection (1AA)(b) as its secretary if the Registrar is satisfied that the company has failed to comply with any provision of this Act with respect to the keeping of any register or other record.

[36/2014]

(1B) Any person who is appointed by the directors of a company as a secretary must, at the time of his or her appointment, by himself or herself or through a registered qualified individual authorised by him or her, file with the Registrar a declaration in the prescribed form that he or she consents to act as secretary and providing the prescribed particulars.

[36/2014]

(1C) A person to whom subsection (1AA)(a) applies who, after 15 May 1987, becomes a secretary of another company and is not qualified to act as secretary under subsection (1AA)(b) is not to be regarded as being a person who is qualified to discharge the functions of secretary under this subsection.

[36/2014]

(1D) In this section and sections 173 to 173I, “secretary” includes an assistant or deputy secretary.

[36/2014]

(1E) Where a director is the sole director of a company, he or she must not act or be appointed as the secretary of the company.

(2) Subsection (1) does not operate to prevent a corporation which was acting as the secretary of a company immediately before 29 December 1967 from continuing to act as secretary of that company for a period of 12 months after that date.

(3) The secretary or secretaries are to be appointed by the directors and at least one of those secretaries must be present at the registered office of the company by himself or herself or his or her agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.

(3A) Despite subsection (3), a secretary or his or her agent or clerk of a private company need not be physically present at the registered office during the times specified in that subsection if a secretary or his or her agent or clerk of the private company is readily contactable by a person at the registered office by telephone or other means of instantaneous communication during those times.

[36/2014]

(4) Subject to subsection (4A), anything required or authorised to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorised generally or specially in that behalf by the directors.

(4A) The office of secretary must not be left vacant for more than 6 months at any one time.

(5) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

### **Provision protecting officers from liability**

**172.**—(1) Any provision that purports to exempt an officer of a company (to any extent) from any liability that would otherwise attach to him or her in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

[36/2014]

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for an officer of the company against any liability attaching to him or her in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void, except as permitted by section 172A or 172B.

[36/2014]

(3) This section applies to any provision, whether contained in a company's constitution or in any contract with the company or otherwise.

[36/2014]

### **Provision of insurance**

**172A.** Section 172(2) does not prevent a company from purchasing and maintaining for an officer of the company insurance against any such liability mentioned in that subsection.

[36/2014]

### **Third party indemnity**

**172B.**—(1) Section 172(2) does not apply where the provision for indemnity is against liability incurred by the officer to a person other than the company, except when the indemnity is against —

(a) any liability of the officer to pay —

(i) a fine in criminal proceedings; or

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any

requirement of a regulatory nature (however arising);  
or

- (b) any liability incurred by the officer —
- (i) in defending criminal proceedings in which he or she is convicted;
  - (ii) in defending civil proceedings brought by the company or a related company in which judgment is given against him or her; or
  - (iii) in connection with an application for relief referred to in subsection (4) in which the court refuses to grant him or her relief.

[36/2014]

(2) The references in subsection (1)(b) to a conviction, judgment or refusal of relief are references to the final decision in the proceedings.

[36/2014]

(3) For the purposes of subsection (2) —

- (a) a conviction, judgment or refusal of relief becomes final —
- (i) if it is not appealed against — at the end of the period for bringing an appeal; or
  - (ii) if it is appealed against — at the time when the appeal (or any further appeal) is disposed of; and
- (b) an appeal (or further appeal) is disposed of —
- (i) if it is determined and there is no right of further appeal, or if there is a right of further appeal, the period for bringing any further appeal has ended; or
  - (ii) if it is abandoned or otherwise ceases to have effect.

[36/2014]

(4) The reference in subsection (1)(b)(iii) to an application for relief is to an application for relief under section 76A(13) or 391.

[36/2014]

**Registers of directors, chief executive officers, secretaries and auditors**

**173.**—(1) The Registrar must, in respect of each company, keep a register of the company's —

- (a) directors;
- (b) chief executive officers;
- (c) secretaries; and
- (d) auditors (if any).

[36/2014]

(2) The register under subsection (1) is to be kept in such form as the Registrar may determine.

[36/2014]

(3) Subject to subsection (4), the register of a company's directors must contain the following information in respect of each director of the company:

- (a) full name and any former name;
- (b) residential address or, at the director's option, alternate address;
- (c) nationality;
- (d) identification;
- (e) date of appointment;
- (f) date of cessation of appointment.

[36/2014]

(4) The Registrar need only keep any former name of a director in the register of the company for a period of 5 years from the date on which the name was furnished to the Registrar.

[36/2014]

(5) The register of a company's chief executive officers must contain the following information in respect of each chief executive officer of the company:

- (a) full name;
- (b) residential address or, at the chief executive officer's option, alternate address;

- (c) nationality;
- (d) identification;
- (e) date of appointment;
- (f) date of cessation of appointment.

[36/2014]

(6) The register of a company's secretaries must contain the following information in respect of each secretary of the company:

- (a) full name;
- (b) residential address or, at the secretary's option, alternate address;
- (c) identification;
- (d) date of appointment;
- (e) date of cessation of appointment.

[36/2014]

(7) The register of a company's auditors must contain the following information in respect of each auditor of the company:

- (a) full name;
- (b) an address at which the auditors may be contacted;
- (c) identification, if any;
- (d) date of appointment;
- (e) date of cessation of appointment.

[36/2014]

(8) An entry in the register of directors, register of chief executive officers, register of secretaries and register of auditors required to be kept by the Registrar under this section, is prima facie evidence of the truth of any matters which are by this Act directed or authorised to be entered or inserted in the respective register.

[36/2014]

(9) A certificate of the Registrar setting out any of the particulars required to be entered or inserted in the register of directors, register of chief executive officers, register of secretaries or register of auditors required to be kept by the Registrar under this section shall in all courts and before all persons and bodies authorised by law to

receive evidence be received as prima facie evidence of the entry of such particulars in the respective register.

[36/2014]

(10) A certificate of the Registrar stating that, at the time specified in the certificate, a person was named as director, chief executive officer, secretary or auditor of the company in the register of directors, register of chief executive officers, register of secretaries or register of auditors (as the case may be) shall in all courts and before all persons and bodies authorised by law be received as prima facie evidence of the fact, until by a notification of change given to the Registrar it appears that the person has ceased to be or becomes disqualified to act as such a director, chief executive officer, secretary or auditor, as the case may be.

[36/2014]

(11) For the purposes of this section —

(a) a person's name and identification —

(i) in the case of a person registered under the National Registration Act 1965 — means the name and identification as they appear in the latest identity card issued to that person under section 9 of that Act;  
or

(ii) in the case of a person not registered under the National Registration Act 1965 — means the name and identification as they appear in the latest passport issued to that person or such other similar evidence of identification as is available;

(b) a director includes an alternate, a substitute or a local director.

[36/2014]

(12) For the purposes of this section, only one alternate address may be provided at any one time.

[36/2014]

(13) An alternate address of an individual must comply with the following conditions:

(a) it is an address at which the individual can be located;

- (b) it is not a post office box number;
- (c) it is not the residential address of the individual;
- (d) it is located in the same jurisdiction as the individual's residential address.

[36/2014]

(14) Any document required to be served under this Act on any person who is a director, chief executive officer or secretary is sufficiently served if addressed to the person and left at or sent by post to his or her residential address or alternate address (as the case may be) which is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under this section.

[36/2014]

(15) Any document required to be served under this Act on a person who is for the time being an auditor of a company is sufficiently served if addressed to the person and left at or sent by post to the address which is entered in the register of auditors kept by the Registrar under this section.

[36/2014]

### **Duty of company to provide information on directors, chief executive officers, secretaries and auditors**

**173A.**—(1) A company must by notice furnish to the Registrar —

- (a) within 14 days after a person becomes a director, chief executive officer, secretary or auditor, the information required under section 173(3), (5), (6) or (7), as the case may be; and
- (b) within 14 days after any change in —
  - (i) the appointment of any director, chief executive officer, secretary or auditor; or
  - (ii) any information required to be contained in the registers of directors, chief executive officers, secretaries and auditors referred to in section 173(3), (5), (6) or (7).

[36/2014]

(2) A prescribed fee is payable for the provision of an alternate address in prescribed circumstances for the purposes of the register of directors, register of chief executive officers or register of secretaries (as the case may be) under section 173.

[36/2014]

(3) The information to be furnished to the Registrar under subsection (1) must be given in a notice in such form as may be prescribed or, if not prescribed, in such form as the Registrar may determine.

[36/2014]

### **Duty of directors, chief executive officers, secretaries and auditors to provide information to company**

**173B.**—(1) A director, a chief executive officer, a secretary or an auditor (as the case may be) must give the company —

- (a) any information the company needs to comply with section 173A(1)(a) as soon as practicable but not later than 14 days after his or her initial appointment unless he or she has previously given the information to the company in writing; and
- (b) any information the company needs to comply with section 173A(1)(b) as soon as practicable but not later than 14 days after any change to the information referred to in section 173(3), (5), (6) and (7).

[36/2014]

(2) Despite subsection (1), a director, a chief executive officer, a secretary or an auditor (as the case may be) must, subject to subsection (3), provide any information referred to in section 173(3), (5), (6) or (7) for the purpose of enabling the company to confirm its record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

[36/2014]

(3) The director, chief executive officer, secretary or auditor (as the case may be) mentioned in subsection (2) must furnish the information to the company as soon as practicable but not later

than 14 days after receipt of a written request for such information from the company.

[36/2014]

- (4) A director, chief executive officer or secretary who wishes to —
- (a) substitute his or her residential address, as stated in the register of directors, register of chief executive officers or register of secretaries, with an alternate address; or
  - (b) substitute his or her alternate address, as stated in the register of directors, register of chief executive officers or register of secretaries, with his or her residential address or with a different alternate address,

must inform the company which will treat the change as a change of particulars under section 173A(1)(b)(ii).

[36/2014]

### **Duty of company to keep consents of directors and secretaries**

**173C.** Every company must keep at its registered office —

- (a) in respect of each director —
  - (i) a signed copy of his or her consent to act as director;
  - (ii) a statement that he or she is not disqualified to act as director under this Act or under any other written law; and
  - (iii) documentary evidence (if any) of any change in his or her name; and
- (b) in respect of a secretary, a signed copy of his or her consent to act as secretary.

[36/2014]

### **Saving and transitional provisions for existing particulars of directors, chief executive officers, secretaries and auditors**

**173D.**—(1) In the case of a company incorporated before 3 January 2016 the name and particulars of the persons who were lodged with the Registrar as a director, a secretary or an auditor of the company under section 173 in force immediately before that date, must be entered in the company's register of directors, register of secretaries

or register of auditors (whichever may be applicable) referred to in section 173, until a notification of any change to the information referred to in section 173(3), (6) or (7) is received by the Registrar under section 173A(1)(b).

[36/2014]

(2) Where a company mentioned in subsection (1) has lodged the name and particulars of one or more managers with the Registrar as a manager or managers (as the case may be) of the company under section 173 in force immediately before 3 January 2016, the name and particulars of the manager or managers (as the case may be) must be entered in the company's register of chief executive officers referred to in section 173, until a notification of any change in the information referred to in section 173(5) is received by the Registrar under section 173A(1)(b).

[36/2014]

(3) For the purposes of subsections (1) and (2) —

- (a) the address lodged with the Registrar in respect of any director or secretary under section 173 in force immediately before 3 January 2016 must be entered as his or her residential address;
- (b) the address lodged with the Registrar in respect of any manager under section 173 in force immediately before 3 January 2016 must be entered as his or her residential address in his or her capacity as chief executive officer of the company; and
- (c) the address lodged with the Registrar in respect of any auditor under section 173 in force immediately before 3 January 2016, must be entered as the auditor's address.

[36/2014]

### **Self-notification in certain circumstances**

**173E.**—(1) A director who ceases to qualify to act as director by virtue of section 148 or 155 —

- (a) must, without affecting section 165(1)(c), notify the company of his or her disqualification as soon as

practicable but not later than 14 days after the disqualification; and

- (b) may give the notice referred to in section 173A(1)(b) to the Registrar if the director has reasonable cause to believe that the company will not do so.

[36/2014]

(2) A director who resigns from office and who has given notice of his or her resignation to the company, or a director who is removed or retires from office, may give the notice referred to in section 173A(1)(b) to the Registrar if the director has reasonable cause to believe that the company will not do so.

[36/2014]

(3) A secretary who resigns from office and who has given notice of his or her resignation to the company, or a secretary who is removed or retires from office, may give the notice referred to in section 173A(1)(b) to the Registrar if the secretary has reasonable cause to believe that the company will not do so.

[36/2014]

(4) A director, chief executive officer or secretary who has changed his or her residential address or alternate address (as the case may be) which is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173, or an auditor who has changed the auditor's address which is entered in the register of auditors kept by the Registrar under section 173, may give the notice referred to in section 173A(1)(b) to the Registrar if he or she has reasonable cause to believe that the company will not do so.

[36/2014]

### **Amendment of register by Registrar**

**173F.**—(1) Where the Registrar has reasonable cause to believe that a director of a company —

- (a) is no longer qualified to act as such by virtue of section 148 or 155; or
- (b) is dead,

the Registrar may on his or her own initiative amend the register of directors of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a director by virtue of that fact.

[36/2014]

(2) Where the Registrar has reasonable cause to believe that a chief executive officer of a company is dead, the Registrar may on his or her own initiative amend the register of chief executive officers of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a chief executive officer of the company by virtue of that fact.

[36/2014]

(3) Where the Registrar has reasonable cause to believe that a secretary of a company is dead, the Registrar may on his or her own initiative amend the register of secretaries of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a secretary of the company by virtue of that fact.

[36/2014]

(4) Where the Registrar has reasonable cause to believe that the auditor of a company —

(a) has had its registration as an accounting entity suspended or removed; or

(b) being an individual is dead,

the Registrar may on his or her own initiative amend the register of auditors of the company kept by the Registrar under section 173 to indicate that the person has ceased to be an auditor of the company by virtue of that fact.

[36/2014]

(5) Where the Registrar has reasonable cause to believe that he or she has made an amendment to the relevant register under subsection (1), (2), (3) or (4) under a mistaken belief that a director, a chief executive officer, a secretary or an auditor (as the case may be) of a company has ceased to be a director, a chief executive officer, a secretary or an auditor (as the case may be) of the company, the Registrar may on his or her own initiative amend the register of directors, register of chief executive officers, register of

secretaries or register of auditors to restore the name of the person in such register.

[36/2014]

### **Provision and use of residential address**

**173G.**—(1) Subject to this section, a director, a chief executive officer and a secretary of a company that is incorporated on or after 3 January 2016 is required to give notice to the Registrar of the following:

- (a) at incorporation or within 14 days after the date of his or her appointment (as the case may be) his or her residential address, unless his or her residential address has already been entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173;
- (b) if there is any change to his or her residential address, the particulars of the change within 14 days after the change, unless such change has already been entered in the register of directors, register of chief executive officers or register of secretaries (as the case may be) kept by the Registrar under section 173.

[36/2014]

(2) In the case of a company incorporated before 3 January 2016 —

- (a) a director, chief executive officer and secretary of the company is required to give notice to the Registrar of the following:
  - (i) any change in his or her residential address that was lodged with the Registrar under section 173 in force immediately before that date within 14 days after the change, unless such change has already been entered in the register of directors, register of chief executive officers or register of secretaries (as the case may be) kept by the Registrar under section 173;
  - (ii) any subsequent change in his or her residential address within 14 days after the change, unless such change has already been entered in the register of

directors, register of chief executive officers or register of secretaries (as the case may be) kept by the Registrar under section 173;

- (b) if the address that is entered as the residential address of a chief executive officer or a secretary under section 173D(3)(a) or (b) is not the individual's residential address, the chief executive officer or secretary (as the case may be) is required to give notice to the Registrar of the individual's residential address within 14 days after 3 January 2016, unless the residential address has, pursuant to a notice by the company under section 173A(1)(b)(ii), already been entered in the register of chief executive officers or the register of secretaries (as the case may be) kept by the Registrar under section 173.

[36/2014]

(3) Where a director, chief executive officer or secretary of a company has made a report of a change of his or her residential address under section 10 of the National Registration Act 1965, he or she is taken to have notified the Registrar of the change in compliance with subsection (1)(b) or (2), whichever subsection is applicable.

[36/2014]

(4) Despite section 12 or 12A, where on or after 3 January 2016, the residential address of a person is notified to the Registrar under subsection (1) or (2), or is transmitted to the Registrar by the Commissioner of National Registration under section 11 of the National Registration Act 1965, the residential address of the individual is protected from disclosure and is not available for public inspection or access except as provided for under this section or where the individual's residential address is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173.

[36/2014]

(5) Where —

- (a) the alternate address of a director, chief executive officer or secretary is entered in the register of directors, register of chief executive officers or register of secretaries (as the

case may be) that is kept by the Registrar under section 173(1)(a), (b) or (c), respectively; and

(b) the circumstances set out in subsection (6) apply,

the Registrar may enter the residential address of the director, chief executive officer or secretary in the respective register of directors, register of chief executive officers or register of secretaries, as the case may be.

[36/2014]

(6) Subsection (5) applies where —

(a) communications sent by the Registrar under this Act, or by any officer of the Authority under any ACRA administered Act to the director, chief executive officer or secretary (as the case may be) at his or her alternate address and requiring a response within a specified period remain unanswered; or

(b) there is evidence to show that service of any document under this Act or under any ACRA administered Act at the alternate address is not effective to bring it to the notice of the director, chief executive officer or secretary, as the case may be.

[36/2014]

(7) Before proceeding under subsection (5), the Registrar must give notice to the director, chief executive officer or secretary affected, and to every company of which the Registrar has been notified under this Act that the individual is a director, chief executive officer or secretary, as the case may be.

[36/2014]

(8) The notice mentioned in subsection (7) must —

(a) state the grounds on which it is proposed to enter the individual's residential address in the register of directors, register of chief executive officers or register of secretaries, as the case may be; and

(b) specify a period within which representations may be made before that is done.

[36/2014]

(9) The Registrar must take account of any representations received within the specified period.

[36/2014]

(10) Where the Registrar enters the residential address in the register of directors, register of chief executive officers or register of secretaries under subsection (5), the Registrar must give notice of that fact to the director, chief executive officer or secretary affected, and to every company of which the Registrar has been notified under this Act that the individual is a director, chief executive officer or secretary, as the case may be.

[36/2014]

(11) A notice to a director, chief executive officer or secretary under subsection (7) or (10) must be sent to the individual at his or her residential address unless it appears to the Registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any other last known address of that individual.

[36/2014]

(12) Where the Registrar enters an individual's residential address in the register of directors, register of chief executive officers or register of secretaries under subsection (5), or a Registrar appointed under any other ACRA administered Act discloses and makes available for public inspection under that Act the particulars of an individual's residential address under a provision of that Act equivalent to subsection (5) —

- (a) the residential address ceases to be protected under subsection (4) from disclosure or from public inspection or access; and
- (b) the individual is not, for a period of 3 years after the date on which the residential address is entered in the register of directors, register of chief executive officers or register of secretaries, allowed to provide an alternate address under section 173B(1)(b) or 173E(4).

[36/2014]

(13) Nothing in this section applies to any information lodged with the Registrar or deemed to be lodged before 3 January 2016 or

prevents such information from being disclosed or from being available for public inspection or access.

[36/2014]

(14) Nothing in this section prevents the residential address of an individual that is notified to the Registrar under subsection (1) or (2), or is transmitted to the Registrar by the Commissioner of National Registration under section 11 of the National Registration Act 1965 from —

- (a) being used by the Registrar for the purposes of any communication with the individual;
- (b) being disclosed for the purposes of issuing any summons or other legal process against the individual for the purposes of this Act or any other written law;
- (c) disclosure in compliance with the requirement of any court or the provisions of any written law;
- (d) disclosure for the purpose of assisting any public officer or officer of any other statutory body in the investigation or prosecution of any offence under any written law; or
- (e) disclosure in such other circumstances as may be prescribed.

[36/2014]

(15) Any individual aggrieved by the decision of the Registrar under subsection (5) may, within 30 days after the date of receiving the notice under subsection (10), appeal to the Court which may confirm the decision or give such directions in the matter as seem proper or otherwise determine the matter.

[36/2014; 40/2019]

(16) In this section, “ACRA administered Act” means the Accounting and Corporate Regulatory Authority Act 2004 and any of the written laws specified in the Second Schedule to that Act.

[36/2014]

### **Penalty for breach under sections 173, 173A, 173B, 173C and 173G**

**173H.**—(1) If default is made by a company in section 173A(1) or 173C, the company and every officer of the company who is in

default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

(2) Subject to subsection (3) —

(a) a director, a chief executive officer, a secretary or an auditor who being bound to comply with a requirement under section 173B fails to do so; or

(b) a director, a chief executive officer or a secretary who being bound to comply with a requirement under section 173G(1) or (2) fails to do so,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

(3) A director, a chief executive officer or a secretary who has opted to provide the company with an alternate address instead of his or her residential address for the purpose of section 173(3)(b), (5)(b) or (6)(b) (as the case may be) must ensure that the alternate address that he or she has provided is and continues to be an address at which he or she may be located, and if he or she fails to do so he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(4) For the purposes of subsection (3), a reference to the director, chief executive officer or secretary being located at an address means the director, chief executive officer or secretary may be physically found at the address after reasonable attempts have been made to contact the person at the address.

[36/2014]

### **Transitional provisions for old registers of directors, managers, secretaries and auditors**

**173I.**—(1) A company must continue to keep the following information for the periods set out in subsection (2):

- (a) with respect to each person who is a director of the company immediately before 3 January 2016 —
- (i) the signed copy of the person’s consent to act as a director mentioned in section 173(2)(a) in force immediately before that date; and
  - (ii) documentary evidence (if any) of any change in the person’s name mentioned in section 173(2)(c) in force immediately before that date;
- (b) with respect to each person who is a secretary of the company immediately before 3 January 2016, the signed copy of the person’s consent to act as a secretary mentioned in section 173(4A) in force immediately before that date.

[36/2014]

(2) The period mentioned in subsection (1) commences on 3 January 2016 and ceases on —

- (a) in the case of subsection (1)(a), the date on which the person ceases to be a director of the company; or
- (b) in the case of subsection (1)(b), the date on which the person ceases to be a secretary of the company.

[36/2014]

(3) Section 173(8) in force immediately before 3 January 2016 continues to apply in respect of any information lodged with the Registrar under section 173 in force immediately before that date.

[36/2014]

### *Division 3 — Meetings and proceedings*

#### **Statutory meeting and statutory report**

**174.**—(1) Every public company that is a limited company and has a share capital must, within a period of not less than one month and not more than 3 months after the date at which it is entitled to commence business, hold a general meeting of the members of the company to be called the “statutory meeting”.

(2) The directors must at least 7 days before the day on which the meeting is to be held forward a report to be called the “statutory report” to every member of the company.

(3) The statutory report must be certified by not less than 2 directors of the company and must state —

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;
- (c) an abstract of the receipts of the company and of the payments made thereout up to a date within 7 days of the date of the report exhibiting under distinctive headings the receipts from shares and debentures and other sources the payments made thereout and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;
- (d) the names and addresses and descriptions of the directors, trustees for holders of debentures (if any), auditors (if any), chief executive officers (if any) and secretaries of the company; and
- (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

[36/2014]

(4) The statutory report must, so far as it relates to the shares allotted and to the cash received in respect of such shares and to the receipts and payments on capital account, be examined and reported upon by the auditors, if any.

(5) The directors must cause a copy of the statutory report and the auditor’s report (if any) to be lodged with the Registrar at least 7 days before the date of the statutory meeting.

(6) The directors must cause a list showing the names and addresses of the members and the number of shares held by them respectively to be produced at the commencement of the meeting and to remain open and accessible to any member during the continuance of the meeting.

(7) The members present at the meeting are at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the constitution may be passed.

[36/2014]

(8) The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the constitution either before or subsequently to the former meeting may be passed and the adjourned meeting has the same powers as an original meeting.

[36/2014]

(9) The meeting may by ordinary resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, despite any other provision of this Act, at least 7 days' notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of any default in complying with this section every officer of the company who is in default and every director of the company who fails to take all reasonable steps to secure compliance with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

### **Annual general meeting**

**175.**—(1) Subject to this section and section 175A, a general meeting of every company to be called the “annual general meeting” must, in addition to any other meeting, be held after the end of each financial year within —

- (a) 4 months in the case of a public company that is listed; or

(b) 6 months in the case of any other company.

[15/2017]

(2) The Registrar may extend the period mentioned in subsection (1)(a) or (b) —

(a) upon an application by the company, if the Registrar thinks there are special reasons to do so; or

(b) in respect of any prescribed class of companies.

[15/2017]

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held is the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

(a) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty; and

(b) the Court may on the application of any member order a general meeting to be called.

(5) The Minister may, by order in the *Gazette*, specify such other period in substitution of the period mentioned in subsection (1)(a) or (b), or both.

[15/2017]

### **When private company need not hold annual general meeting**

**175A.**—(1) A company need not hold an annual general meeting for a financial year —

(a) if it is a private company in respect of which there is in force a resolution passed in accordance with subsection (2) to dispense with the holding of annual general meetings;

(b) if, at the end of that financial year, it is a private company and has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1) within the period specified in section 203(1)(b); or

(c) if, at the end of that financial year, it is both a private company and a dormant relevant company the directors of which are, under section 201A, exempt from the requirements of section 201 for the financial year.

[15/2017]

(2) Despite any other provision of this Act, a resolution mentioned in subsection (1)(a) is only treated as passed at a general meeting if it has been passed by all of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at the meeting.

[15/2017]

(3) A resolution under subsection (1)(a) has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.

[15/2017]

(4) In any year in which an annual general meeting would be required to be held but for this section, and in which no such meeting has been held, any member of the company may, by notice to the company not later than 14 days before the date by which an annual general meeting would have been required under section 175 to be held, require the holding of an annual general meeting in that year.

[15/2017]

(5) The power of a member under subsection (4) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.

(6) If such a notice is given or electronic communication is transmitted, section 175(1) and (4) applies with respect to the calling of the meeting and the consequences of default.

(7) A resolution mentioned in subsection (1)(a) ceases to be in force if the company is converted to a public company.

[15/2017]

(8) If the resolution mentioned in subsection (1)(a) ceases to be in force but less than 3 months remain to the date on which the company

is required under section 175 to hold an annual general meeting, the company need not hold that annual general meeting.

[15/2017]

(9) Subsection (8) does not affect any obligation of the company to hold an annual general meeting in that year pursuant to a notice given under subsection (4) or an electronic communication transmitted under subsection (5).

(10) Unless the contrary intention appears, if a company need not hold an annual general meeting for a financial year then for that financial year —

- (a) a reference in any provision of this Act to the doing of anything at an annual general meeting is to be read as a reference to the doing of that thing by way of a resolution by written means under section 184A;
- (b) a reference in any provision of this Act to the date or conclusion of an annual general meeting is, unless the meeting is held, to be read as a reference to the date of expiry of the period by which an annual general meeting would have been required under section 175 to be held;
- (c) the reference in section 197(1) or (1A) to the lodging of a return with the Registrar after its annual general meeting is to be read as a reference to the lodging of that return —
  - (i) in the case of a company mentioned in subsection (1)(a) or (b) — after the company has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1); or
  - (ii) in the case of a company mentioned in subsection (1)(c) — after the end of its financial year.

[15/2017]

(11) In this section, an address of a person includes any number or address used for electronic communication.

**Convening of extraordinary general meeting on requisition**

**176.**—(1) The directors of a company, despite anything in its constitution, must, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than 10% of the total voting rights of all members having at that date a right to vote at general meetings, immediately proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than 2 months after the receipt by the company of the requisition.

[36/2014]

(1A) For the purposes of subsection (1), any of the company's paid-up shares held as treasury shares are to be disregarded.

[36/2014]

(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened must not be held after the expiration of 3 months from that date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting must be paid to the requisitionists by the company, and any sum so paid must be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(5) A meeting at which a special resolution is to be proposed is deemed not to be duly convened by the directors if they do not give

such notice thereof as is required by this Act in the case of special resolutions.

### Calling of meetings

**177.**—(1) Two or more members holding not less than 10% of the total number of issued shares of the company (excluding treasury shares) or, if the company has not a share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the constitution may call a meeting of the company.

[36/2014]

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, must be called by written notice of not less than 14 days or such longer period as is provided in the constitution.

[36/2014]

(3) A meeting is, even though it is called by notice shorter than is required by subsection (2), deemed to be duly called if it is so agreed —

- (a) in the case of a meeting called as the annual general meeting — by all the members entitled to attend and vote thereat; or
- (b) in the case of any other meeting — by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.

(4) So far as the constitution does not make other provision in that behalf, notice of every meeting must be served on every member having a right to attend thereat in the manner in which notices are required to be served by the model constitution prescribed under section 36(1) for the type of company to which the company belongs, if any.

[36/2014]

### Right to demand a poll

**178.**—(1) Any provision in a company's constitution is void insofar as it would have the effect —

- (a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting;
- (b) of making ineffective a demand for a poll on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting that is made —
  - (i) by not less than 5 members having the right to vote at the meeting;
  - (ii) by a member or members representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting; or
  - (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5% of the total sum paid up on all the shares conferring that right; or
- (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than 72 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

[36/2014]

(1A) Despite subsection (1)(b), where any provision of the constitution of a company incorporated before 3 January 2016 is void under subsection (1)(b)(ii) or (iii), a demand for a poll on any question or matter other than the election of the chairperson of the meeting or the adjournment of the meeting may be made —

- (a) by a member or members representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting; or
- (b) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less

than 5% of the total sum paid up on all the shares conferring that right.

[36/2014]

(2) The instrument appointing a proxy to vote at a meeting of a company is deemed to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) a demand by a person as proxy for a member of the company is deemed to be the same as a demand by the member.

(3) A person entitled to vote on a poll at a meeting is deemed to be a person entitled to vote for the purposes of this Act.

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

**179.**—(1) So far as the constitution does not make other provision in that behalf and subject to sections 64 and 64A —

- (a) 2 members of the company personally present form a quorum;
- (b) any member elected by the members present at a meeting may be chairperson thereof;
- (c) in the case of a company having a share capital —
  - (i) on a show of hands, each member who is personally present and entitled to vote has one vote; and
  - (ii) on a poll, each member has one vote in respect of each share held by the member and where all or part of the share capital consists of stock or units of stock each member has one vote in respect of the stock or units of stock held by the member which is or are or were originally equivalent to one share; and
- (d) in the case of a company not having a share capital every member has one vote.

[36/2014]

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if the person votes, use all the person's votes or cast all the votes the person 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 company — authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members; or
- (b) if it is a creditor, including a holder of debentures, of a company — authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorised is, in accordance with the person's authority and until the person's authority is revoked by the corporation, entitled to exercise the same powers on behalf of the corporation 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 is authorised 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 as a member or proxy or as a corporate representative of another member,

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

[36/2014]

(5) Subject to section 41(8) and (9), a certificate under the seal of the corporation is prima facie evidence of the appointment or of the revocation of the appointment (as the case may be) of a representative pursuant to subsection (3).

(6) Where a holding company is beneficially entitled to the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (3) stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act or by the constitution of the

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

[36/2014]

(7) Where by or under any provision of this Act any notice, copy of a resolution or other document relating to any matter is required to be lodged by a company with the Registrar, and a minute mentioned in subsection (6) is signed by the representative pursuant to that subsection and the minute relates to such a matter the company must within 14 days after the signing of the minute lodge a copy thereof with the Registrar.

[36/2014]

(8) For the purposes of this section, any reference to a member of a company does not include the company itself where it is such a member by virtue of its holding shares as treasury shares.

### **As to member's rights at meetings**

**180.**—(1) A member has, despite any provision in the constitution of the company, a right to attend any general meeting of the company and to speak on any resolution before the meeting.

[36/2014]

(2) In the case of a company limited by shares, the holder of a share may vote on a resolution before a general meeting of the company if, in accordance with the provisions of section 64, the share confers on the holder a right to vote on that resolution.

[36/2014]

(3) In the case of a company other than a company limited by shares, a member may vote on a resolution before a general meeting of the company if the right to vote on that resolution is conferred on the member under the constitution of the company.

[36/2014]

(4) Despite subsection (2), a preference share issued after 15 August 1984 but before 3 January 2016 carries, in addition to

any other right conferred by this Act, the right in a poll at any general meeting to at least one vote in respect of each such share held during such period as the preferential dividend or any part thereof remains in arrears and unpaid, such period starting from a date not more than 12 months, or such lesser period as the constitution may provide, after the due date of the dividend.

[36/2014]

(5) For the purposes of subsection (4) —

- (a) “preference share” means a share, by whatever name called, which does not entitle the holder thereof —
  - (i) to the right to vote at a general meeting (except in the circumstances specified in subsection (4)); or
  - (ii) to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise; and
- (b) a dividend is deemed to be due on the date appointed in the constitution for the payment of the dividend for any year or other period or, if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend has been earned or declared.

[36/2014]

## Proxies

**181.**—(1) Subject to this section, a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint another person, whether a member or not, as the member’s proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member also has the same right as the member to speak at the meeting.

[36/2014]

(1A) Subject to this section, unless the constitution otherwise provides —

- (a) a proxy is not entitled to vote except on a poll;

- (b) a member is not entitled to appoint more than 2 proxies to attend and vote at the same meeting; and
- (c) where a member appoints 2 proxies, the appointments are invalid unless the member specifies the proportions of the member's holdings to be represented by each proxy.

[36/2014]

(1B) A member of a company entitled to attend and vote at a meeting of the company held pursuant to an order of the Court under section 210(1), or at any adjourned meeting under section 210(3), is, unless the Court orders otherwise, entitled to appoint only one proxy to attend and vote at the same meeting.

[36/2014]

(1C) Except where subsection (1B) applies, a member of a company having a share capital who is a relevant intermediary may appoint more than 2 proxies in relation to a meeting to exercise all or any of the member's rights to attend and to speak and vote at the meeting, but each proxy must be appointed to exercise the rights attached to a different share or shares held by the member (which number and class of shares must be specified).

[36/2014]

(1D) A proxy appointed under subsection (1C) has at a meeting the right to vote on a show of hands.

[36/2014]

(2) In every notice calling a meeting of a company or a meeting of any class of members of a company there must appear with reasonable prominence a statement as to the rights of the member to appoint a proxy or proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence.

[36/2014]

(3) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat

by proxy shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(4) No person shall be guilty of an offence under subsection (3) by reason only of the issue to a member at the member's request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which entitles the member to direct the proxy to vote either for or against the resolution.

(6) In this section, "relevant intermediary" means —

- (a) a banking corporation licensed under the Banking Act 1970 or a wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity;
- (b) a person holding a capital markets services licence to provide custodial services under the Securities and Futures Act 2001 and who holds shares in that capacity; or
- (c) the Central Provident Fund Board established by the Central Provident Fund Act 1953, in respect of shares purchased under the subsidiary legislation made under that Act providing for the making of investments from the contributions and interest standing to the credit of members of the Central Provident Fund, if the Board holds those shares in the capacity of an intermediary pursuant to or in accordance with that subsidiary legislation.

[36/2014; 4/2017]

### **Power of Court to order meeting**

**182.** 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 constitution 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 may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy is deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he or she were present at the meeting.

[36/2014]

### **Circulation of members' resolutions, etc.**

**183.**—(1) Subject to this section, a company must on the requisition of such number of members of the company as is specified in subsection (2) and, unless the company otherwise resolves, at the expense of the requisitionists —

- (a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting or (if the resolution is proposed to be passed by written means under section 184A) for which agreement is sought; and
- (b) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) is —

- (a) any number of members representing not less than 5% of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

- (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than \$500.

(3) Subject to subsection (3A), notice of a resolution referred to in subsection (1) must be given, and any statement so referred to must be circulated, to members of the company entitled to have notice of the meeting sent to them by serving on each member, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.

(3A) Where the resolution is proposed to be passed by written means under section 184A, the notice of the resolution and statement must be given and circulated to members of the company entitled to have notice of the meeting sent to them by serving on each member —

- (a) a copy of the resolution and statement; and
- (b) a notification that formal agreement to the resolution is being sought under section 184A.

(3B) Notice of the resolution must be given to any other member of the company by serving on the member notice of the general effect of the resolution in any manner permitted for giving the member notice of meetings of the company.

(3C) Except where the resolution is proposed to be passed by written means under section 184A, the copy of the resolution mentioned in subsection (3) must be served, or notice of the general effect of the resolution mentioned in subsection (3B) must be given (as the case may be) in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it must be served or given as soon as practicable thereafter.

(4) Subject to subsection (4A), a company is not bound under this section to give notice of any resolution or to circulate any statement unless —

- (a) a copy of the requisition signed by the requisitionists, or 2 or more copies which between them contain the

signatures of all the requisitionists, is deposited at the registered office of the company —

- (i) in the case of a requisition requiring notice of a resolution — not less than 6 weeks before the meeting; and
  - (ii) in the case of any other requisition — not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto,

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection is deemed to have been properly deposited for the purposes thereof.

(4A) A company is not bound under this section to give notice of any resolution which is proposed to be passed by written means under section 184A, or to circulate any statement relating thereto, unless —

- (a) the requisition setting out the text of the resolution and the statement is received by a director of the company in legible form or a permitted alternative form; and
- (b) the notice states that formal agreement to the resolution is sought under section 184A.

(4B) Where the requisition under subsection (4A)(a) requests that the date of its receipt by a company be notified to a specified person, the directors must, without delay after it is first received by a director in legible form or a permitted alternative form, notify that person of the date when it was first so received.

(5) The company is not bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the

company's costs on an application under this section to be paid in whole or in part by the requisitionists, even though they are not parties to the application.

(6) Despite anything in the company's constitution, the business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice is deemed to have been so given despite the accidental omission, in giving it, of one or more members.

[36/2014]

(7) In the event of any default in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(8) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

- (a) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or
- (b) in another form that —
  - (i) is currently agreed between the company and the person as a form in which the thing may be sent or otherwise supplied to the company; and
  - (ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

### **Special resolutions**

**184.**—(1) A resolution is a special resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting of which —

- (a) in the case of a private company — not less than 14 days' written notice; or
- (b) in the case of a public company — not less than 21 days' written notice,

specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Despite subsection (1), if it so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under subsection (1) has been given.

(3) At any meeting at which a special resolution is submitted, a declaration of the chairperson that the resolution is carried is unless a poll is demanded conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted, a poll is deemed to be effectively demanded if demanded —

- (a) by such number of members for the time being entitled under the constitution to vote at the meeting as is specified in the constitution, but it is not in any case necessary for more than 5 members to make the demand;
- (b) if no such provision is made by the constitution — by 3 members so entitled, or by one or 2 members so entitled, if —
  - (i) that member holds or those 2 members together hold not less than 10% of the total number of paid-up shares of the company (excluding treasury shares); or
  - (ii) that member represents or those 2 members together represent not less than 10% of the total voting rights

of all the members having a right to vote at that meeting.

[36/2014]

(4A) For the purposes of subsection (4), any reference to a member does not include a reference to a company itself where it is registered as a member.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed, reference must be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the constitution of the company.

[36/2014]

(6) For the purposes of this section, notice of a meeting is deemed to be duly given and the meeting is deemed to be duly held when the notice is given and the meeting held in the manner provided by this Act or by the constitution.

[36/2014]

(7) Any extraordinary resolution, duly and appropriately passed before 29 December 1967 is for the purposes of this Act treated as a special resolution.

(8) Where in the case of a company incorporated before 29 December 1967 any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

### **Passing of resolutions by written means**

**184A.**—(1) Despite any other provision of this Act, a private company or an unlisted public company may pass any resolution by written means in accordance with the provisions of this section and sections 184B to 184F.

[36/2014]

(2) Subsection (1) does not apply to a resolution mentioned in section 175A(1)(a) or a resolution for which special notice is required.

[15/2017]

(3) A special resolution is passed by written means if the resolution indicates that it is a special resolution and if it has been formally

agreed on any date by one or more members of the company who on that date represent —

- (a) at least 75%; or
- (b) if the constitution of the company requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the company.

[36/2014]

(4) An ordinary resolution is passed by written means if the resolution does not indicate that it is a special resolution and if it has been formally agreed on any date by one or more members of the company who on that date represent —

- (a) a majority; or
- (b) if the constitution of the company requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members who on that date would have the right to vote on that resolution at a general meeting of the company.

[36/2014]

(4A) A resolution mentioned in section 76(9B)(e) is passed by written means if the resolution indicates that it is a resolution mentioned in that provision and if it has been formally agreed on any date by all the members of the company who on that date would have the right to vote on that resolution at a general meeting of the company.

(5) For the purposes of this section, a resolution of a company is formally agreed by a member if —

- (a) the company receives from the member (or the member's proxy if this is allowed) a document that —
  - (i) is given to the company in legible form or a permitted alternative form;
  - (ii) indicates the member's agreement (or agreement on the member's behalf) to the resolution by way of the

member's signature (or the member's proxy's signature if that is allowed), or such other method as the constitution may provide; and

(iii) includes the text of the resolution or otherwise makes clear that it is that resolution that is being agreed to; and

(b) the member (or the member's proxy) had a legible text of the resolution before giving that document.

[36/2014]

(6) Nothing in subsection (3), (4) or (4A) is to be construed as requiring the requisite number of members to formally agree to the resolution on a single day.

(6A) For the purposes of this section, something is "in legible form or a permitted alternative form" if, and only if, it is sent or otherwise supplied —

(a) in a form (such as a paper document) that is legible before being sent or otherwise supplied and does not change form during that process; or

(b) in another form that —

(i) is currently agreed between the company and the person as a form in which the thing may be sent or otherwise supplied to the company; and

(ii) is such that documents sent or supplied in that form can (where particular conditions are met) be received in legible form or be made legible following receipt in non-legible form.

(7) Any reference in this Act or any other law to the passing or making of a resolution, or the passing or making of a resolution at a meeting, includes a reference to the passing of the resolution by written means in accordance with this section.

(8) Any reference in this Act or any other law to the doing of anything at a general meeting of a company includes a reference to the passing of a resolution authorising the doing of that thing by written means in accordance with this section.

(9) In this section and sections 184B to 184F, “unlisted public company” means a public company the securities of which are not listed for quotation or quoted on an approved exchange in Singapore or any securities exchange outside Singapore.

[36/2014; 4/2017]

### **Requirements for passing of resolutions by written means**

**184B.**—(1) A resolution of a private company or an unlisted public company may only be passed by written means if —

- (a) either —
  - (i) agreement to the resolution was first sought by the directors of the company in accordance with section 184C; or
  - (ii) a requisition for that resolution was first given to the company in accordance with section 183 and, by reason of that notice, the documents referred to in section 183(3A) in respect of the resolution were served on members of the company in accordance with section 183(3A);
- (b) the constitution of the company does not prohibit the passing of resolutions (either generally or for the purpose in question) by written means; and
- (c) all conditions in the company’s constitution relating to the passing of the resolution by written means are met.

[36/2014]

(2) Any resolution that is passed in contravention of subsection (1) is invalid.

### **Where directors seek agreement to resolution by written means**

**184C.**—(1) The directors of a private company or an unlisted public company who wish to seek agreement to a resolution of the company and for it to be passed by written means must send to each member, having the right to vote on that resolution at a general meeting, a copy of the text of the resolution.

[36/2014]

(2) As far as practicable, the directors must comply with subsection (1) as respects every member at the same time and without delay.

(3) Without limiting any other means of complying with subsections (1) and (2), the directors have complied with those subsections if they secure that the same paper document containing the text of the resolution is sent without delay to each member in turn.

(4) Subject to section 184D, if the resolution is passed before the directors have complied with subsection (1) as respects every member, that fact does not affect the validity of the resolution or any obligation already incurred by the directors under subsections (1) and (2).

### **Members may require general meeting for resolution**

**184D.**—(1) Any member or members of a private company or an unlisted public company representing at least 5% of the total voting rights of all the members having the right to vote on a resolution at a general meeting of the company may, within 7 days after —

- (a) the text of the resolution has been sent to the member or members in accordance with section 184C; or
- (b) the documents referred to in section 183(3A) in respect of the resolution have been served on the member or members,

as the case may be, give notice to the company requiring that a general meeting be convened for that resolution.

*[36/2014]*

- (2) Where notice is given under subsection (1) —
  - (a) the resolution is invalid even though it may have in the meantime been passed in accordance with section 184A; and
  - (b) the directors must proceed to convene a general meeting for the resolution.

**Period for agreeing to written resolution**

**184DA.**—(1) Unless the constitution of a company otherwise provides, a resolution proposed to be passed by written means lapses if it is not passed before the end of the period of 28 days beginning with the date on which the written resolution is circulated to the members of the company.

[36/2014]

(2) The agreement to a resolution is ineffective if indicated after the expiry of that period.

[36/2014]

**Company's duty to notify members that resolution passed by written means**

**184E.**—(1) Where a resolution of a private company or an unlisted public company is passed by written means, the company must —

- (a) notify every member that it has been passed; and
- (b) do so within 15 days from the earliest date on which a director or secretary of the company is aware that it has been passed.

[36/2014]

(2) Non-compliance with this section does not render the resolution invalid.

**Recording of resolutions passed by written means**

**184F.**—(1) Where a resolution of a private company or an unlisted public company is passed by written means, the company must cause a record of the resolution, and the indication of each member's agreement (or agreement on the member's behalf) to it, to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

[36/2014]

(2) Non-compliance with subsection (1) does not render the resolution invalid.

(3) Any such record, if purporting to be signed by a director or the secretary of the company, is evidence of the proceedings in passing the resolution.

(4) Where a record is made in accordance with this section, then, until the contrary is proved, the requirements of this Act with respect to those proceedings are deemed to have been complied with.

(5) Section 189 applies in relation to a record made in accordance with this section as it applies in relation to minutes of proceedings of a general meeting.

### **Resolutions of one member companies**

**184G.**—(1) Despite anything in this Act, a company that has only one member may pass a resolution by the member recording the resolution and signing the record.

(2) If this Act requires information or a document relating to the resolution to be lodged with the Registrar, that requirement is satisfied by lodging the information or document with the resolution that is passed.

### **Resolution requiring special notice**

**185.** Where by this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company must give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, must give them notice thereof, in any manner allowed by the constitution, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, is deemed to be properly given.

[36/2014]

### **Registration and copies of certain resolutions**

**186.**—(1) A copy of —

- (a) every special resolution; and
- (b) every resolution, including any resolution passed under section 175A(1)(a), which effectively binds any class of

shareholders whether agreed to by all the members of that class or not,

must, except where otherwise expressly provided by this Act within 14 days after the passing or making thereof, be lodged by the company with the Registrar.

*[36/2014; 15/2017]*

(2) Where the constitution of a company has not been registered, a printed copy of every resolution to which this section applies must be forwarded to any member at the member's request on payment of \$1 or such less sum as the company directs.

*[36/2014]*

(3) In the event of any default in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(4) In the event of any default in complying with subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine of \$50 for each copy in respect of which default is made.

### **Resolutions at adjourned meetings**

**187.** Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors the resolution is for all purposes treated as having been passed on the date on which it was in fact passed and not on any earlier date.

### **Minutes of proceedings**

**188.**—(1) Every company must cause —

- (a) minutes of all proceedings of general meetings and of meetings of its directors and of its chief executive officers (if any) to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and

- (b) those minutes to be signed by the chairperson of the meeting at which the proceedings were had or by the chairperson of the next succeeding meeting.

[36/2014]

(2) Any minutes so entered that purport to be signed as provided in subsection (1) are evidence of the proceedings to which they relate, unless the contrary is proved.

(3) Where minutes have been so entered and signed, then, until the contrary is proved —

- (a) the meeting is deemed to have been duly held and convened;
- (b) all proceedings had thereat are deemed to have been duly had; and
- (c) all appointments of officers or liquidators made thereat are deemed to be valid.

(3A) Every company must keep minute books in which it must cause to be entered the following matters:

- (a) if the company has only one director —
  - (i) the passing of resolutions by that director; and
  - (ii) the making of declarations by that director;

(b) resolutions passed by written means under section 184A, within one month of the passing or making of each resolution or declaration.

(3B) The company must ensure that minutes of the passing of a resolution mentioned in subsection (3A)(b) are signed by a director within a reasonable time after the resolution is passed.

(3C) The director of a company with only one director who has passed a resolution or made a declaration must sign the minutes thereof within a reasonable time after the resolution is passed or the declaration is made.

(3D) Minutes entered in accordance with subsection (3A) and purportedly signed in accordance with subsection (3B) or (3C) (as the

case may be) are evidence of the resolution or declaration to which they relate, unless the contrary is proved.

(4) 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 and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

### **Inspection of minute books**

**189.**—(1) The books mentioned in section 188(1) and (3A) must be kept by the company at the registered office or the principal place of business in Singapore of the company, and must be open to the inspection of any member without charge.

(2) Any member is entitled to be furnished within 14 days after the member has made a request in writing in that behalf to the company with a copy of any minutes specified in section 188(1) or (3A) at a charge not exceeding \$1 for every page thereof.

(2A) Subsection (1) does not apply to books containing minutes of proceedings of meetings of a company's directors and of its chief executive officers, or (as the case may be) books containing minutes of the passing of resolutions and the making of declarations by the director of a company that has only one director; and subsection (2) does not apply to any of those minutes.

[36/2014]

(3) If any copy required under this section is not so furnished the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 and also to a default penalty.

### *Division 4 — Register of members kept by public company*

[36/2014]

### **Application and interpretation of Division**

**189A.**—(1) This Division applies only in relation to a public company.

[36/2014]

(2) In this Division, a reference to the register means the register of members required to be kept by a public company under section 190(1).

[36/2014]

### **Register and index of members of public companies**

**190.**—(1) Every public company must keep a register of its members and enter therein —

- (a) the names and addresses of the members, and in the case of a public company having a share capital 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 7 years so ceased to be a member; and
- (d) in the case of a public company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

[36/2014]

(2) Despite anything in subsection (1), where the public company has converted any of its shares into stock and given notice of the conversion to the Registrar, the company must alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (1)(a).

[36/2014]

(2A) Where a public company purchases one or more of its own shares or stocks in circumstances in which section 76H applies —

- (a) the requirements of subsections (1)(a), (b) and (c) and (2) must be complied with unless the public company cancels all of the shares or stocks immediately after the purchase in accordance with section 76K(1); but

(b) any share or stock which is so cancelled is to be disregarded for the purposes of subsections (1)(a) and (2).  
[36/2014]

(3) Despite anything in subsection (1), a public company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless the person specifically requests the names and particulars of former members.

[36/2014]

(4) The register of members is prima facie evidence of any matters inserted therein as required or authorised by this Act.

### **Index of members of public company**

(5) Every public company having more than 50 members must, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and must, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

[36/2014]

(6) The index must in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(7) If default is made in complying with this section, the public company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

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

**191.**—(1) The register of members and index (if any) must be kept at the registered office of the public company, but —

(a) if the work of making them up is done at another office of the company in Singapore they may be kept at that other office; or

- (b) if the company arranges with some other person to make up the register and index (if any) on its behalf they may be kept at the office of that other person at which the work is done if that office is in Singapore.

[36/2014]

(2) Every public company must, within 14 days after the register and index, if any, are first kept at a place other than the registered office, lodge with the Registrar notice of the place where the register and index (if any) are kept and must, within 14 days after any change in the place at which the register and index (if any) are kept, lodge with the Registrar notice of the change.

[36/2014]

(3) If default is made in complying with this section, the public company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

### **Inspection and closing of register**

**192.**—(1) A public company may close the register of members or any class of members for one or more periods not exceeding 30 days in the aggregate in any calendar year.

[36/2014]

(2) The register and index must be open to the inspection of any member without charge and of any other person on payment for each inspection of \$1 or such less sum as the public company requires.

[36/2014]

(3) Any member or other person may request the public company to furnish that member or other person with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of \$1 or such less sum as the company requires for every page thereof required to be copied and the company must cause any copy so requested by any person to be sent to that person within a period of 21 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

[36/2014]

(4) If any copy so requested is not sent within the period prescribed by subsection (3), the public company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 and also to a default penalty.

[36/2014]

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

**193.** Where, by virtue of section 191(1)(b), the register of members is kept at the office of some person other than the public company, and by reason of any default of the person the company fails to comply with section 191(1) or (2) or with section 192 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if that other person were an officer of the company who was in default, and the power of the Court under section 399 extends to the making of orders against that other person and that other person's officers and employees.

[36/2014]

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

**194.—(1)** If —

- (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 or the public company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

[36/2014]

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

- (a) any question relating to the title of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises

between members or alleged members or between members or alleged members on the one hand and the public company on the other hand; and

- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

[36/2014]

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

(4) No application for the rectification of a register in respect of an entry which was made in the register more than 30 years before the date of the application may be entertained by the Court.

### **Limitation of liability of trustee, etc., registered as holder of shares**

**195.**—(1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register as the holder of a share in any company may become registered as the holder of that share as trustee, executor or administrator of that estate and is in respect of that share subject to the same liabilities and no more as he or she would have been subject to if the share had remained registered in the name of the deceased person.

[15/2017]

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any company being a share registered in a register may with the consent of the company and of the registered holder of that share become registered as the holder of the share as trustee, executor or administrator of that estate and is in respect of the share subject to the same liabilities and no more as he or she would have been subject to if the share had been registered in the name of the deceased person.

[15/2017]

(3) Shares in a company registered in a register and held by a trustee in respect of a particular trust must at the request of the trustee be marked in the register in such a way as to identify them as being held in respect of the trust.

[15/2017]

(4) Subject to this section, no notice of any trust expressed, implied or constructive may be entered in a register or be receivable by the Registrar and no liabilities are affected by anything done pursuant to subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the company concerned is not affected by notice of any trust by anything so done.

[15/2017]

### **Branch registers**

**196.**—(1) A public company having a share capital may cause to be kept in any place outside Singapore a branch register of members which is deemed to be part of the company's register of members.

[36/2014]

(2) The public company must lodge with the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice must be lodged within 14 days after the opening of the office or of the change or discontinuance, as the case may be.

[36/2014]

(3) A branch register must be kept in the same manner in which the principal register is by this Act required to be kept.

(4) The public company must transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as possible after the entry is made, and must cause to be kept at that office duly entered up from time to time a duplicate of its branch register, which is for all purposes of this Act deemed to be part of the principal register.

[36/2014]

(5) Subject to this section with respect to the duplicate register, the shares registered in a branch register must be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register may during the continuance of that registration be registered in any other register.

(6) A public company may discontinue a branch register and thereupon all entries in that register must be transferred to some other

branch register kept by the company in the same place or to the principal register.

[36/2014]

(7) This section applies to all public companies incorporated in Singapore.

[36/2014]

(8) If by virtue of the law in force in any other country any corporation incorporated under that law keeps in Singapore a branch register of its members, the Minister may by order declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members apply, subject to any modifications specified in the order, to and in relation to any such branch register kept in Singapore as they apply to and in relation to the registers of companies under this Act and thereupon those provisions are to apply accordingly.

(9) If default is made in complying with this section, the public company and every officer of the company who is in default and every person who, pursuant to section 191, has arranged to make up the principal register, and who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

*Division 4A — Electronic register of members kept by Registrar*

**Electronic register of members**

**196A.**—(1) On and after 3 January 2016, the Registrar must, in respect of every private company, keep and maintain an electronic register of members of that company containing such information notified to the Registrar on or after that date.

[36/2014]

(2) The electronic register of members of a private company must be kept in such form as the Registrar may determine and must contain —

- (a) the following information:
  - (i) the names of the members;
  - (ii) the addresses of the members;

- (iii) in the case of a company having a share capital —
- (A) a statement of the shares held by each member of the amount paid or agreed to be considered as paid on the shares of each member; and
  - (B) the date of every allotment of shares to members (including any deemed allotment as defined in section 63(3)) and the number of shares comprised in each allotment;
- (iv) the date on which the name of each person was entered in the register as a member;
- (v) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (b) any change to the information referred to in paragraph (a)(i), (ii) and (iii) that occurs on or after 3 January 2016.

[36/2014]

(3) Where a private company has converted any of its shares into stock and the company notifies the Registrar of this fact, the register must show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (2)(a).

[36/2014]

(4) Particulars of any change in the information referred to in subsection (2) must be given to the Registrar where a private company purchases one or more of its shares or stocks in circumstances in which section 76H applies unless the company cancels all the shares or stocks immediately after the purchase in accordance with section 76K(1).

[36/2014]

(5) The Registrar must update the electronic register of members in accordance with any change that is required or authorised by any provision of this Act to be lodged with the Registrar, including section 31(1), 63(1), 70(6), 71(1B), 74A(3), 76B(7), 76K(1A), 126(2) or 128(1)(a).

[36/2014]

(6) An entry in the register of members required to be kept by the Registrar under this section is prima facie evidence of the truth of any matters which are by this Act directed or authorised to be entered or inserted in the register of members.

[36/2014]

### **Information to be provided by pre-existing private companies**

**196B.**—(1) A private company incorporated, or converted from a public company, before 3 January 2016 must lodge with the Registrar the information necessary to be included in the company's electronic register of members under section 196A within the earlier of the following dates:

- (a) 6 months after 3 January 2016;
- (b) the date on which the first return under section 197 is required to be lodged with the Registrar after 3 January 2016.

[36/2014]

(2) If a private company to which subsection (1) applies fails to lodge any of the information that it is required to lodge under that subsection, the Registrar may, in place of the omitted information, enter in the electronic register of members the corresponding information contained in the register of members kept by the company under section 190 in force immediately before 3 January 2016.

[36/2014]

(3) The Registrar may extend the time for furnishing the information under subsection (1) if the Registrar considers it fair and reasonable to do so in the circumstances of the case.

[36/2014]

### **Application of sections 194 and 195**

**196C.**—(1) Section 194 applies in respect of the electronic register of members of a private company required to be kept by the Registrar under section 196A as if a reference to a register under section 194 referred to the electronic register of members of the private company in question.

[36/2014]

(2) Section 195 applies in respect of the electronic register of members of a private company required to be kept by the Registrar under section 196A but with the following modifications:

- (a) a reference to a register under section 194 refers to the electronic register of members of the private company in question;
- (b) the reference to any branch register were omitted;
- (c) the company is required to notify the Registrar of any request made by a trustee under section 195(3) for the relevant shares to be marked in the electronic register of members as to identify the shares being held in respect of a trust within 14 days after the request.

[36/2014]

### **Maintenance of old register of members**

**196D.**—(1) Subject to subsections (2) and (3), a private company incorporated, or which was converted from a public company before 3 January 2016 must —

- (a) continue to keep any branch register of members under section 196 in force immediately before 3 January 2016 for a period of 7 years after that date; and
- (b) continue to keep its register of members under section 190(1) in force immediately before 3 January 2016 for a period of 7 years after the last member referred to in the register ceases to be a member of the company.

[36/2014]

(2) A private company is not required to update the branch register or the register of members required to be kept under subsection (1) with any changes in the particulars therein that occurred on or after the date on which the company furnishes the information required to be furnished to the Registrar under section 196B(1).

[36/2014]

(3) Until the expiry of the period for which any branch register and register of members is required to be kept under subsection (1) but subject to subsection (2) —

- (a) sections 190, 191, 192(2), (3) and (4), 194, 195 and 196 in force immediately before 3 January 2016 continue, with the necessary modifications, to apply in relation to the branch register and register of members required to be kept under subsection (1); and
- (b) any non-compliance with the sections mentioned in paragraph (a) may be dealt with and punished in accordance with those provisions as if they were in force immediately before 3 January 2016.

[36/2014]

### *Division 5 — Annual return*

#### **Annual return by companies**

**197.**—(1) Every company, other than a company mentioned in subsection (1A), must lodge a return with the Registrar after its annual general meeting —

- (a) in the case of a listed company — within 5 months after the end of its financial year; and
- (b) in any other case — within 7 months after the end of its financial year.

[15/2017]

(1A) A company having a share capital and keeping a branch register in any place outside Singapore must lodge a return with the Registrar after its annual general meeting —

- (a) in the case of a listed company — within 6 months after the end of its financial year; and
- (b) in any other case — within 8 months after the end of its financial year.

[15/2017]

(1B) The Registrar may, if the Registrar thinks there are special reasons to do so, extend any period within which a company must lodge a return under subsection (1) or (1A) —

- (a) upon an application by the company; or
- (b) in respect of any prescribed class of companies.

[15/2017]

- (2) The return mentioned in subsections (1) and (1A) —
- (a) must be in such form;
  - (b) must contain such particulars and information; and
  - (c) must be accompanied by such documents,
- as may be prescribed.

[36/2014; 15/2017]

(3) The particulars to be contained in, and the documents that are to accompany, the return mentioned in subsection (1) may differ according to the class or description of company prescribed.

[36/2014]

(4) If a private company is required under section 175A(4) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the company must lodge a notice of the date on which the annual general meeting was held with the Registrar within 14 days after that date.

[15/2017]

(5) [*Deleted by Act 15 of 2017*]

(6) If a company fails to comply with this section, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

### **Financial year of company**

**198.**—(1) Where a company is incorporated on or after 31 August 2018 —

- (a) the company's first financial year starts on the company's date of incorporation and, subject to subsection (4), ends on the last day of the company's first financial year as furnished under section 19(1)(b); and
- (b) each of the company's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

[15/2017]

(2) A company's first financial year must not be longer than 18 months unless the Registrar on the application of the company otherwise approves.

[15/2017]

(3) Where a company was incorporated before 31 August 2018 —

(a) the last day of the financial year for the company's first financial year ending on or after 31 August 2018 is —

(i) where the company had, before 31 August 2018, lodged an annual return, or lodged a notification with the Registrar informing the Registrar of the end of the company's financial year — the anniversary of the last day of the financial year as indicated by the company in the last annual return or last such notification with the Registrar; or

(ii) where the company had not, before 31 August 2018, lodged an annual return, or lodged a notification with the Registrar informing the Registrar of the end of the company's financial year — the anniversary of the date of incorporation of the company; and

(b) each of the company's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

[15/2017]

(4) Despite subsections (1) and (3), but subject to subsections (5) and (6), a company may by notice lodged with the Registrar in the prescribed form specify a new date as the last day of the company's financial year to apply to its previous or current financial year.

[15/2017]

(5) The Registrar's approval must be obtained if the notice mentioned in subsection (4) —

(a) results in a financial year being longer than 18 months; or

(b) is lodged less than 5 years after the end of an earlier financial year that ended on a date on or after 31 August

2018, if the end of that earlier financial year was changed under this section.

[15/2017]

(6) The notice under subsection (4) cannot specify a new date as the last day of the company's financial year —

- (a) after the expiry of the period under section 175 within which an annual general meeting of the company must be held after that financial year;
- (b) after the expiry of the period under section 197 within which an annual return of the company must be lodged with the Registrar after that financial year; or
- (c) after the expiry of the period under section 203 within which a copy of the financial statements, or consolidated financial statements, balance sheet, and documents mentioned in section 203(1) are required to be sent to all persons entitled to receive notice of general meetings of the company.

[15/2017]

(7) For the purposes of —

- (a) subsection (3)(a)(i), where the last day of the financial year of a company as indicated in the last annual return or in the last notification with the Registrar informing the Registrar of the last day of the company's financial year falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February; and
- (b) subsection (3)(a)(ii), where the date of incorporation of a company falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February.

[15/2017]

## PART 6

### FINANCIAL STATEMENTS AND AUDIT

[36/2014]

*Division 1 — Financial statements**[36/2014]***Accounting records and systems of control**

**199.**—(1) Every company must cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and must cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

*[36/2014]*

(2) The company must retain the records referred to in subsection (1) for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

*[2/2007]*

(2A) Every public company and every subsidiary company of a public company must devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

- (a) assets are safeguarded against loss from unauthorised use or disposition; and
- (b) transactions are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements and to maintain accountability of assets.

*[36/2014]*

(3) The records referred to in subsection (1) must be kept at the registered office of the company or at such other place as the directors think fit and must at all times be open to inspection by the directors.

(4) If accounting and other records are kept by the company at a place outside Singapore there must be sent to and kept at a place in Singapore and be at all times open to inspection by the directors such statements and returns with respect to the business dealt with in the

records so kept as will enable to be prepared true and fair financial statements and any documents required to be attached thereto.

[36/2014]

(5) The Court may in any particular case order that the accounting and other records of a company be open to inspection by a public accountant acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the public accountant during his or her inspection must not be disclosed by the public accountant except to that director.

(6) 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 and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

[36/2014]

**200.** [Repealed by Act 36 of 2014]

**200A.** [Repealed by Act 39 of 2007]

### **Financial statements and consolidated financial statements**

**201.**—(1) The directors of every company must lay before the company at its annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held.

[15/2017]

(2) Subject to subsections (12) to (15), the financial statements mentioned in subsection (1) must comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the company.

[36/2014]

(3) [Deleted by Act 15 of 2017]

(4) [Deleted by Act 15 of 2017]

(5) Subject to subsections (12) to (15), the directors of a company that is a parent company at the end of its financial year need not comply with subsection (1) but must cause to be made out and laid before the company at its annual general meeting —

(a) consolidated financial statements dealing with the financial position and performance of the group for the

financial year in respect of which the annual general meeting is held; and

- (b) a balance sheet dealing with the state of affairs of the parent company at the end of its financial year,

each of which complies with the requirements of the Accounting Standards and gives a true and fair view of the matters referred to in paragraph (a) or (b) (as the case may be) so far as it concerns members of the parent company.

[36/2014; 15/2017]

(6) [*Deleted by Act 15 of 2017*]

(7) The directors must (before the financial statements mentioned in subsection (1) and the balance sheet mentioned in subsection (5)(b) are made out) take reasonable steps —

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause —
  - (i) those assets to be written down to an amount which they might be expected so to realise; or
  - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the books of the company at an amount which, having regard to its value to the company as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the financial statements such information and explanations as

will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.

[36/2014]

(8) The financial statements must be duly audited before they are laid before the company at its annual general meeting as required by this section, and the auditor's report required by section 207 must be attached to or endorsed upon those financial statements.

[36/2014]

(9) The directors of the company must —

- (a) take reasonable steps to ensure that the financial statements are audited as required by this Part not less than 14 days before the annual general meeting of the company, unless all the persons entitled to receive notice of general meetings of the company agree that the financial statements may be audited as required by this Part less than 14 days before the annual general meeting of the company; and
- (b) cause to be attached to those financial statements the auditor's report that is furnished to the directors under section 207(1A).

[36/2014]

(10) In subsections (8) and (9), “financial statements”, in relation to a company, means —

- (a) in the case where the company is not a parent company — the financial statements required to be laid before the company at its annual general meeting under subsection (1); or
- (b) in the case where the company is a parent company — the consolidated financial statements of the group and the balance sheet of the parent company required to be laid before the company at its annual general meeting under subsection (5).

[36/2014]

(11) Where at the end of a financial year a company is the subsidiary company of another corporation, the directors of the

company must state in, or in a note as a statement annexed to, the financial statements laid before the company at its annual general meeting the name of the corporation which is its ultimate parent corporation.

[36/2014]

(12) The financial statements or consolidated financial statements of a company need not comply with any requirement of the Accounting Standards for the purposes of subsection (1) or (5), if the company has obtained the approval of the Registrar to such non-compliance.

[36/2014]

(13) Where financial statements or consolidated financial statements prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (1) or (5), would not give a true and fair view of any matter required by this section to be dealt with in the financial statements or consolidated financial statements, the financial statements or consolidated financial statements need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.

[36/2014]

(14) In the event of any non-compliance with a requirement of the Accounting Standards mentioned in subsection (13), there must be included in the financial statements or consolidated financial statements, as the case may be —

- (a) a statement by the auditor of the company that the auditor agrees that such non-compliance is necessary for the financial statements or consolidated financial statements (as the case may be) to give a true and fair view of the matter concerned;
- (b) particulars of the departure, the reason therefor and its effect, if any; and
- (c) such further information and explanations as will give a true and fair view of that matter.

[36/2014]

(15) The Minister may, by order in the *Gazette*, in respect of companies of a specified class or description, substitute other accounting standards for the Accounting Standards, and the

provisions of this section and sections 207 and 209A apply accordingly in respect of such companies.

[36/2014]

(16) The financial statements laid before a company at its general meeting (including any consolidated financial statements annexed to the balance sheet of a parent company) must be accompanied, before the auditor reports on the financial statements under this Part, by a statement signed on behalf of the directors by 2 directors of the company containing the information set out in the Twelfth Schedule.

[36/2014]

(17) Any document (other than any financial statements or a balance sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of a company (other than a banking corporation) must not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied —

- (a) if the reserve is invested outside the business of the company — by a statement showing the manner in which and the security upon which it is invested; or
- (b) if the reserve is being used in the business of the company — by a statement to the effect that the reserve is being so used.

[36/2014]

(18) The provisions of this Act relating to the form and content of the statement of directors and the annual financial statements apply to a banking corporation with such modifications and exceptions as are determined either generally or in any particular case by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act 1970.

[36/2014]

(19) In respect of a company that is registered as a charity or approved as an institution of a public character under the Charities Act 1994, the requirements of this section as to the form and content of a company's financial statements or consolidated financial statements being in compliance with the Accounting Standards

apply subject to any modification prescribed under section 12(1)(f) of that Act in respect of such a company.

[36/2014]

(20) For the purposes of subsections (1) and (5), a reference to the preceding financial statements includes the profit and loss account, balance sheet and consolidated accounts required to be laid before the company at its annual general meeting under section 201 in force before 1 July 2015.

[36/2014]

(21) For the purposes of subsections (1) and (5), a reference to the requirement to lay financial statements before a company includes the laying of the profit and loss account, balance sheet and consolidated accounts prepared in accordance with section 201 in force immediately before 1 July 2015, where such profit and loss account, balance sheet and consolidated accounts have been prepared in respect of a financial year which ended before 1 July 2015.

[36/2014]

(22) Subsection (16) does not apply to any company in respect of any financial year which ended before 1 July 2015; and section 201(5) to (8), (11), (12) and (15) in force immediately before that date continues to apply to such company for that financial year.

[36/2014]

(23) Without limiting section 197(2), a company referred to in subsection (22) must, when lodging a return with the Registrar under section 197, attach a copy of the report prepared in accordance with section 201(5) in force immediately before 1 July 2015.

[36/2014]

### **Certain dormant companies exempted from duty to prepare financial statements**

**201A.**—(1) Subject to subsection (3), the directors of a dormant relevant company are exempt from the requirements of section 201 for a financial year if the requirements set out in subsection (2) are satisfied.

[36/2014]

- (2) The requirements referred to in subsection (1) are —
- (a) that the relevant company has been dormant —
    - (i) from the time of its formation; or
    - (ii) since the end of the previous financial year;
  - (b) that the directors of the relevant company have lodged with the Registrar a statement by the directors that —
    - (i) the company has been dormant for the period set out in paragraph (a)(i) or (ii), as the case may be;
    - (ii) no notice has been received under subsection (3) in relation to the financial year; and
    - (iii) the accounting and other records required by this Act to be kept by the company have been kept in accordance with section 199; and
  - (c) that the statement mentioned in paragraph (b) has been lodged with the Registrar at the same time that the annual return is required to be lodged under section 197(1).

[36/2014]

(3) A relevant person may by written notice require the directors of a dormant relevant company to comply with any or all of the requirements of section 201 in respect of a financial year but the written notice must be issued to the directors not less than 3 months before the end of the financial year.

[36/2014]

- (4) In subsection (3), “relevant person” means —
- (a) the Registrar;
  - (b) one or more members holding not less than 5% of the total number of issued shares of the company (excluding treasury shares); or
  - (c) not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member).

[36/2014]

(5) For the purposes of this section —

(a) “relevant company” means a company —

- (i) which is not a listed company or a subsidiary company of a listed company;
- (ii) whose total assets at any time during the financial year in question does not exceed —
  - (A) \$500,000 in value; or
  - (B) such other amount as may be prescribed in substitution by the Minister; and
- (iii) which, if it is a parent company (which is not itself a subsidiary company of another corporation), belongs to a group the consolidated total assets of which at any time during the financial year in question does not exceed —
  - (A) \$500,000 in value; or
  - (B) such other amount as may be prescribed in substitution by the Minister; and

(b) section 205B(2) and (3) applies in determining whether a relevant company is dormant.

[36/2014]

(6) This section does not apply to the directors of any company in respect of a financial year which ended before 3 January 2016 and the directors of such company must prepare the accounts or consolidated accounts for that financial year and lay the accounts or consolidated accounts of the company at its annual general meeting for that financial year, in accordance with Part VI in force immediately before that date.

[36/2014]

(7) Without limiting section 197(2), a company referred to in subsection (6) must, when lodging a return with the Registrar under section 197, attach a copy of the accounts or consolidated accounts so prepared.

[36/2014]

**Retention of documents laid before company at annual general meeting**

**201AA.**—(1) Every company must cause to be kept at the company's registered office, or such other place as the directors think fit —

- (a) a copy of each of the documents that was laid before the company at its annual general meeting under section 201 for a period of not less than 5 years after the date of the annual general meeting, being a date on or after 3 January 2016; or
- (b) in respect of any financial year for which the company need not hold an annual general meeting because of section 175A(1) —
  - (i) a copy of the financial statements; or
  - (ii) in the case of a parent company, a copy of the consolidated financial statements and balance sheet (including every document required by law to be attached thereto),

and a copy of the auditors' report where such financial statements or consolidated financial statements are duly audited, that were sent to all persons entitled to receive notice of general meetings of the company in accordance with section 203(1) for a period of not less than 5 years after the date on which the documents were sent, being a date on or after 3 January 2016.

*[36/2014; 15/2017]*

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

*[36/2014]*

(3) The Registrar or an authorised officer may at any time require the company to furnish any document kept under subsection (1), and

may, without fee or reward, inspect, make copies of or extracts from such document.

[36/2014]

(4) Any person who —

- (a) without lawful excuse, refuses to produce any document required of the person by the Registrar or an authorised officer under subsection (3); or
- (b) assaults, obstructs, hinders or delays the Registrar or the authorised officer in the course of inspecting or making copies or extracts from the document,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(5) In this section, “authorised officer” means an officer of the Authority authorised by the Registrar for the purposes of this section.

[36/2014]

### **Audit committees**

**201B.**—(1) Every listed company must have an audit committee.

(2) An audit committee must be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and must be composed of 3 or more members of whom a majority must not be —

- (a) executive directors of the company or any related corporation;
- (b) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or
- (c) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

(3) The members of an audit committee must elect a chairperson from among their number who is not an executive director or employee of the company or any related corporation.

(4) If a member of an audit committee resigns, dies or for any other reason ceases to be a member with the result that the number of members is reduced below 3, the board of directors must, within 3 months of that event, appoint such number of new members as may be required to make up the minimum number of 3 members.

(5) The functions of an audit committee are —

(a) to review —

- (i) with the auditor, the audit plan;
- (ii) with the auditor, the auditor's evaluation of the system of internal accounting controls;
- (iii) with the auditor, the auditor's audit report;
- (iv) the assistance given by the company's officers to the auditor;
- (v) the scope and results of the internal audit procedures; and
- (vi) the financial statements of the company and, if it is a parent company, the consolidated financial statements, submitted to it by the company or the parent company, and thereafter to submit them to the directors of the company or parent company; and

(b) to nominate a person or persons as auditor, despite anything contained in the constitution or under section 205, together with such other functions as may be agreed to by the audit committee and the board of directors.

[36/2014]

(6) The auditor has the right to appear and be heard at any meeting of the audit committee and must appear before the committee when required to do so by the committee.

(7) Upon the request of the auditor, the chairperson of the audit committee must convene a meeting of the committee to consider any

matters the auditor believes should be brought to the attention of the directors or shareholders.

(8) Each audit committee may regulate its own procedure and in particular the calling of meetings, the notice to be given of such meetings, the voting and proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

(9) Where the directors of a company or of a parent company are required to make a statement under section 201(16) and the company is a listed company, the directors must describe in the statement the nature and extent of the functions performed by the audit committee pursuant to subsection (5).

[36/2014]

(10) [*Deleted by Act 36 of 2014*]

(11) Any reference in this section to a director who is not an executive director of a company is a reference to a director who is not an employee of, and does not hold any other office of profit in, the company or in any related corporation of that company in conjunction with his or her office of director and his or her membership of any audit committee, and any reference to an executive director is to be read accordingly.

### **When directors need not lay financial statements before company**

**201C.**—(1) The directors of a private company need not comply with the requirement in section 201 to lay before the company at its annual general meeting financial statements or consolidated financial statements of the company if the company need not hold an annual general meeting because of section 175A(1).

[15/2017]

(2) Where the financial statements or consolidated financial statements are not laid before the company at its annual general meeting under subsection (1), the reference in section 207(1) to financial statements required to be laid before the company in general meeting is to be read as a reference to the documents required to be sent to persons entitled to receive notice of general meetings of the company under section 203(1).

[15/2017]

**Relief from requirements as to form and content of financial statements and directors' statement**

**202.**—(1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) or to the form and content of the statement required by section 201(16) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

[36/2014]

(2) The Registrar may, where the Registrar considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) or to the form and content of the statement required by section 201(16) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

[36/2014]

(3) The Registrar must not make an order under subsection (1) unless he or she is of the opinion that compliance with the requirements of this Act would render the financial statements or consolidated financial statements or directors' statement (as the case may be) misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

[36/2014]

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in

which case the Registrar must give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

**Voluntary revision of defective financial statements, or consolidated financial statements or balance sheet**

**202A.**—(1) Subject to subsection (3), this section applies at any time —

- (a) in the case where the holding of annual general meetings is dispensed with under section 175A — after the financial statements or, in the case of a parent company, consolidated financial statements and balance sheet are sent to the members of the company under section 203; or
- (b) in any other case — after the financial statements or, in the case of a parent company, consolidated financial statements and balance sheet are laid before the company at an annual general meeting.

[36/2014]

(2) Where this section applies, if it appears to the directors of the company that the financial statements or, in the case of a parent company, consolidated financial statements or balance sheet do not comply with the requirements of this Act (including compliance with the Accounting Standards), the directors may cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised and make necessary consequential revisions to the summary financial statement or directors' statement.

[36/2014]

(3) The revision of the financial statements, or consolidated financial statements or balance sheet (as the case may be), under subsection (2) must be confined to —

- (a) those aspects in which the financial statements, or consolidated financial statements or balance sheet (as the case may be), did not comply with this Act (including compliance with the Accounting Standards); and
- (b) the making of any necessary consequential revisions.

[36/2014]

(4) Where the Registrar has given the directors of the company a notice under section 202B(1), the directors may not cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised unless the Registrar agrees with the directors on the manner in which to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), referred to in section 202B(2)(b).

[36/2014]

(5) The Minister may make regulations under section 411 in respect of the revision of financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement, including but not limited to the following:

- (a) the manner of revision of financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement;
- (b) the application of any provision of this Act to such financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement subject to such additions, exceptions and modifications as may be specified in the regulations;
- (c) the taking of steps by the directors to bring any revision of the financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement;
- (d) the requirement to lodge the revised financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement with the Registrar and the payment of any filing fee pursuant to such lodgment.

[36/2014]

**Registrar's application to Court in respect of defective financial statements, or consolidated financial statements and balance sheet**

**202B.**—(1) If it appears to the Registrar that there is, or may be, a question whether the financial statements or, in the case of a parent company, consolidated financial statements and balance sheet comply with the requirements of this Act (including compliance with the Accounting Standards), the Registrar may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise, and specify the period within which the directors must respond.

[36/2014]

(2) The directors of the company to whom notice under subsection (1) is given must at the end of the period mentioned in subsection (1), or such longer period as the Registrar may allow —

- (a) give the Registrar an explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), if the directors do not propose to revise the financial statements, or consolidated financial statements or balance sheet, as the case may be; or
- (b) inform the Registrar how the directors propose to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), to address the questions in respect of which the Registrar has given notice.

[36/2014]

(3) If the Registrar is satisfied with the explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), mentioned in subsection (2)(a), no further action need be taken by the directors in respect of the notice under subsection (1).

[36/2014]

(4) If the Registrar agrees with the directors on the manner in which to revise the financial statements, or consolidated financial statements or balance sheet (as the case may be), referred to in subsection (2)(b), the directors may cause the financial statements, or

consolidated financial statements or balance sheet (as the case may be), to be revised in the manner provided in section 202A.

[36/2014]

(5) The Registrar may apply to Court under subsection (6) if —

- (a) the Registrar does not receive a response from the directors after giving the notice mentioned in subsection (1);
- (b) the Registrar is not satisfied with the explanation of the financial statements, or consolidated financial statements and balance sheet (as the case may be), mentioned in subsection (2)(a); or
- (c) the Registrar does not agree with the directors on the manner in which the financial statements, or consolidated financial statements or balance sheet (as the case may be), referred to in subsection (2)(b) are to be revised.

[36/2014]

(6) An application to Court referred to in subsection (5) may be for —

- (a) a declaration that the financial statements, or consolidated financial statements or balance sheet (as the case may be), do not comply with the requirements of this Act (including compliance with the Accounting Standards); and
- (b) an order requiring the directors of the company to cause the financial statements, or consolidated financial statements or balance sheet (as the case may be), to be revised.

[36/2014]

(7) Where the Court orders the preparation of revised financial statements, or consolidated financial statements or balance sheet, under subsection (6), it may give directions as to —

- (a) the auditing of the financial statements, or consolidated financial statements or balance sheet, as the case may be;
- (b) the making of revisions to the financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement in such manner as the Court considers necessary within a specified period;

- (c) where the Court has given directions under paragraph (b) to make revisions to the summary financial statement, the review by the auditors of the revised summary financial statement;
- (d) the making of necessary consequential revisions to any other document;
- (e) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance sheet, directors' statement or summary financial statement; and
- (f) such other matters as the Court thinks fit.

[36/2014]

(8) If the Court finds that the financial statements, or consolidated financial statements or balance sheet (as the case may be), did not comply with the requirements of this Act (including the Accounting Standards), it may order that all or part of —

- (a) the costs of or incidental to the application; and
- (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised financial statements, or consolidated financial statements or balance sheet, as the case may be,

must be borne by any or all the directors who were directors of the company as at the date of the directors' statement which accompanied the defective financial statements, or consolidated financial statements and balance sheet, as the case may be.

[36/2014]

(9) The provisions of this section apply equally to revised financial statements, or consolidated financial statements or balance sheet (as the case may be), in which case they have effect as if the references to revised financial statements, or consolidated financial statements or balance sheet (as the case may be), were references to further revised financial statements, or consolidated financial statements or balance sheet, as the case may be.

[36/2014]

**Members of company entitled to financial statements, etc.**

**203.**—(1) A copy of the financial statements or, in the case of a parent company, a copy of the consolidated financial statements and balance sheet (including every document required by law to be attached thereto), which is duly audited and which (or which but for section 201C) is to be laid before the company in general meeting accompanied by a copy of the auditor's report thereon must be sent to all persons entitled to receive notice of general meetings of the company —

- (a) unless subsection (2) applies — not less than 14 days before the date of the meeting; or
- (b) if the company is not required to hold an annual general meeting because of section 175A(1)(a) — not later than 5 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance sheet, relate.

[36/2014; 15/2017]

(2) The financial statements, or consolidated financial statements, balance sheet and documents referred to in subsection (1) may be sent less than 14 days before the date of the meeting as required under subsection (1)(a) if all the persons entitled to receive notice of general meetings of the company so agree.

[36/2014]

(3) Any member of a company (whether or not entitled to have sent to the member copies of the financial statements, or consolidated financial statements and balance sheet) to whom copies have not been sent and any holder of a debenture must, on a request being made by the member or debenture holder to the company, be furnished by the company without charge with a copy of the last financial statements, or consolidated financial statements and balance sheet (including every document required by this Act to be attached thereto) together with a copy of the auditor's report thereon.

[36/2014]

(3A) If default is made in complying with subsection (1) or (3), the company and every officer of the company who is in default shall, unless it is proved that the member or holder of a debenture in question has already made a request for and been furnished with a

copy of the financial statements, or consolidated financial statements and balance sheet, and all documents referred to in subsection (1) or (3), each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

(4) In a case referred to in subsection (1)(b), any member or auditor of the company may, by notice to the company not later than 14 days after the day on which the documents referred to in subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the company.

[36/2014]

(4A) Where a company is not required to hold an annual general meeting because of section 175A(1)(b), any member or auditor of the company may, by notice to the company not later than 14 days after the day on which the documents referred to in subsection (1) were sent out, require that a general meeting be held for the purpose of laying those documents before the company.

[15/2017]

(5) Section 175A(5) applies, with the necessary modifications, to the giving of a notice under subsection (4) or (4A).

[15/2017]

(6) The directors of the company must, within 14 days after the date of giving of the notice mentioned in subsection (4) or (4A), convene a meeting for the purpose referred to in that subsection.

[36/2014; 15/2017]

(7) If default is made in convening the meeting under subsection (6) —

(a) each director in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000; and

(b) the Court may, on application of the member or auditor, order a general meeting to be called.

### **Provision of summary financial statement to members**

**203A.**—(1) Despite section 203 and anything in its constitution, a company may, in such cases as may be specified by regulations and provided all the conditions so specified are complied with, send a

summary financial statement instead of copies of the documents referred to in section 203(1) to members of the company.

[36/2014]

(2) Where a company sends to its members a summary financial statement under subsection (1), any member of the company, and any holder of a debenture, entitled to be furnished by the company with a copy of the documents referred to in section 203(3) may instead request for a summary financial statement.

[36/2014]

(3) A summary financial statement need not be sent to any member of the company who does not wish to receive the statement.

(4) Copies of the documents referred to in section 203(1) must be sent to any member of the company who wishes to receive them.

(5) The summary financial statement must be derived from the company's annual financial statements or consolidated financial statements, and directors' statement and must be in such form and contain such information as may be specified by regulations.

[36/2014]

(6) Every summary financial statement must —

(a) state that it is only a summary of information in the company's annual financial statements or consolidated financial statements, and directors' statement; and

(b) contain a statement by the company's auditors (if any) of their opinion as to whether the summary financial statement is consistent with the financial statements or consolidated financial statements, and the directors' statement and complies with the requirements of this section and any regulations made under subsection (9).

[36/2014]

(6A) The directors of the company must ensure that the summary financial statements comply with the requirements referred to in subsections (5) and (6).

[36/2014]

(7) If default is made in complying with this section other than subsection (6A) or any regulations made under subsection (9), the company and every officer of the company who is in default shall be

guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

(8) [Deleted by Act 36 of 2014]

(9) The Minister may make regulations to give effect to this section, including making provision as to the manner in which it is to be ascertained whether a member of the company wishes to receive copies of the documents referred to in section 203(1) or does not wish to receive the summary financial statement under this section.

### Penalty

**204.**—(1) If any director of a company fails to comply with section 201(2), (5) or (16), he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

[36/2014]

(1A) If any director of a company —

- (a) fails to comply with any provision of this Division (other than section 201(2), (5) or (16));
- (b) fails to take all reasonable steps to secure compliance by the company with any such provision; or
- (c) has by his or her own wilful act been the cause of any default by the company of any such provision,

he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

[36/2014]

(2) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the preceding provisions of this Division relating to the form and content of the financial statements of a company or consolidated financial statements of a parent company by reason of an omission from the financial statements or consolidated financial statements, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a

true and fair view of the matters required by section 201 to be dealt with in the financial statements or consolidated financial statements.  
[36/2014]

(3) If an offence under this section is committed with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction —

(a) in the case of an offence under subsection (1), to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both; or

(b) in the case of an offence under subsection (1A), to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the Court dealing with the case the offence was committed wilfully.

### *Division 2 — Audit*

#### **Appointment and remuneration of auditors**

**205.**—(1) The directors of a company must, within 3 months after incorporation of the company, appoint an accounting entity or accounting entities to be the auditor or auditors of the company, and any auditor or auditors so appointed hold office, subject to this section, until the conclusion of the first annual general meeting.

[36/2014]

(2) A company must at each annual general meeting of the company appoint an accounting entity or accounting entities to be the auditor or auditors of the company, and any auditor or auditors so appointed hold office, subject to this section, until the conclusion of the next annual general meeting of the company.

[36/2014]

(3) Subject to subsections (7) and (8) and section 205AF, the directors may appoint an accounting entity to fill any casual vacancy in the office of auditor of the company, but while such a vacancy continues the surviving or continuing auditor or auditors (if any) may act.

[36/2014]

(4) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by a company —

- (a) it must immediately send a copy of the notice to the auditor concerned and to the Registrar; and
- (b) the auditor may, within 7 days after the receipt by the auditor of the copy of the notice, make representations in writing to the company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6) Unless the Registrar on the application of the company otherwise orders, the company must send a copy of the representations as so requested and the auditor may, without affecting the auditor's right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a company is removed from office pursuant to subsection (4) at a general meeting of the company —

- (a) the company may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled to do so vote in person or, where proxies are allowed, by proxy immediately appoint another accounting entity nominated at the meeting as auditor; or
- (b) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the company may, by ordinary resolution, appoint another accounting entity as auditor, being an accounting entity notice of whose nomination as auditor has, at least 10 days before the resumption of the adjourned meeting, been received by the company.

[36/2014]

(8) A company must, immediately after the removal of an auditor from office pursuant to subsection (4), give written notice of the removal to the Registrar and, if the company does not appoint another auditor under subsection (7), the Registrar may appoint an auditor.

[36/2014]

(9) An auditor appointed pursuant to subsection (7) or (8) must, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

(10) If the directors do not appoint an auditor or auditors as required by this section, the Registrar may on the application in writing of any member of the company make the appointment.

(11) Subject to subsection (7), an accounting entity is not capable of being appointed auditor of a company at an annual general meeting unless it held office as auditor of the company immediately before the meeting or notice of its nomination as auditor was given to the company by a member of the company not less than 21 days before the meeting.

[36/2014]

(12) Where notice of nomination of an accounting entity as an auditor of a company is received by the company whether for appointment at an adjourned meeting under subsection (7) or at an annual general meeting, the company must, not less than 7 days before the adjourned meeting or the annual general meeting, send a copy of the notice to the accounting entity nominated, to each auditor (if any) of the company and to each person entitled to receive notice of general meetings of the company.

[36/2014]

(12A) Where a company need not hold an annual general meeting for a financial year because of section 175A(1) and the auditor or auditors of the company is or are to be appointed by a resolution by written means under section 184A by virtue of section 175A(10), references in subsections (11) and (12) to the date of an annual general meeting are references to the time —

- (a) agreement to that resolution is sought in accordance with section 184C; or

- (b) documents referred to in section 183(3A) in respect of the resolution are served or made accessible in accordance with section 183(3A),

as the case may be.

[15/2017]

(13) If, after notice of nomination of an accounting entity as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date 21 days or less after the notice has been given, subsection (11) does not apply in relation to the accounting entity and, if the annual general meeting is called for a date not more than 7 days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under subsection (12), it is required to be sent, the company is deemed to have complied with that subsection in relation to the notice.

[36/2014]

(14) [Deleted by Act 36 of 2014]

(15) [Deleted by Act 36 of 2014]

(16) The fees and expenses of an auditor of a company —

(a) in the case of an auditor appointed by the company at a general meeting — must be fixed by the company in general meeting or, if so authorised by the members at the last preceding annual general meeting, by the directors; and

(b) in the case of an auditor appointed by the directors or by the Registrar under this section or under section 205AF — may be fixed by the directors or by the Registrar, as the case may be, and, if not so fixed, must be fixed as provided in paragraph (a) as if the auditor had been appointed by the company.

[36/2014]

(17) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

**Resignation of non-public interest company auditors**

**205AA.**—(1) An auditor of a non-public interest company (other than a company which is a subsidiary company of a public interest company) may resign before the end of the term of office for which the auditor was appointed by giving the company a notice of resignation in writing.

[36/2014]

(2) Where a notice of resignation is given under subsection (1), the auditor's term of office expires —

- (a) at the end of the day on which notice is given to the company; or
- (b) if the notice specifies a time on a later day for the purpose, at that time.

[36/2014]

(3) Within 14 days beginning on the date on which a company receives a notice of resignation under subsection (1), the company must lodge with the Registrar a notification of that fact in such form as the Registrar may require.

[36/2014]

(4) In this section and sections 205AB, 205AC and 205AF —

“non-public interest company” means a company other than a public interest company;

“public interest company” means a company which is listed or in the process of issuing its debt or equity instruments for trading on an approved exchange in Singapore, or such other company as the Minister may prescribe.

[36/2014; 4/2017]

**Resignation of auditor of public interest company or subsidiary company of public interest company**

**205AB.**—(1) An auditor of a public interest company, or a subsidiary company of a public interest company, may by giving the company a notice of resignation in writing, resign before the end of the term of office for which the auditor was appointed, if —

- (a) the auditor has applied for consent from the Registrar to the resignation and provided a written statement of the auditor's reasons for resigning and, at or about the same time as the application, notified the company in writing of the application to the Registrar and provided the company with the written statement of the auditor's reasons for resigning; and
- (b) the consent of the Registrar has been given.

[36/2014]

(2) The Registrar must, as soon as practicable after receiving the application from an auditor under subsection (1), notify the auditor and the company whether it consents to the resignation of the auditor.

[36/2014]

(3) A statement made by an auditor in an application to the Registrar under subsection (1)(a) or in answer to an inquiry by the Registrar relating to the reasons for the application —

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
- (b) subject to subsection (4), may not be made the ground of a prosecution, an action or a suit against the auditor,

and a certificate by the Registrar that the statement was made in the application or in the answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

[36/2014]

(4) Despite subsection (3), the statement referred to therein may be used in any disciplinary proceedings commenced under the Accountants Act 2004 against the auditor.

[36/2014]

(5) The resignation of an auditor of a public interest company, or subsidiary company of a public interest company, takes effect —

- (a) on the day (if any) specified for the purpose in the notice of resignation;
  - (b) on the day on which the Registrar notifies the auditor and the company of the Registrar's consent to the resignation;
- or

(c) on the day (if any) fixed by the Registrar for the purpose, whichever last occurs.

[36/2014]

### **Written statement to be disseminated unless application to Court made**

**205AC.**—(1) Where an auditor of a public interest company, or a subsidiary company of a public interest company, gives the company a notice of resignation under section 205AB, the company must within 14 days after receiving the notice of resignation and the written statement of the auditor's reasons for resigning (called in this section and sections 205AD and 205AE the written statement) send a copy of the written statement to every member of the company.

[36/2014; 40/2019]

(2) Copies of the written statement need not be sent out if an application is made to the Court within 14 days, beginning on the date on which the company received the written statement, by either the company or any other person who claims to be aggrieved by the written statement, for a determination that the auditor has abused the use of the written statement or is using the provisions of this section to secure needless publicity for defamatory matter.

[36/2014; 40/2019]

(3) In the case where an application is made under subsection (2) by —

(a) the company — the company must give notice of the application to the auditor of the company; or

(b) any other person — that person must give notice of the application to the company and the auditor of the company.

[36/2014]

(4) If default is made in complying with subsection (1), the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[36/2014]

**Court may order written statement not to be sent out**

**205AD.**—(1) This section applies if an application has been made under section 205AC(2) in relation to a written statement given by an auditor.

[36/2014]

(2) If the Court is satisfied that the auditor has abused the use of the written statement or is using the written statement to secure needless publicity for any defamatory matter, the Court —

- (a) must direct that copies of the written statement are not to be sent under section 205AC(1); and
- (b) may order the auditor, though not a party to the application, to pay the applicant's costs on the application in whole or in part.

[36/2014]

(3) If the Court gives directions under subsection (2)(a), the company must, within 14 days beginning on the date on which the directions are given send a notice setting out the effect of the directions to —

- (a) every member of the company; and
- (b) unless already named as a party to the proceedings, the auditor who gave the written statement.

[36/2014]

(4) If the Court decides not to grant the application, the company must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reasons —

- (a) give notice of the decision to the auditor who has given the written statement; and
- (b) send a copy of the written statement to every member of the company and to that auditor.

[36/2014]

(5) If default is made in complying with subsection (3) or (4), the company and every director of the company who is in default shall

each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[36/2014]

### **Privilege against defamation**

**205AE.** A person is not liable to any action for defamation at the suit of any person —

- (a) in the absence of malice, in respect of the publication of the written statement to the member of the company pursuant to section 205AC(1); or
- (b) in respect of the publication of the written statement to the member of the company pursuant to section 205AD(4)(b).

[36/2014]

### **Appointment of new auditor in place of resigning auditor**

**205AF.**—(1) Subject to subsection (3), if —

- (a) an auditor of a non-public interest company (other than a subsidiary company of a public interest company) gives notice of resignation under section 205AA(1); or
- (b) an auditor of a public interest company, or a subsidiary company of a public interest company, gives notice of resignation under section 205AB(1), and the Registrar approves the resignation of the auditor under section 205AB(2),

the directors of the company in question —

- (c) must call a general meeting of the company as soon as is practicable, and in any case not more than 3 months after the date of the auditor's resignation, for the purpose of appointing an auditor in place of the auditor who desires to resign or has resigned; and
- (d) upon appointment of the new auditor, must lodge with the Registrar a notification of such appointment within 14 days of the appointment.

[36/2014]

(2) If the directors of a company fail to appoint an auditor in place of the auditor who desires to resign or has resigned, the Registrar may, on the application in writing of any member of the company, make the appointment.

[36/2014]

(3) Subsections (1) and (2) do not apply if the financial statements of the company are not required to be audited under this Act, or where the resigning auditor is not the sole auditor of the company.

[36/2014]

(4) An auditor appointed pursuant to subsection (1) or (2) must, unless the auditor is removed or resigns, hold office until the conclusion of the next annual general meeting of the company.

[36/2014]

(5) If default is made in complying with subsection (1), the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[36/2014]

### **Certain companies exempt from obligation to appoint auditors**

**205A.**—(1) Despite section 205, a company which is exempt from audit requirements under section 205B or 205C, and its directors, are exempt from section 205(1) or (2), as the case may be.

(2) Where a company ceases to be so exempt, the company must appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting; and the auditors so appointed hold office until the conclusion of that meeting.

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

### **Dormant company exempt from audit requirements**

**205B.**—(1) A company is exempt from audit requirements if —

(a) it has been dormant from the time of its formation; or

(b) it has been dormant since the end of the previous financial year.

(2) A company is dormant during a period in which no accounting transaction occurs; and the company ceases to be dormant on the occurrence of such a transaction.

(3) For the purpose of subsection (2), transactions of a company arising from any of the following are to be disregarded:

(a) the taking of shares in the company by a subscriber to the constitution pursuant to an undertaking of the subscriber in the constitution;

(b) the appointment of a secretary of the company under section 171;

(c) the appointment of an auditor under section 205;

(d) the maintenance of a registered office under sections 142, 143 and 144;

(e) the keeping of registers and books under sections 88, 131, 173, 189 and 191;

(f) the payment of any fee or charge (including any fee, penalty or interest for late payment) payable under any written law;

(fa) the payment of any composition amount payable under section 409B or any other written law;

(fb) the payment or receipt by the company of such nominal sum not exceeding such amount as may be prescribed;

(g) such other matter as may be prescribed.

[36/2014]

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) —

(a) the copies of the financial statements or consolidated financial statements and balance sheet of the company to be sent under section 203 need not be audited;

(b) section 203 has effect with the omission of any reference to the auditor's report or a copy of the report;

- (c) copies of an auditor's report need not be laid before the company in a general meeting; and
- (d) the annual return of the company to be lodged with the Registrar must be accompanied by a statement by the directors —
  - (i) that the company is a company referred to in subsection (1)(a) or (b) as at the end of the financial year;
  - (ii) that no notice has been received under subsection (6) in relation to that financial year; and
  - (iii) as to whether the accounting and other records required by this Act to be kept by the company have been kept in accordance with section 199.

[36/2014]

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it thereupon ceases to be so exempt; but it remains so exempt in relation to accounts for the financial year in which it was dormant throughout.

(6) Any member or members holding not less than 5% of the total number of issued shares of the company (excluding treasury shares) or any class of those shares (excluding treasury shares), or not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member) may, by written notice to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

(8) In this section, "accounting transaction" means a transaction the accounting or other record of which is required to be kept under section 199(1).

**Small company exempt from audit requirements**

**205C.**—(1) Subject to subsections (3), (4) and (6), a company that is a small company in respect of a financial year is exempt from audit requirements for that financial year.

[36/2014]

(2) Section 205B(4), (6) and (7) applies, with the necessary modifications, to a small company so exempt.

[36/2014]

(3) Subsection (1) does not apply to a parent company unless the parent company —

(a) is a small company; and

(b) is part of a small group.

[36/2014]

(4) Subsection (1) does not apply to a subsidiary company unless the subsidiary company —

(a) is a small company; and

(b) is part of a small group.

[36/2014]

(5) In this section, “small company” and “small group” have the meanings given in the Thirteenth Schedule.

[36/2014]

(6) This section does not apply to a company with respect to its financial statements for a financial year commencing before 1 July 2015 and such a company must prepare its accounts or consolidated accounts and its directors must lay them at its annual general meeting in accordance with Part VI in force immediately before that date.

[36/2014]

(7) Without limiting section 197(2), a company mentioned in subsection (6) must, when lodging a return with the Registrar under section 197, attach a copy of the accounts or consolidated accounts so prepared.

[36/2014]

**Registrar may require company exempt from audit requirements to lodge audited financial statements**

**205D.** Despite sections 205B and 205C, the Registrar may, if he or she is satisfied that there has been a breach of any provision of section 199 or 201 or that it is otherwise in the public interest to do so, by written notice to a company exempt under either of those sections, require that company to lodge with the Registrar, within such time as may be specified in that notice —

- (a) its financial statements duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and
- (b) an auditor's report mentioned in section 207 in relation to those financial statements prepared by the auditor or auditors of the company.

[36/2014]

**Auditors' remuneration**

**206.—**(1) If a company is served with a notice sent by or on behalf of —

- (a) at least 5% of the total number of members of the company; or
- (b) the holders in aggregate of not less than 5% of the total number of issued shares of the company (excluding treasury shares),

requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary corporation in respect of services other than auditing services rendered to the company, the company must immediately —

- (c) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;

- (d) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and
- (e) lay such statement before the company in general meeting.

[36/2014]

(1A) Without affecting subsection (1), a public company must, under prescribed circumstances, undertake a review of the fees, expenses and emoluments of its auditor to determine whether the independence of the auditor has been compromised, and the outcome of the review must be sent to all persons entitled to receive notice of general meetings of the company.

(2) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

### **Powers and duties of auditors as to reports on financial statements**

**207.**—(1) An auditor of a company must report to the members —

- (a) on the financial statements required to be laid before the company in general meeting and on the company's accounting and other records relating to those financial statements; and
- (b) where the company is a parent company for which consolidated financial statements are prepared, on the consolidated financial statements.

[36/2014]

(1A) A report by an auditor of a company under subsection (1) must be furnished by the auditor to the directors of the company in sufficient time to enable the company to comply with the requirements of section 203(1) in relation to that report but no offence is committed by an auditor under this subsection if the directors have not submitted the financial statements for audit as required under this Part in sufficient time, having regard to the complexity of the financial statements, for the auditor to make the auditor's report.

[36/2014]

- (2) An auditor must, in a report under this section, state —
- (a) whether the financial statements and, if the company is a parent company for which consolidated financial statements are prepared, the consolidated financial statements are in the auditor's opinion —
    - (i) in compliance with the requirements of the Accounting Standards; and
    - (ii) give a true and fair view of —
      - (A) the financial position and performance of the company; and
      - (B) if consolidated financial statements are required, the financial position and performance of the group;
  - (aa) if the financial statements or consolidated financial statements do not comply with any requirement of the Accounting Standards and the approval of the Registrar under section 201(12) to such non-compliance has not been obtained, whether such non-compliance is, in the opinion of the auditor, necessary for the financial statements or consolidated financial statements to give a true and fair view of any matter required by section 201 to be dealt with in them;
  - (b) whether the accounting and other records required by this Act to be kept by the company and, if it is a parent company, by the subsidiary corporations other than those of which the auditor has not acted as auditor have been, in the auditor's opinion, properly kept in accordance with this Act;
  - (c) [*Deleted by Act 5 of 2004*]
  - (d) any defect or irregularity in the financial statements or consolidated financial statements and any matter not set out in the financial statements or consolidated financial statements without regard to which a true and fair view of the matters dealt with by the financial statements or

consolidated financial statements would not be obtained;  
and

- (e) if the auditor is not satisfied as to any matter referred to in paragraph (a), (aa) or (b), the auditor's reasons for not being so satisfied.

[36/2014]

(3) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

- (a) whether the auditor has obtained all the information and explanations that the auditor required;
- (b) whether proper accounting and other records, excluding registers, required to be kept under section 199(1), have been kept by the company as required by this Act;
- (c) whether the returns received from branch offices of the company are adequate;
- (d) [*Deleted by Act 36 of 2014*]
- (e) where consolidated financial statements are prepared otherwise than as one set of consolidated financial statements for the group, whether the auditor agrees with the reasons for preparing them in the form in which they are prepared, as given by the directors in the financial statements,

and the auditor must state in the auditor's report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

[36/2014]

(4) An auditor is not required to form an opinion in the auditor's report as to whether the accounting and other records of subsidiary corporations (which are not incorporated in Singapore) of a Singapore parent company have been kept in accordance with this Act.

[36/2014]

(5) An auditor of a company has a right of access at all times to the accounting and other records, including registers, of the company, and is entitled to require from any officer of the company and any

auditor of a related company such information and explanations as the auditor desires for the purposes of audit.

(6) An auditor of a parent company for which consolidated financial statements are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary corporation, and is entitled to require from any officer or auditor of any subsidiary corporation, at the expense of the parent company, such information and explanations in relation to the affairs of the subsidiary corporation as the auditor requires for the purpose of reporting on the consolidated financial statements.

[36/2014]

(7) The auditor's report must be attached to or endorsed on the financial statements or consolidated financial statements and must, if any member so requires, be read before the company in general meeting and must be open to inspection by any member at any reasonable time.

[36/2014]

(8) An auditor of a company or an agent authorised by the auditor in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which the auditor attends on any part of the business of the meeting which concerns the auditor in such capacity as auditor.

(9) If an auditor, in the course of the performance of such duties as auditor of a company, is satisfied that —

- (a) there has been a breach or non-observance of any of the provisions of this Act; and
- (b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in the auditor's report on the financial statements or consolidated financial statements or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary company, of the directors of the parent company,

the auditor must immediately report the matter in writing to the Registrar.

[36/2014]

(9A) Despite subsection (9), if an auditor of a public company or a subsidiary corporation of a public company, in the course of the performance of the auditor's duties as such, has reason to believe that a serious offence involving fraud or dishonesty is being or has been committed against the company by officers or employees of the company, the auditor must immediately report the matter to the Minister.

[36/2014]

(9B) No duty to which an auditor of a company may be subject is to be regarded as having been contravened by reason of the auditor reporting the matter mentioned in subsection (9A) in good faith to the Minister.

(9C) An auditor who is under a legal duty under any other written law to make a report to the Monetary Authority of Singapore in relation to an offence involving fraud or dishonesty that the auditor becomes aware of in the course of the performance of the auditor's duties as such, is not required to make a report to the Minister under subsection (9A) if the auditor has already made a report in relation to the same offence under that written law to the Monetary Authority of Singapore.

(9D) In subsection (9A), "a serious offence involving fraud or dishonesty" means —

- (a) an offence that is punishable by imprisonment for a term that is not less than 2 years; and
- (b) the value of the property obtained or likely to be obtained from the commission of such an offence is not less than \$100,000.

[36/2014]

(10) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its parent company access, in accordance with this section, to any accounting and other records, including registers, of the

corporation in the officer's or auditor's custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of the auditor's duties or the exercise of the auditor's powers, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000.

[36/2014]

(11) The reference to the registers of —

- (a) a company in subsection (5);
- (b) a subsidiary corporation of a parent company in subsection (6); or
- (c) a corporation in subsection (10),

does not include any register kept by the company, subsidiary corporation of a parent company or corporation (as the case may be) under Part 11A.

[15/2017]

### **Auditors and other persons to enjoy qualified privilege in certain circumstances**

**208.**—(1) An auditor shall not, in the absence of malice on the auditor's part, be liable to any action for defamation at the suit of any person in respect of any statement which the auditor makes in the course of the auditor's duties as such, whether the statement is made orally or in writing.

(2) A person shall not, in the absence of malice on the person's part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of the auditor's duties and required by this Act to be lodged with the Registrar.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

**Provisions indemnifying auditors**

**208A.**—(1) Any provision, whether in the constitution or in any contract with a company or otherwise, for exempting any auditor of the company from, or indemnifying the auditor against, any liability which by law would otherwise attach to the auditor in respect of any negligence, default, breach of duty or breach of trust of which the auditor may be guilty in relation to the company is void.

[36/2014]

(2) This section does not prevent a company from indemnifying such auditor against any liability incurred or that will be incurred by the auditor —

- (a) in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or in which the auditor is acquitted; or
- (b) in connection with any application under section 76A(13) or 391 or any other provision of this Act, in which relief is granted to the auditor by the court.

[36/2014]

**Duties of auditors to trustee for debenture holders**

**209.**—(1) The auditor of a borrowing corporation must within 7 days after furnishing the corporation with any financial statements or any report, certificate or other document which the auditor is required by this Act or by the debentures or trust deed to give to the corporation, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof.

[36/2014]

(2) Where, in the performance of the auditor's duties as auditor of a borrowing corporation, the auditor becomes aware of any matter which is in the auditor's opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the corporation, the auditor must, within 7 days after so becoming aware of the matter, send by post a report in writing on such matter to the borrowing corporation and a copy thereof to the trustee.

(3) If any person fails to comply with subsection (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

### **Interpretation of this Part**

**209A.** In this Part, unless the contrary intention appears —

“balance sheet”, in relation to a company, means the balance sheet, by whatever name called, prepared in accordance with the Accounting Standards;

“consolidated financial statements” has the meaning given by the Accounting Standards;

“consolidated total assets” —

(a) in the case where consolidated financial statements are prepared in relation to a group — are determined in accordance with the accounting standards applicable to the group; or

(b) in the case where consolidated financial statements are not prepared in relation to a group — means the aggregate total assets of all the members of the group;

“directors’ statement” means the statement of the directors mentioned in section 201(16);

“entity” means an entity that is referred to in the Accounting Standards in relation to the preparation of financial statements and the requirements for the preparation of financial statements;

“financial statements” means the financial statements of a company required to be prepared by the Accounting Standards;

“group” has the meaning given by the Accounting Standards;

“parent company” means a company that is required under the Accounting Standards to prepare financial statements in relation to a group;

“subsidiary company” means a company that is a subsidiary as defined in the Accounting Standards;

“subsidiary corporation” means a corporation that is a subsidiary as defined in the Accounting Standards;

“ultimate parent corporation” means a corporation which is a parent but is not a subsidiary, within the meaning of the Accounting Standards.

[36/2014]

**209B.** [Repealed by Act 5 of 2004]

## PART 7

### ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

#### **Power to compromise with creditors, members and holders of units of shares**

**210.**—(1) Where a compromise or an arrangement is proposed between —

- (a) a company and its creditors or any class of them;
- (b) a company and its members or any class of them; or
- (c) a company and holders of units of shares of the company or any class of them,

the Court may, on the application in a summary way of any person referred to in subsection (2), order a meeting of the creditors, the members of the company, the holders of units of shares of the company, or a class of such persons, to be summoned in such manner as the Court directs.

[36/2014]

(2) The persons referred to in subsection (1) are —

- (a) in the case of a company being wound up — the liquidator;  
and
- (b) in any other case —
  - (i) the company; or

- (ii) any creditor, member or holder of units of shares of the company.

[36/2014]

(3) A meeting held pursuant to an order made under subsection (1) may be adjourned from time to time if the resolution for the adjournment is approved by a majority in number representing three-fourths in value of —

- (a) the creditors or class of creditors;
- (b) the members or class of members; or
- (c) the holders of units of shares or class of holders of units of shares,

present and voting either in person or by proxy at the meeting.

[36/2014]

(3AA) If the conditions set out in subsection (3AB) are satisfied, a compromise or an arrangement is binding —

- (a) in the case of a company in the course of being wound up, on the liquidator and contributories of the company, and on all —
  - (i) the creditors or class of creditors;
  - (ii) the members or class of members; or
  - (iii) the holders of units of shares or class of holders of units of shares,

as the case may be; or

- (b) in the case of any other company, on the company and on all —
  - (i) the creditors or class of creditors;
  - (ii) the members or class of members; or
  - (iii) the holders of units of shares or class of holders of units of shares,

as the case may be.

[36/2014; 35/2018]

(3AB) The conditions referred to in subsection (3AA) are as follows:

- (a) unless the Court orders otherwise, a majority in number of —
- (i) the creditors or class of creditors;
  - (ii) the members or class of members; or
  - (iii) the holders of units of shares or class of holders of units of shares,
- present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;
- (b) the majority in number referred to, or such number as the Court may order, under paragraph (a) represents three-fourths in value of —
- (i) the creditors or class of creditors;
  - (ii) the members or class of members; or
  - (iii) the holders of units of shares or class of holders of units of shares,
- present and voting either in person or by proxy at the meeting or the adjourned meeting, as the case may be;
- (c) the compromise or arrangement is approved by order of the Court.

[36/2014]

(3A) [*Deleted by Act 40 of 2018*]

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

[1/2007; 40/2018]

(4A) [*Deleted by Act 40 of 2018*]

(5) An order under subsection (3AB)(c) has no effect until a copy of the order is lodged with the Registrar, and upon being so lodged, the order takes effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

[36/2014]

(6) Subject to subsection (7), a copy of every order made under subsection (3AB)(c) must be annexed to every copy of the constitution of the company issued after the order has been made.

[36/2014]

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company must so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies) has been proposed, the directors of the company must —

- (a) if a meeting of the members of the company by resolution so directs, instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as possible; and
- (b) make such report or reports available at the registered office of the company for inspection by the shareholders, creditors and holders of units of shares of the company at least 7 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

[36/2014]

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

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

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member, creditor or holder of units of shares of the company restrain further proceedings in any action or proceeding against the company except

by permission of the Court and subject to such terms as the Court imposes.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(10A) Where the terms of any compromise or arrangement approved under this section provides for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may, after the expiration of 2 years and must before the expiration of 10 years from the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

[36/2014]

(10B) The Official Receiver must —

- (a) deal with any moneys received under subsection (10A) as if the moneys were paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018; and
- (b) sell or dispose of any other consideration received under subsection (10A) in such manner as the Official Receiver thinks fit and must deal with the proceeds of such sale or disposal as if it were moneys paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

(11) In this section —

“arrangement” includes a reorganisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

“company” means any corporation liable to be wound up under the Insolvency, Restructuring and Dissolution Act 2018;

“holder of units of shares” does not include a person who holds units of shares only beneficially.

[36/2014; 40/2018]

**Information as to compromise with creditors, members and holders of units of shares of company**

**211.**—(1) Where a meeting is summoned under section 210, there must —

- (a) with every notice summoning the meeting which is sent to a creditor, member or holder of units of shares of the company — be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members, creditors or holders of units of shares of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and
- (b) in every notice summoning the meeting which is given by advertisement — be included either such a statement or a notification of the place at which and the manner in which creditors, members or holders of units of shares of the company entitled to attend the meeting may obtain copies of such a statement.

[36/2014]

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement must give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor, member or holder of units of shares of the company entitled to attend the meeting must on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

[36/2014]

(4) Each director and each trustee for debenture holders must give notice to the company of such matters relating to the director or the trustee as may be necessary for the purposes of this section within

7 days of the receipt of a request in writing for information as to such matters.

(5) Where default is made in complying with any requirement of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(6) For the purpose of subsection (5), the liquidator of the company and any trustee for debenture holders are deemed to be officers of the company.

(7) Despite subsection (5), a person shall not be liable under that subsection if the person shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to the person's interests.

**211A. to 211J.** [*Repealed by Act 40 of 2018*]

### **Approval of compromise or arrangement by Court**

**212.—**(1) Where an application is made to the Court under this Part or section 71 of the Insolvency, Restructuring and Dissolution Act 2018 for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (called in this section the transferor company) is to be transferred to another company (called in this section the transferee company), the Court may either by the order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in

that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding up, of the transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

[1/2007; 40/2018]

(1A) [*Deleted by Act 40 of 2018*]

(2) Where an order made under this section provides for the transfer of property or liabilities, then by virtue of the order that property is transferred to and vests in, and those liabilities are transferred to and become the liabilities of, the transferee company, free in the case of any particular property if the order so directs, from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made must lodge within 7 days of the making of the order —

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

and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(4) No vesting order, referred to in this section, has any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

(5) In this section —

“liabilities” includes duties;

“property” includes property, rights and powers of every description.

(6) In this section, “company” means any corporation liable to be wound up under the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

**213.** [Repealed by S 675/2001]

**214.** [Repealed by S 675/2001]

### **Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority**

**215.—**(1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (called in this section the transferor company) to a person (called in this section the transferee) has, within 4 months after the making of the offer in that behalf by the transferee, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% of the total number of those shares (excluding treasury shares) or of the shares of that class (other than shares already held at the date of the offer by the transferee, and excluding any shares in the transferor company held as treasury shares), the transferee may at any time within 2 months, after the offer has been so approved, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire the dissenting shareholder’s shares; and when such a notice is given the transferee is, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, entitled and bound to acquire

those shares on the terms which, under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee or if the offer contained 2 or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.

[36/2014]

(1A) Where alternative terms were offered to the shareholders, a dissenting shareholder is entitled to elect not later than the end of one month after the date on which the notice is given under subsection (1), or 14 days after a statement is supplied under subsection (2), whichever is the later, which of those terms the dissenting shareholder prefers.

[36/2014]

(1B) In offering alternative terms to the shareholders, the transferee must state which of those terms is to apply to the acquisition of the shares of a dissenting shareholder where the dissenting shareholder fails to make the election within the time allowed under subsection (1A).

[36/2014]

(1C) In determining whether the scheme or contract has been approved by the holders of the requisite number of shares, or shares of any particular class, under subsection (1), the following shares are to be disregarded:

- (a) shares that are issued after the date of the offer;
- (b) relevant treasury shares that cease to be held as treasury shares after the date of the offer.

[36/2014]

(1D) In subsection (1C)(b), “relevant treasury shares” means —

- (a) shares that are held by the transferor company as treasury shares on the date of the offer; or
- (b) shares that become shares held by the transferor company as treasury shares after the date of the offer but before a date specified in or determined in accordance with the terms of the offer.

[36/2014]

(2) Where a transferee has given notice to any dissenting shareholder that it desires to acquire the dissenting shareholder's shares, the dissenting shareholder is entitled to require the transferor company by a written demand served on the transferor company, within one month from the date on which the notice was given, to supply the dissenting shareholder with a written statement of the names and addresses of all other dissenting shareholders as shown in the register of members, and the transferee is not entitled or bound to acquire the shares of the dissenting shareholders until 14 days after the posting of the statement of such names and addresses to the dissenting shareholder.

[36/2014]

(3) Where, pursuant to any such scheme or contract, shares in a transferor company are transferred to a transferee or its nominee and those shares together with any other shares in the transferor company held by the transferee at the date of the transfer comprise or include 90% of the total number of the shares in the transferor company or of any class of those shares, then —

(a) the transferee must within one month from the date of the transfer (unless on a previous transfer pursuant to the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(b) any such holder may within 3 months from the giving of the notice to such holder require the transferee to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) with respect to any shares, the transferee is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the Court on the application of either the transferee or the shareholder thinks fit to order.

[36/2014]

(3A) In subsection (3), for the purpose of calculating whether 90% of the total number of shares are held by the transferee, shares

held by the transferor company as treasury shares are to be treated as having been acquired by the transferee.

[36/2014]

(4) Where a notice has been given by the transferee under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee must, after the expiration of one month after the date on which the notice has been given or, after 14 days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of —

- (a) transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee, and on its own behalf by the transferee; and
- (b) pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee for the shares which by virtue of this section the transferee is entitled to acquire,

and the transferor company must thereupon register the transferee as the holder of those shares.

[36/2014]

(5) Any sums received by the transferor company under this section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by the transferor company in trust for the several persons entitled to the shares in respect of which they were respectively received.

[36/2014]

(6) Where any money or other consideration is held in trust by a company for any person under this section, the company holding the money or other consideration may, after the expiration of 2 years and must before the expiration of 10 years from the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

[36/2014]

(7) The Official Receiver must —

- (a) deal with any moneys received under subsection (6) as if the moneys were paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018; and
- (b) sell or dispose of any other consideration received under subsection (6) in such manner as the Official Receiver thinks fit and must deal with the proceeds of such sale or disposal as if it were moneys paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

(8) In this section, a dissenting shareholder includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer the shareholder's shares to the transferee in accordance with the scheme or contract.

[36/2014]

(8A) In this section and sections 215AA and 215AB —

- (a) “shares” includes units of shares;
- (b) “shareholders” includes holders of units of shares but does not include a person who holds units of shares only beneficially;
- (c) “register of members” includes any records kept by or with respect to the transferor company of the names and addresses of holders of units of shares.

[36/2014]

(8B) Nothing in the definition of “shares” in subsection (8A) is to be read as requiring any securities to be treated —

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe;  
or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for

which the holder is entitled to subscribe are of the same class.

[36/2014]

(9) For the purposes of this section, shares held or acquired —

- (a) by a nominee on behalf of the transferee; or
- (b) by a related corporation of the transferee or by a nominee of that related corporation,

are to be treated as held or acquired by the transferee.

[36/2014]

(10) The reference in subsection (1) to shares already held by the transferee includes a reference to shares which the transferee has contracted to acquire but is not to be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder for no consideration and under seal or for no consideration other than a promise by the transferee to make the offer.

[36/2014]

(11) Where, during the period within which an offer for the transfer of shares to the transferee can be approved, the transferee acquires or contracts to acquire any of the shares whose transfer is involved but otherwise than by virtue of the approval of the offer, then, if —

- (a) the consideration for which the shares are acquired or contracted to be acquired (called in this subsection the acquisition consideration) does not at that time exceed the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the acquisition consideration, at the time referred to in paragraph (a), no longer exceeds the consideration specified in those terms,

the transferee is to be treated for the purposes of this section as having acquired or contracted to acquire those shares by virtue of the approval of the offer.

[36/2014]

**Joint offers**

**215AA.**—(1) In the case of a scheme involving an offer to acquire all of the shares in a company, or all of the shares in any particular class in a company, by 2 or more persons jointly (called in this section the joint transferees), section 215 is to be read subject to this section.

[36/2014]

(2) The conditions for the exercise of the rights conferred by section 215(1) are satisfied —

(a) in the case of acquisitions of shares by virtue of acceptances of the offer — by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares jointly; or

(b) in other cases — by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.

[36/2014]

(3) The conditions for the exercise of the rights conferred by section 215(3) are satisfied —

(a) in the case of acquisitions of shares by virtue of acceptances of the offer — by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares jointly; or

(b) in other cases — by the joint transferees acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.

[36/2014]

(4) Subject to this section, the rights and obligations of the transferee under section 215 are respectively joint rights and joint and several obligations of the joint transferees.

[36/2014]

(5) Subject to subsection (6), any notice or other document given or sent by or to the joint transferees under section 215 is complied with if the notice or document is given or sent by or to any of them.

[36/2014]

(6) The notice required to be given by the joint transferees under section 215(1) and (3) must be made by all of the joint transferees and, where one or more of them is a company, signed by a director of that company.

[36/2014]

**Effect of impossibility, etc., of communicating or accepting offer made under scheme or contract**

**215AB.**—(1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being an offer made under a scheme or contract for the purposes of section 215 if —

- (a) those shareholders have no address in Singapore registered with the company;
- (b) the offer was not communicated to those shareholders —
  - (i) in order not to contravene the law of a country or territory outside Singapore; or
  - (ii) because communication to those shareholders would in the circumstances be unduly onerous; and
- (c) either —
  - (i) the offer is published in the *Gazette*; or
  - (ii) the offer can be inspected, or a copy of it obtained, at a place in Singapore or on a website, and a notice is published in the *Gazette* specifying the address of that place or website.

[36/2014]

(2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside Singapore, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being made under a scheme or contract for the purposes of section 215.

[36/2014]

(3) It is not to be inferred —

- (a) that an offer which is not communicated to every holder of shares in the company cannot be an offer made under a

scheme or contract for the purposes of section 215 unless the requirements of subsection (1)(a), (b) and (c) are met; or

- (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be an offer made under a scheme or contract for those purposes unless the reason for the impossibility or difficulty is the reason mentioned in subsection (2).

[36/2014]

## **Amalgamations**

**215A.** Without affecting section 212 and any other law relating to the merger or amalgamation of companies, 2 or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or a new company, in accordance with sections 215B to 215G, where applicable.

### **Amalgamation proposal**

**215B.**—(1) An amalgamation proposal must contain the terms of an amalgamation under section 215A and, in particular —

- (a) the name of the amalgamated company;
- (b) the registered office of the amalgamated company;
- (c) the full name of every director of the amalgamated company;
- (ca) the residential address or alternate address (as the case may be) of every director of the amalgamated company which is entered in the register of directors kept by the Registrar under section 173(1)(a) in respect of the company;
- (d) the share structure of the amalgamated company, specifying —
  - (i) the number of shares of the amalgamated company;
  - (ii) the rights, privileges, limitations and conditions attached to each share of the amalgamated company; and

- (iii) whether the shares are transferable or non-transferable and, if transferable, whether their transfer is subject to any condition or limitation;
  - (e) a copy of the constitution of the amalgamated company;
  - (f) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;
  - (g) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company;
  - (h) any payment to be made to any member or director of an amalgamating company, other than a payment of the kind described in paragraph (g); and
  - (i) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.  
*[36/2014]*
- (2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.
- (3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal —
- (a) must provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and
  - (b) must not provide for the conversion of those shares into shares of the amalgamated company.
- (4) A cancellation of shares under this section is not deemed to be a reduction of share capital within the meaning of this Act.
- (5) For the purposes of subsection (1)(a), the name of the amalgamated company may be —
- (a) the name of one of the amalgamating companies; or

- (b) a new name that has been reserved under section 27(12B).  
[36/2014]

### **Manner of approving amalgamation proposal**

**215C.**—(1) An amalgamation proposal must be approved —

- (a) subject to the constitution of each amalgamating company, by the members of each amalgamating company by special resolution at a general meeting; and
- (b) by any other person, where any provision in the amalgamation proposal would, if contained in any amendment to the constitution of an amalgamating company or otherwise proposed in relation to that company, require the approval of that person.

[36/2014]

(2) The board of directors of each amalgamating company must, before the general meeting mentioned in subsection (1)(a) —

- (a) resolve that the amalgamation is in the best interest of the amalgamating company;
- (b) make a solvency statement in relation to the amalgamating company in accordance with section 215I; and
- (c) make a solvency statement in relation to the amalgamated company in accordance with section 215J.

(3) Every director who votes in favour of the resolution and the making of the statements mentioned in subsection (2) must sign a declaration stating —

- (a) that, in his or her opinion, the conditions specified in subsection (2)(a), section 215I(1)(a) and (b) (in relation to the amalgamating company) and section 215J(1)(a) and (b) (in relation to the amalgamated company) are satisfied; and
- (b) the grounds for that opinion.

(4) The board of directors of each amalgamating company must send to every member of the amalgamating company, not less than 21 days before the general meeting mentioned in subsection (1)(a) —

- (a) a copy of the amalgamation proposal;

- (b) a copy of the declarations given by the directors under subsection (3);
  - (c) a statement of any material interests of the directors, whether in that capacity or otherwise; and
  - (d) such further information and explanation as may be necessary to enable a reasonable member of the amalgamating company to understand the nature and implications, for the amalgamating company and its members, of the proposed amalgamation.
- (5) The directors of each amalgamating company must, not less than 21 days before the general meeting mentioned in subsection (1)(a) —
- (a) send a copy of the amalgamation proposal to every secured creditor of the amalgamating company; and
  - (b) cause to be published in at least one daily English newspaper circulating generally in Singapore a notice of the proposed amalgamation, including a statement that —
    - (i) copies of the amalgamation proposal are available for inspection by any member or creditor of an amalgamating company at the registered offices of the amalgamating companies and at such other place as may be specified in the notice during ordinary business hours; and
    - (ii) a member or creditor of an amalgamating company is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.
- (6) Any director who contravenes subsection (3) shall be guilty of an offence.

### **Short form amalgamation**

**215D.**—(1) A company (called in this subsection the amalgamating holding company) and one or more of its wholly-owned subsidiaries (called in this subsection the amalgamating subsidiary company) may amalgamate and continue as one company, being the amalgamated

holding company or the amalgamated subsidiary company, without complying with sections 215B and 215C if the members of each amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

- (a) in the case —
  - (i) where the amalgamating companies continue as the amalgamated holding company — the shares of each amalgamating subsidiary company will be cancelled without any payment or any other consideration; or
  - (ii) where the amalgamating companies continue as an amalgamated subsidiary company — the shareholders of the amalgamating holding company are to be issued and hold the same number of shares in the amalgamated subsidiary company as they hold in the amalgamating holding company without any payment or other consideration and the shares of each amalgamating company, except for the shares in the amalgamated subsidiary company which are issued to the shareholders of the amalgamating holding company, will be cancelled without any payment or any other consideration;
- (b) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled;
- (c) the directors of the amalgamating holding company and every amalgamating subsidiary company are satisfied that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and
- (d) the person or persons named as director or directors in the resolution of each amalgamating company will be the director or directors of the amalgamated company.

[36/2014]

(2) Two or more wholly-owned subsidiary companies of the same corporation may amalgamate and continue as one company without complying with sections 215B and 215C if the members of each amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

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

[36/2014]

(3) The directors of each amalgamating company must, not less than 21 days before the general meeting mentioned in subsection (1) or (2) (as the case may be) give written notice of the proposed amalgamation to every secured creditor of the amalgamating company.

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

(5) The board of directors of each amalgamating company must, before the commencement of the general meeting mentioned in subsection (1) or (2) (as the case may be), make a solvency statement in relation to the amalgamated company in accordance with section 215J.

[36/2014]

(6) Every director who votes in favour of the making of the solvency statement mentioned in subsection (5) must sign a declaration stating —

- (a) that, in the director's opinion, the conditions specified in section 215J(1)(a) and (b) are satisfied; and
  - (b) the grounds for that opinion.
- (7) Any director who contravenes subsection (6) shall be guilty of an offence.
- (8) A cancellation of shares under this section is not deemed to be a reduction of share capital within the meaning of this Act.

### **Registration of amalgamation**

**215E.**—(1) For the purpose of effecting an amalgamation, the following documents must be filed with the Registrar, in the prescribed form with such particulars as may be required in the form, together with payment of the prescribed fee:

- (a) the amalgamation proposal that has been approved;
- (aa) any solvency statement made under section 215C(2) or 215D(5), as the case may be;
- (b) any declaration required under section 215C(3) or 215D(6), as the case may be;
- (c) a declaration signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the constitution of the amalgamating company;
- (d) where the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, a copy of any notice or other documentary evidence that the name which it is proposed to be registered or the proposed new name (as the case may be) has been reserved under section 27(12B);
- (e) a declaration signed by the directors, or proposed directors, of the amalgamated company stating that, where the proportion of the claims of the creditors of the amalgamated company in relation to the value of the assets of the amalgamated company is greater than the proportion of the claims of the creditors of an

amalgamating company in relation to the value of the assets of the amalgamating company, no creditor will be prejudiced by that fact.

[36/2014]

(2) Where the amalgamated company is a new company —

(a) section 19(1)(a) and (c) is deemed to have been complied with if, and only if, subsection (1) has been complied with; and

(b) the reference to a person named in the constitution as a director or the secretary of the proposed company in section 19(2)(b) includes a reference to a proposed director of the amalgamated company.

[36/2014]

### **Notice of amalgamation, etc.**

**215F.**—(1) Upon the receipt of the relevant documents and fees, the Registrar must —

(a) if the amalgamated company is the same as one of the amalgamating companies — issue a notice of amalgamation in such form as the Registrar may determine; or

(b) if the amalgamated company is a new company — issue a notice of amalgamation in such form as the Registrar may determine together with the notice of incorporation under section 19(4).

(2) Where an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the relevant documents and fees mentioned in subsection (1), the notice of amalgamation and any notice of incorporation issued by the Registrar must be expressed to have effect on the date specified in the amalgamation proposal.

(3) The Registrar must, as soon as practicable after the effective date of an amalgamation, remove the amalgamating companies, other than the amalgamated company, from the register.

(4) Upon the application of the amalgamated company and payment of the prescribed fee, the Registrar must issue to the amalgamated company a certificate of confirmation of amalgamation.

[36/2014]

### **Effect of amalgamations**

**215G.** On the date shown in a notice of amalgamation —

- (a) the amalgamation is effective;
- (b) the amalgamated company has the name specified in the amalgamation proposal;
- (c) all the property, rights and privileges of each of the amalgamating companies are transferred to and vest in the amalgamated company;
- (d) all the liabilities and obligations of each of the amalgamating companies are transferred to and become the liabilities and obligations of the amalgamated company;
- (e) all proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;
- (f) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and
- (g) the shares and rights of the members in the amalgamating companies are converted into the shares and rights provided for in the amalgamation proposal.

### **Power of Court in certain cases**

**215H.**—(1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application of that person made at any time before the date on which the amalgamation becomes effective, make any order it thinks fit in

relation to the amalgamation proposal, and may, without limiting the generality of this subsection, make an order —

- (a) directing that effect must not be given to the amalgamation proposal;
- (b) modifying the amalgamation proposal in such manner as may be specified in the order; or
- (c) directing the amalgamating company or its board of directors to reconsider the amalgamation proposal or any part thereof.

(2) An order may be made under subsection (1) on such terms or conditions as the Court thinks fit.

### **Solvency statement in relation to amalgamating company and offence for making false statement**

**215I.**—(1) For the purposes of section 215C(2)(b), “solvency statement”, in relation to an amalgamating company, means a statement by the board of directors of the amalgamating company that it has formed the opinion —

- (a) that, as regards the amalgamating company’s situation at the date of the statement, there is no ground on which the amalgamating company could then be found to be unable to pay its debts; and
- (b) that, at the date of the statement, the value of the amalgamating company’s assets is not less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

(2) The solvency statement —

- (a) if the amalgamating company is exempt from audit requirements under section 205B or 205C, must be in the form of a written declaration; or
- (b) if the amalgamating company is not such a company, must be in the form of a written declaration or must be accompanied by a report from its auditor that the auditor has inquired into the affairs of the amalgamating company

and is of the opinion that the statement is not unreasonable given all the circumstances.

[36/2014]

(3) In forming an opinion for the purposes of subsection (1)(a) and (b), the directors must take into account all liabilities of the amalgamating company (including contingent liabilities).

(4) In determining, for the purposes of subsection (1)(b), whether the value of the amalgamating company's assets is or will become less than the value of its liabilities (including contingent liabilities), the board of directors of the amalgamating company —

(a) must have regard to —

- (i) the most recent financial statements of the amalgamating company that comply with section 201(2) and (5), as the case may be; and
- (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamating company's assets and the value of the amalgamating company's liabilities (including contingent liabilities); and

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[36/2014]

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the board of directors of the amalgamating company may take into account —

(a) the likelihood of the contingency occurring; and

(b) any claim the amalgamating company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(6) Any director of an amalgamating company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.

**Solvency statement in relation to amalgamated company and offence for making false statement**

**215J.**—(1) In sections 215C(2)(c) and 215D(5), “solvency statement”, in relation to an amalgamated company, means a written declaration by the board of directors of each amalgamating company that it has formed the opinion —

- (a) that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and
- (b) that the value of the amalgamated company’s assets will not be less than the value of its liabilities (including contingent liabilities).

[36/2014]

(2) In forming an opinion for the purposes of subsection (1)(a) and (b), the directors must take into account all liabilities of the amalgamated company (including contingent liabilities).

(3) In determining, for the purposes of subsection (1)(b), whether the value of the amalgamated company’s assets will become less than the value of its liabilities (including contingent liabilities), the board of directors of each amalgamating company —

- (a) must have regard to —
  - (i) the most recent financial statements of the amalgamating company and the other amalgamating companies that comply with section 201(2) and (5), as the case may be; and
  - (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamated company’s assets and the value of the amalgamated company’s liabilities (including contingent liabilities); and
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

[36/2014]

(4) In determining, for the purposes of subsection (3), the value of a contingent liability, the board of directors of each amalgamating company may take into account —

- (a) the likelihood of the contingency occurring; and
- (b) any claim the amalgamated company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(5) Any director of an amalgamating company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.

### **Transfer of money or other consideration paid under terms of amalgamation to Official Receiver**

**215K.**—(1) Where the terms of any amalgamation proposal that is approved under section 215C, or is deemed to be approved under section 215D, provide for any money or other consideration to be held by or on behalf of any party to the amalgamation in trust for any person, the person holding the money or other consideration may, after the expiration of 2 years and must before the expiration of 10 years from the date on which, the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

[36/2014]

- (2) The Official Receiver must —
- (a) deal with any moneys received under subsection (1) as if the moneys were paid to the Official Receiver under section 197 of the Insolvency, Restructuring and Dissolution Act 2018; and
  - (b) sell or dispose of any other consideration received under subsection (1) in such manner as the Official Receiver thinks fit and must deal with the proceeds of such sale or disposal as if it were moneys paid to the Official Receiver

under section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[36/2014; 40/2018]

### **Personal remedies in cases of oppression or injustice**

**216.**—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part 9, the Minister, may apply to the Court for an order under this section on the ground —

- (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including the applicant or in disregard of his, her or their interests as members, shareholders or holders of debentures of the company; or
- (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including the applicant).

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without limiting the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the company in future;
- (c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
- (d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
- (e) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(f) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to subsection (2)(f), the provisions of the Insolvency, Restructuring and Dissolution Act 2018 relating to the winding up of a company apply, with such adaptations as are necessary, as if the order had been made upon an application duly made to the Court by the company.

[40/2018]

(4) Where an order under this section makes any alteration in or addition to any company's constitution, then, despite anything in any other provision of this Act, but subject to the provisions of the order, the company concerned does not have power, without the permission of the Court, to make any further alteration in or addition to the constitution inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order are of the same effect as if duly made by resolution of the company.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(5) A copy of any order made under this section must be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(7) This section applies to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members are to be construed accordingly.

### **Derivative or representative actions**

**216A.**—(1) In this section and section 216B, “complainant” means —

- (a) any member of a company;
- (b) the Minister, in the case of a declared company under Part 9; or

- (c) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

[36/2014]

(2) Subject to subsection (3), a complainant may apply to the Court for permission to bring an action or arbitration in the name and on behalf of the company or intervene in an action or arbitration to which the company is a party for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the company.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

(3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —

- (a) the complainant has given 14 days' notice to the directors of the company of the complainant's intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action or arbitration;
- (b) the complainant is acting in good faith; and
- (c) it appears to be prima facie in the interests of the company that the action or arbitration be brought, prosecuted, defended or discontinued.

[36/2014]

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3)(a), the Court may make such interim order as it thinks fit pending the complainant giving notice as required.

(5) In granting permission under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following:

- (a) an order authorising the complainant or any other person to control the conduct of the action or arbitration;
- (b) an order giving directions for the conduct of the action or arbitration by the person so authorised;

- (c) an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action or arbitration.

[36/2014]

[Act 25 of 2021 wef 01/04/2022]

- (6) Where the action has been commenced or is to be brought in the State Courts, an application for permission under subsection (2) must be made in a District Court.

[5/2014]

[Act 25 of 2021 wef 01/04/2022]

### **Evidence of shareholders' approval not decisive — Court approval to discontinue action under section 216A**

**216B.**—(1) An application made or an action brought or intervened in under section 216A must not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company has been or may be approved by the members of the company, but evidence of approval by the members may be taken into account by the Court in making an order under section 216A.

(2) An application made or an action brought or intervened in under section 216A must not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 216A, the Court may at any time order the company to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

## PART 8

**217. to 227.** [Repealed by Act 40 of 2018]

## PART 8A

**227AA. to 227X.** [*Repealed by Act 40 of 2018*]

## PART 9

## INVESTIGATIONS

**Application of this Part**

**228.** This Part does not authorise any investigation into the insurance business of a company or into the business of a banking corporation, unless specifically provided for in this Part.

**Interpretation**

**229.** In this Part, unless the contrary intention appears —

“company” includes a foreign company which is a declared company;

“declared company” means a company or foreign company which the Minister has by order declared to be a company to which this Part applies;

“officer or agent”, in relation to a corporation, includes —

(a) a director, banker, solicitor or auditor of the corporation;

(b) a person who at any time —

(i) has been a person referred to in paragraph (a);  
or

(ii) has been otherwise employed or appointed by the corporation;

(c) a person who —

(i) has in the person’s possession any property of the corporation;

(ii) is indebted to the corporation; or

- (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and
- (d) where there are reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (c) — that person.

### **Power to declare company or foreign company**

**230.** The Minister may by order declare that a company or foreign company is a company to which this Part applies if the Minister is satisfied —

- (a) that a prima facie case has been established that, for the protection of the public or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;
- (b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;
- (c) that for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; or
- (d) in the case of a foreign company, that the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company.

### **Appointment of inspectors for declared companies**

**231.—(1)** Where a company or foreign company has been declared to be a company to which this Part applies, the Minister must appoint one or more inspectors to investigate the affairs of that company, and to report his or her opinion thereon to the Minister.

(2) An inspector appointed under subsection (1) may, at any time in the course of the inspector's investigation, without the necessity of making an interim report, inform the Minister of matters coming to the inspector's knowledge as a result of the investigation which tend to show that an offence has been committed; and the Minister may thereafter take such steps as the Minister may consider fit.

(3) The expenses of and incidental to an investigation of a declared company must be defrayed in the first instance out of moneys provided by Parliament.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who is convicted on a prosecution brought under section 233(3) or who is ordered to pay damages or restore property in proceedings under section 233(4) the Minister may by notification in the *Gazette* direct that the expenses be so paid.

(5) A notification under subsection (4) may specify the time or times and the manner in which the payment of the expenses must be made.

(6) Where a notification has been published by the Minister under subsection (5), the persons named in the notification to the extent therein specified shall be liable to reimburse the Minister in respect of such expenses.

(7) Action to recover any such expenses may be taken in the name of the Government in any court of competent jurisdiction.

(8) Where a notification under subsection (4) has been published for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the company are deemed to be part of the costs and expenses of the winding up for the purposes of section 203(1)(a) of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

(9) The report of the inspector may if the inspector thinks fit, and must, if the Minister so directs, include a recommendation as to the terms of the notification which the inspector thinks proper in the light

of the inspector's investigation to be given by the Minister under subsection (4).

### **Investigation of affairs of company by inspectors at direction of Minister**

**232.**—(1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs —

- (a) in the case of a company having a share capital, on the application of —
  - (i) not less than 200 members (excluding the company itself if it is registered as a member) or of members holding not less than 10% of the shares issued (excluding treasury shares); or
  - (ii) holders of debentures holding not less than 20% in nominal value of debentures issued;
- (b) in the case of a company not having a share capital, on the application of not less than 20% in number of the persons on the company's register of members; or
- (c) in any case on the application of a company pursuant to a special resolution.

(2) An application under this section must be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security for such amount as the Minister thinks fit for payment of the cost of the investigation.

### **As to reports of inspectors**

**233.**—(1) An inspector appointed by the Minister may, and if so directed by the Minister must, make interim reports to the Minister and on the conclusion of the investigation the inspector must report the inspector's opinion on or in relation to the affairs that the inspector has been appointed to investigate together with the facts

upon which the inspector's opinion is based to the Minister, and a copy of the report must, subject to subsection (1B), be forwarded by the Minister to the registered office of the company, and a further copy must, subject to that subsection, at the request of the applicants be delivered to them.

(1A) Subject to subsections (1B) and (1C), the Minister must give a copy of a report made under this Part to each person to whom in the opinion of the Minister the report ought to be given by reason that it relates to the affairs of that person to a material extent.

(1B) The Minister is not bound to furnish a company, an applicant or any other person with a copy of the report or any part thereof if the Minister is of the opinion that there is good reason for not divulging the contents of the report or any part thereof.

(1C) Subject to subsection (1D), the Minister must not give a copy of a report made under this Part to a person under subsection (1A) if the Minister believes that legal proceedings that have been or, in the Minister's opinion, might be instituted, might be unduly prejudiced by giving the report to that person.

(1D) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Part may order that a copy of the report or part thereof must be given to that person.

(2) The Minister may, if he or she is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published but must refrain from so doing if the Attorney-General has certified in writing that publication of the report would be prejudicial to the administration of justice.

(3) If from any report of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted, the Minister must cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) must on being required by the Minister to do so give all assistance in connection with the prosecution which they are reasonably able to give.

(4) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any company dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that company or in the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained, the Minister may himself or herself bring proceedings for that purpose in the name of the company.

**234.** [*Repealed by Act 13 of 1987*]

### **Investigation of affairs of related corporation**

**235.** Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a corporation which is or has at any relevant time been a corporation deemed to be related by virtue of section 6 to the company, the inspector may, with the consent in writing of the Minister, investigate the affairs of that corporation.

### **Procedure and powers of inspector**

**236.—(1)** If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of section 6, the inspector has power to do so, and the inspector must report on the affairs of the other corporation so far as the inspector thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part must, if required by an inspector appointed under this Part, produce to the inspector all books and documents in the officer's or agent's custody or power and must give to the inspector all assistance in connection with the investigation which he or she is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being

investigated pursuant to this Part to appear for examination on oath or affirmation (which the inspector is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

- (a) may take possession of all such books and documents;
- (b) may retain all such books and documents for such time as the inspector considers to be necessary for the purpose of the investigation; and
- (c) must permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his or her possession.

(4A) If an inspector has reasonable grounds for believing that a director or past director of the company or of a corporation which is or has at any time been deemed to be or to have been related to that company by virtue of section 6 whose affairs the inspector is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Singapore or elsewhere, into or out of which there has been paid any money which has been in any way connected with any act or omission or series of acts or omissions, which on the part of that director or past director constituted misconduct (whether fraudulent or not towards that company or that related company or its members), an inspector may require the director or past director to produce to the inspector all documents in the director's or past director's possession or under his or her control relating to that bank account.

(5) If any officer or agent of any corporation, the affairs of which are being investigated pursuant to this Part, fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him or her by an inspector with respect to the affairs of the corporation or that officer or agent is a director or past director to whom subsection (4A)

applies, if he or she fails to comply with a requirement of an inspector under that subsection, the inspector may certify the failure or refusal under the hand of the inspector to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if the offender had been guilty of contempt of the Court.

(6) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, is entitled to refuse to answer any question which is relevant or material to the investigation on the ground that the person's answer might tend to incriminate him or her but if the person claims that the answer to any question, might incriminate him or her and but for this subsection the person would have been entitled to refuse to answer the question, the answer to the question may not be used in any subsequent criminal proceedings except in the case of a charge against the person for making a false statement in answer to that question.

(7) Subject to subsection (6), any person is entitled to refuse to answer a question on the ground that the answer might tend to incriminate him or her.

(8) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (6) thereafter be used in evidence in any legal proceedings against that person.

### **As to costs of investigations**

**237.**—(1) The expenses of and incidental to an investigation by an inspector appointed pursuant to sections 232 and 243 (including the costs of any proceedings brought by the Minister in the name of the company), must be paid by the company investigated or if the Minister so directs by the applicants or in part by the company and in part by the applicants.

(2) Despite subsection (1) —

- (a) if the company fails to pay the whole or any part of the sum which it is so liable to pay, the applicants must make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount (if any) which they have under subsection (1) been directed by the Minister to pay; and
- (b) any balance of the expenses not paid either by the company or the applicants must be paid out of moneys provided by Parliament.

### **Report of inspector to be admissible in evidence**

**238.** A copy of the report of any inspector appointed under this Part, certified as correct by the Minister, is admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which the inspector's opinion is based in relation to any matter contained in the report.

### **Powers of inspector in relation to a declared company**

**239.**—(1) An inspector of a declared company may employ such persons as the inspector considers necessary and in writing authorise any such person to do anything the inspector could himself or herself do, except to examine on oath or affirmation.

(2) Any officer or agent of a corporation who —

- (a) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or
- (b) refuses or fails to answer any question lawfully put to him or her by any such person,

shall be liable to be dealt with in the same manner as is provided in section 236(5) for refusing or failing to comply with the request of an inspector.

**Suspension of actions and proceedings by declared company**

**240.**—(1) On and after the appointment of an inspector in respect of any declared company until the expiration of 3 months after the inspector has presented the inspector's final report to the Minister, no action or proceeding may without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as the Minister thinks fit) be commenced or proceeded with in any Court —

- (a) by the company upon or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person —
  - (i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to the holder or other person gave therefor adequate pecuniary consideration; and
  - (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to the holder or other person or at any time within 3 years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section is void and of no effect.

**Winding up of company**

**241.**—(1) An application to the Court —

- (a) in the case of a company — for the winding up of the company; or
- (b) in the case of a foreign company — for the winding up so far as the assets of the company in Singapore are concerned of the affairs of the company,

may be made by the Minister at any time after a report has been made in respect of a declared company by an inspector whereupon the provisions of the Insolvency, Restructuring and Dissolution Act 2018, with such adaptations as are necessary, apply as if —

- (c) in the case of a company — a winding up application had been duly made to the Court by the company; and
- (d) in the case of a foreign company — an application for an order for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore had been duly made to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

[40/2018]

(2) Where, in the case of a foreign company, on any application under subsection (1) an order is made for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore the company must not carry on business or establish or keep a place of business in Singapore.

## Penalties

**242.**—(1) Any person who, with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part —

- (a) destroys, conceals or alters any book, document or record of or relating to a declared company; or
- (b) sends or attempts to send or conspires with any other person to send out of Singapore any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) If in any prosecution for an offence under this section it is proved that the person charged with the offence —

- (a) has destroyed, concealed or altered any book, document or record of or relating to the company; or
- (b) has sent or attempted to send or conspired to send out of Singapore any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing the person had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on the person.

### **Appointment and powers of inspectors to investigate ownership of company**

**243.**—(1) Where it appears to the Minister that there is good reason to do so, the Minister may appoint one or more inspectors to investigate and report on the membership of any corporation, whether or not it is a declared company, and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the corporation or able to control or materially to influence the policy of the corporation.

(2) The appointment of an inspector under this section may define the scope of the inspector's investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 232, the Minister must appoint an inspector to conduct the investigation unless the Minister is satisfied that the application is vexatious, and the inspector's appointment must not exclude from the scope of the inspector's investigation any matter which the application seeks to have included therein, except insofar as the

Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment, the inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the inspector's investigation.

(5) For the purposes of any investigation under this section, the provisions of this Part with respect to the investigation of declared companies apply with the necessary modifications of references to the affairs of the corporation or to those of any other corporation, but so that —

- (a) this Part applies in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with that of the corporation, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the corporation or of the other corporation, as the case may be; and
- (b) the Minister is not bound to furnish the corporation or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if the Minister is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but may, if the Minister thinks fit, cause to be kept by the Registrar a copy of the report or (as the case may be) the parts of the report, as respects which the Minister is not of that opinion.

### **Power to require information as to persons interested in shares or debentures**

**244.**—(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a corporation and that it is unnecessary to appoint an inspector for the purpose, the Minister may require any person whom the Minister has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give such information to the Minister.

(2) For the purposes of this section, a person is deemed to have an interest in a share or debenture if the person has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if the person's consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with the person's instructions.

(3) Any person who fails to give any information required of the person under this section, or who in giving any such information makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) This section applies to a banking corporation but nothing therein requires, subject to the provisions of the Banking Act 1970, disclosure by a banking corporation to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the banker.

(5) The Minister may by notification in the *Gazette* delegate his or her powers under this section either generally or in any particular case to a committee of an approved exchange that has been approved by the Minister under any written law relating to the securities industry

or to any body, panel or committee that has been established to advise the Minister on matters connected with the securities industry.

[4/2017]

(6) A committee of an approved exchange or any body, panel or committee mentioned in subsection (5) in the discharge of its powers under that subsection must keep the Minister informed of any information obtained under this section.

[4/2017]

(7) Despite any delegation of the Minister's powers under this section, the Minister may exercise any of the powers conferred upon the Minister under this section.

### **Power to impose restrictions on shares or debentures**

**245.**—(1) Where in connection with an investigation under section 243 or 244 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, the Minister may by order in the *Gazette* direct that the shares are until further order subject to the following restrictions:

- (a) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, is void;
- (b) that no voting rights are exercisable in respect of those shares;
- (c) that no further shares may be issued in right of those shares or pursuant to any offer made to the holder thereof; and
- (d) that, except in a liquidation, no payment may be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2) Any order of the Minister directing that shares will cease to be subject to the restrictions mentioned in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of subsection (1)(c) and (d), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(3) Where any shares are for the time being subject to any restrictions mentioned in subsection (1), any person who —

- (a) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;
- (b) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or
- (c) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom the firstmentioned person does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares whether as holder or proxy,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(4) Where shares in any company are issued in contravention of the restrictions imposed pursuant to subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(5) A prosecution must not be instituted under this section except with the consent of the Public Prosecutor.

(6) This section applies in relation to debentures as it applies in relation to shares.

### **Inspectors appointed in other countries**

**246.** Where —

- (a) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and

- (b) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

the Minister may by notice declare that the inspector so appointed is to have the same powers and duties in Singapore in relation to the investigation as if the corporation were a declared company and the inspector had been appointed under section 231 and thereupon the inspector has those powers and duties.

## PART 10 DISSOLUTION

[40/2018]

*Division 1 — [Repealed by Act 40 of 2018]*

**247. to 252.** [Repealed by Act 40 of 2018]

*Division 2 — [Repealed by Act 40 of 2018]*

*Subdivision (1) — [Repealed by Act 40 of 2018]*

**253. to 262.** [Repealed by Act 40 of 2018]

*Subdivision (2) — [Repealed by Act 40 of 2018]*

**263. to 276.** [Repealed by Act 40 of 2018]

*Subdivision (3) — [Repealed by Act 40 of 2018]*

**277.** [Repealed by Act 40 of 2018]

**278.** [Repealed by Act 40 of 2018]

*Subdivision (4) — [Repealed by Act 40 of 2018]*

**279. to 289.** [Repealed by Act 40 of 2018]

*Division 3 — [Repealed by Act 40 of 2018]*

*Subdivision (1) — [Repealed by Act 40 of 2018]*

**290.** *[Repealed by Act 40 of 2018]*

**291.** *[Repealed by Act 40 of 2018]*

**292.** *[Repealed by Act 40 of 2018]*

**293.** *[Repealed by Act 40 of 2018]*

*Subdivision (2) — [Repealed by Act 40 of 2018]*

**294.** *[Repealed by Act 40 of 2018]*

**295.** *[Repealed by Act 40 of 2018]*

*Subdivision (3) — [Repealed by Act 40 of 2018]*

**296.** *[Repealed by Act 40 of 2018]*

**297.** *[Repealed by Act 40 of 2018]*

**298.** *[Repealed by Act 40 of 2018]*

**299.** *[Repealed by Act 40 of 2018]*

*Subdivision (4) — [Repealed by Act 40 of 2018]*

**300. to 312.** *[Repealed by Act 40 of 2018]*

*Division 4 — Provisions applicable to  
every mode of winding up*

*Subdivision (1) — [Repealed by Act 40 of 2018]*

**313. to 326.** *[Repealed by Act 40 of 2018]*

*Subdivision (2) — [Repealed by Act 40 of 2018]*

**327.** *[Repealed by Act 40 of 2018]*

**328.** *[Repealed by Act 40 of 2018]*

*Subdivision (3) — [Repealed by Act 40 of 2018]*

**329. to 335.** *[Repealed by Act 40 of 2018]*

*Subdivision (4) — [Repealed by Act 40 of 2018]*

**336. to 342.** *[Repealed by Act 40 of 2018]*

*Subdivision (5) — Dissolution*

**343.** *[Repealed by Act 40 of 2018]*

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

**344.**—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, the Registrar may send to the company, and its directors, secretaries and members, a letter to that effect and stating that, if an answer showing cause to the contrary is not received within 30 days after the date of the letter, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

*[36/2014]*

(1A) Without limiting subsection (1), in determining whether there is reasonable ground to believe that a company is not carrying on business, the Registrar may have regard to such circumstances as may be prescribed.

*[36/2014]*

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, the Registrar may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of 60 days after the date of that notice the name of the company mentioned in that notice will, unless cause is (in the form and manner specified in section 344C) shown to the contrary, be struck off the register and the company will be dissolved.

*[36/2014]*

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

(a) no liquidator is acting;

- (b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by the liquidator; or
- (c) the affairs of the company have been fully wound up under Division 2 of Part 8 of the Insolvency, Restructuring and Dissolution Act 2018 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

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

[40/2018]

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

- (a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection affects the power of the Court to wind up a company the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 6 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being lodged with the Registrar the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the

company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

[36/2014]

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

[36/2014]

(7) The Registrar must ensure that —

(a) such particulars of the company mentioned in subsection (1) and of the Registrar's belief that the company is not carrying on business or is not in operation, as the Registrar may determine, is sent to —

(i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act 1992; and

(ii) the Central Provident Fund Board established under the Central Provident Fund Act 1953; and

(b) the substance of the notices to be published in the *Gazette* referred to in subsections (2), (3) and (4) is also published on the Authority's website.

[36/2014]

### **Striking off on application by company**

**344A.**—(1) The Registrar may, on the application by a company, strike the company's name off the register on such grounds and subject to such conditions as may be prescribed.

[36/2014]

(2) An application under subsection (1) is to be made on the company's behalf by its directors or by a majority of them.

[36/2014]

(3) Upon receipt of the application, the Registrar must, if satisfied that the grounds and conditions (if any) referred to in subsection (1) have been satisfied, send to the company and its directors, secretaries and members a letter informing them of the application and stating that if an answer showing cause to the contrary (in the form and manner referred to in section 344C) is not received within 30 days after the date thereof a notice, details of which are set out in subsection (4), will be published in the *Gazette* with a view to striking the name of the company off the register.

[36/2014]

(4) The Registrar may not strike a company's name off the register under this section until after the expiration of 60 days after the publication by the Registrar in the *Gazette* of a notice —

- (a) stating that the Registrar intends to exercise the power under this section in relation to the company; and
- (b) inviting any person to show cause why that should not be done within such period as may be prescribed.

[36/2014]

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(b) as to why the name of the company should not be struck off the register, the Registrar must strike off the name of the company from the register and publish a notice in the *Gazette* of the company's name having been so struck off.

[36/2014]

(6) On the publication of the notice in the *Gazette* under subsection (5), the company is dissolved.

[36/2014]

(7) Despite the dissolution of the company under subsection (6) —

- (a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section affects the power of the Court to wind up a company the name of which has been struck off the register.

[36/2014]

- (8) The Registrar must ensure that —
- (a) such particulars of the company and of the application mentioned in subsection (1), as the Registrar may determine, is sent to —
    - (i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act 1992; and
    - (ii) the Central Provident Fund Board established under the Central Provident Fund Act 1953; and
  - (b) the substance of the notices to be published in the *Gazette* referred to in subsections (4) and (5) is also published on the Authority's website.

[36/2014]

(9) The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other prescribed manner.

[36/2014]

### **Withdrawal of application**

**344B.**—(1) The applicant or applicants may, by written notice to the Registrar, withdraw an application to strike a company's name off the register under section 344A at any time before the name of the company has been struck off the register.

[36/2014]

(2) Upon receipt of the notice mentioned in subsection (1), the Registrar must —

- (a) send to the company by ordinary post a notice that the application to strike the company's name off the register has been withdrawn; and
- (b) publish a notice on the Authority's website that the application to strike the company's name off the register has been withdrawn.

[36/2014]

### **Objections to striking off**

**344C.**—(1) Where a notice is given or published by the Registrar under section 344(2) or 344A(4) of the Registrar's intention to strike

the company's name off the register, any person may deliver, not later than the date specified in the notice, an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be so struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 344(1) or 344A(1).

[36/2014]

(2) An objection to the striking the name of the company off the register mentioned in subsection (1) must be given to the Registrar by notice in the prescribed form and manner.

[36/2014]

(3) Upon receipt of a notice of objection, which is made in the prescribed form and manner, within the time referred to in subsection (1), the Registrar —

- (a) must where applicable, give the applicant or applicants for striking the name of the company off the register notice of the objection; and
- (b) must, in deciding whether to allow the objection, take into account such considerations as may be prescribed.

[36/2014]

### **Application for administrative restoration to register**

**344D.**—(1) Subject to such conditions as may be prescribed, an application may be made to the Registrar to restore to the register the name of a company whose name has been struck off the register by the Registrar under section 344, if no application has been or is being made to the Court to restore the name of the company to the register under section 344(5).

[36/2014]

(2) An application under this section may be made whether or not the company has in consequence been dissolved.

[36/2014]

(3) An application under this section may only be made by a former director or former member of the company.

[36/2014]

(4) An application under this section is not valid unless the application is received by the Registrar within 6 years after the date on which the company is dissolved.

[36/2014]

### **Registrar's decision on application for administrative restoration**

**344E.**—(1) The Registrar must give notice to the applicant of the decision on an application under section 344D.

[36/2014]

(2) If the Registrar's decision is that the name of the company should be restored to the register —

- (a) the restoration takes effect as from the date that notice is sent; and
- (b) the Registrar must —
  - (i) enter in the register a note of the date on which the restoration takes effect; and
  - (ii) cause notice of the restoration to be published in the *Gazette* and on the Authority's website.

[36/2014]

(3) The notice under subsection (2)(b)(ii) must state —

- (a) the name of the company or, if the company is restored to the register under a different name, that name and its former name;
- (b) the company's registration number; and
- (c) the date as on which the restoration of the name of the company to the register takes effect.

[36/2014]

(4) If the Registrar's decision is that the name of the company should not be restored to the register, the person who made the application under section 344D or any other person aggrieved by the decision of the Registrar may appeal to the Court.

[36/2014]

(5) On an appeal made under subsection (4), the Court may —

- (a) confirm the Registrar's decision; or

- (b) restore the name of the company to the register and give such directions and make such orders as the Court is empowered to give and make under section 344G(3).

[36/2014]

### **Registrar may restore company deregistered by mistake**

**344F.**—(1) The Registrar may, on his or her own initiative, restore the name of a company to the register if the Registrar is satisfied that the name of the company has been struck off the register and the company is dissolved under section 344 or 344A as a result of a mistake of the Registrar.

[36/2014]

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the company off the register under section 344A.

[36/2014]

(3) The Registrar may restore the name of a company to the register by publishing in the *Gazette* and on the Authority's website a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

[36/2014]

### **Effect of restoration**

**344G.**—(1) If the name of a company is restored to the register under section 344E(2) or 344F, or on appeal to the Court under section 344E(5), the company is to be regarded as having continued in existence as if its name had not been struck off the register.

[36/2014]

(2) The company and its directors are not liable to a penalty under section 204 for a financial year in relation to which the period for filing its financial statements and other related statements ended —

- (a) after the date of dissolution or striking off; and
- (b) before the restoration of the name of the company to the register.

[36/2014]

(3) On the application by any person, the Court may give such directions and make such orders, as it seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or its name had not been struck off the register.

[36/2014]

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the company to the register.

[36/2014]

### **Retention of books and papers upon striking off**

**344H.**—(1) Where the name of a company has been struck off and the company dissolved under section 344 or 344A, a person who was an officer of the company immediately before the company was dissolved must ensure that all books and papers of the company are retained for a period of at least 5 years after the date on which the company was dissolved.

[15/2017]

(2) An officer of a company who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

[15/2017]

**345. to 349.** [*Repealed by Act 40 of 2018*]

*Division 5 — [Repealed by Act 40 of 2018]*

**350. to 354.** [*Repealed by Act 40 of 2018*]

*Division 6 — [Repealed by Act 40 of 2018]*

**354A.** [*Repealed by Act 40 of 2018*]

**354B.** [*Repealed by Act 40 of 2018*]

**354C.** [*Repealed by Act 40 of 2018*]

## PART 10A

## TRANSFER OF REGISTRATION

**Foreign corporate entities to which this Part applies**

**355.** This Part applies to a foreign corporate entity which intends to be registered as a company limited by shares under this Act.

[15/2017]

**Interpretation of this Part**

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

“date of registration”, in relation to a foreign corporate entity that has applied to be registered as a company limited by shares under this Part, means the date of registration of the foreign corporate entity specified in the notice of transfer of registration;

“foreign corporate entity” means a body corporate that is incorporated outside Singapore;

“notice of transfer of registration” means the notice of transfer of registration issued under section 359(3);

“place of incorporation” means, in the case of a foreign corporate entity that had transferred its domicile after its incorporation, the jurisdiction where the foreign corporate entity is domiciled at the time it applies for registration;

“registration”, in relation to a foreign corporate entity that has applied to be registered as a company limited by shares under this Part, means registration by the Registrar under section 359(1), and “register” and “registered” are to be construed accordingly.

[15/2017]

**Names of companies to be registered under this Part**

**357.—(1)** A foreign corporate entity which intends to be registered as a company limited by shares under this Act must apply to reserve the name of the intended company.

[15/2017]

(2) Section 27 applies to and in respect of an application under subsection (1) as if it were an application to reserve the name of an intended company under that section.

[15/2017]

(3) A foreign corporate entity must not be registered under section 359(1) unless the name which it is proposed to be registered has been reserved under section 27, as applied by subsection (2).

[15/2017]

### **Application for registration**

**358.**—(1) A foreign corporate entity may apply to the Registrar to be registered as a company limited by shares under this Act.

[15/2017]

(2) An application under subsection (1) —

(a) must be made in such form and manner, and contain such particulars, as may be prescribed; and

(b) must be accompanied by —

(i) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its place of incorporation;

(ii) the constitution by which the foreign corporate entity proposes to be registered;

(iii) such other documents as may be prescribed; and

(iv) the prescribed fee.

[15/2017]

(3) The Registrar may require an applicant to furnish to the Registrar such further information or documents as the Registrar may require.

[15/2017]

### **Registration**

**359.**—(1) Subject to section 360, upon compliance by the foreign corporate entity with section 358, the Registrar may, if the Registrar

thinks fit, register the foreign corporate entity as a company limited by shares by registering its constitution.

[15/2017]

(2) The registration of the foreign corporate entity is subject to such conditions that the Registrar may impose.

[15/2017]

(3) Upon registration of the foreign corporate entity, the Registrar must issue a notice of transfer of registration in the prescribed form stating that the company is, on and from the date specified in the notice —

- (a) registered by way of transfer of registration under this Act;
- (b) a company limited by shares; and
- (c) where applicable, a private company.

[15/2017]

(4) A certificate of confirmation of registration must be issued by the Registrar upon the application of the company.

[15/2017]

(5) A notice of transfer of registration issued under subsection (3), and a certificate of confirmation of registration issued under subsection (4), is each conclusive evidence —

- (a) that the foreign corporate entity is registered under this section; and
- (b) of the date of the company's registration.

[15/2017]

(6) A foreign corporate entity registered under this section must, within 60 days after the issue of the notice of transfer of registration under subsection (3), or such further period as may be extended under subsection (7), submit to the Registrar a document evidencing that the foreign corporate entity has been deregistered in its place of incorporation.

[15/2017]

(7) The Registrar may, on the application of the foreign corporate entity registered under this section, extend the 60-day period mentioned in subsection (6) subject to such conditions as the Registrar considers fit.

[15/2017]

(8) The Registrar may, at any time in the Registrar's discretion, waive or modify any condition imposed by the Registrar under subsection (2).

[15/2017]

(9) Any person aggrieved by —

- (a) the refusal of the Registrar to register a foreign corporate entity under subsection (1);
- (b) any condition of registration imposed by the Registrar under subsection (2); or
- (c) the modification of any condition by the Registrar under subsection (8),

may within 30 days after the date of the refusal to register, or the imposition or modification of the condition (as the case may be), appeal to the Minister whose decision is final.

[15/2017]

### **When registration must be refused**

**360.**—(1) The Registrar must refuse to register a foreign corporate entity if the Registrar is not satisfied that the minimum requirements prescribed for registration have been met and that all other requirements for registration have been complied with.

[15/2017]

(2) The Registrar must refuse to register a foreign corporate entity if the Registrar is satisfied that —

- (a) the intended company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (b) it would be contrary to national security or interest for the intended company to be registered.

[15/2017]

(3) Any person aggrieved by the decision of the Registrar under subsection (1) or (2) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

[15/2017]

**Effect of registration**

**361.**—(1) Starting on the date of registration specified in the notice of transfer of registration —

- (a) the foreign corporate entity is deemed to be a company as defined in section 4(1) and all provisions of this Act pertaining to companies apply with such adaptations, exceptions and modifications as may be specified in regulations; and
- (b) if the foreign corporate entity was registered as a foreign company under Division 2 of Part 11 immediately before that date, ceases to be so registered under Division 2 of that Part.

[15/2017]

(2) To avoid doubt, the registration of a foreign corporate entity does not —

- (a) create a new legal entity;
- (b) prejudice or affect the identity of the body corporate constituted by the foreign corporate entity or its continuity as a body corporate;
- (c) affect the property, or the rights or obligations, of the foreign corporate entity; or
- (d) render defective any legal proceedings by or against the foreign corporate entity,

and any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its registration may be continued or commenced by or against the company after the registration.

[15/2017]

**Revocation of registration**

**362.**—(1) The Registrar may by order revoke the registration of a company if the company fails to comply with section 359(6).

[15/2017]

- (2) The Registrar must, before making an order of revocation —
- (a) give the company written notice of the Registrar's intention to revoke the registration;
  - (b) specify in the notice a period of at least 30 days within which the company may make written representations to the Registrar; and
  - (c) consider the company's written representations (if any) that are received by the Registrar within the time specified in the notice.

[15/2017]

(3) At the expiration of the time mentioned in the notice mentioned in subsection (2), the Registrar may, unless cause to the contrary is previously shown, order that the registration of the company be revoked.

[15/2017]

- (4) The Registrar must —
- (a) cause a notice of the order of revocation to be published in the *Gazette*; and
  - (b) serve a copy of the notice of the order of revocation on the company which registration is revoked.

[15/2017]

(5) Upon publication of the notice of the order of revocation in the *Gazette*, the order of revocation takes effect and the company ceases to be a company as defined in section 4(1) and the provisions of this Act cease to apply to the company.

[15/2017]

(6) An order of revocation under subsection (3) is final.

[15/2017]

(7) Despite the order of revocation in respect of a company under subsection (3), the liability (if any) of every officer and member of the company continues.

[15/2017]

- (8) Nothing in this section prejudices —
- (a) the enforcement by any person of any right or claim against the company; or

- (b) the enforcement by the company of any right or claim against any person.

[15/2017]

### **Duty of company to register pre-existing charges**

**363.**—(1) If, before the registration of a foreign corporate entity, there are any charges, whether created by the foreign corporate entity or otherwise, which would have been required to be registered under Division 8 of Part 4 if the foreign corporate entity had been incorporated as a company under this Act, there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the date of registration of the company, a statement containing the prescribed particulars of the charge.

[15/2017]

(2) Documents and particulars required to be lodged for registration under subsection (1) may be lodged by the company concerned or by any person interested in the documents.

[15/2017]

(3) Where registration under subsection (1) is effected by some person other than the company concerned, that person is entitled to recover from the company the amount of any fees properly paid by the person for the registration.

[15/2017]

(4) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[15/2017]

(5) To avoid doubt, a failure to comply with subsection (1) does not affect the continuity of status, operation or effect of any security, right, priority or obligation of the charge.

[15/2017]

(6) The Court, on being satisfied —

- (a) that the omission to register a charge requiring registration under subsection (1), or that the omission or mis-statement of any particular with respect to such charge, was accidental or due to inadvertence or to some other

sufficient cause or is not of a nature to prejudice the position of creditors or shareholders; or

(b) that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

[15/2017]

(7) In respect of any charge that is required to be lodged under subsection (1), sections 134, 135, 136 and 138 apply as if the charge were a charge to which Division 8 of Part 4 applied.

[15/2017]

### **Duties of company with respect to issue of certificates**

**364.**—(1) Within 60 days after the date of registration of the company, the company must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures (as the case may be) as at the date of registration.

[15/2017]

(2) Upon the delivery of the certificates to the holders of existing shares or debentures under subsection (1), all prior certificates in respect of such shares or debentures cease to be operative and cease to have any validity for the purposes of this Act.

[15/2017]

(3) Any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the company is void.

[15/2017]

(4) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have

the certificates or the debentures delivered to the person, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application are to be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

[15/2017]

## Regulations

**364A.** The Minister may make regulations under section 411 in respect of applications for registration, and registration of a foreign corporate entity, under this Part, including —

- (a) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under section 359(1);
- (b) waiving any requirement of this Part in respect of any foreign corporate entity, or class of foreign corporate entities; and
- (c) adapting, modifying or excluding the provisions of this Act in their application to any foreign corporate entity or class of foreign corporate entities registered under this Part.

[15/2017]

## PART 11

### VARIOUS TYPES OF COMPANIES, ETC.

#### *Division 1 — [Repealed by Act 8 of 2003]*

#### *Division 2 — Foreign companies*

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

**365.** This Division applies to a foreign company which —

- (a) establishes a place of business or carries on business in Singapore; or

- (b) intends to establish a place of business or carry on business in Singapore.

[36/2014]

### **Interpretation of this Division**

**366.**—(1) In this Division, unless the contrary intention appears —  
“authorised representative”, in relation to a foreign company,  
means —

- (a) in the case of a foreign company registered before 3 January 2016 — the agent of the foreign company as defined by this section in force immediately before that date; and
- (b) in the case of a foreign company registered on or after 3 January 2016 — the person named in a notice lodged under section 368(1)(e);

“carrying on business” —

- (a) includes the administration, management or otherwise dealing with property situated in Singapore as an agent, a legal personal representative, or a trustee, whether by employees or agents or otherwise; and
- (b) does not exclude activities carried on without a view to any profit.

[36/2014]

(2) Despite subsection (1), a foreign company is not to be regarded as carrying on business in Singapore for the reason only that in Singapore it —

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;

- (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if such order is accepted outside Singapore;
- (f) creates evidence of any debt or creates a charge on movable or immovable property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;
- (i) invests any of its funds or holds any property;
- (j) establishes a share transfer or share registration office in Singapore;
- (k) effects any transaction through its related corporation licensed or approved under any written law by the Monetary Authority of Singapore, established under the Monetary Authority of Singapore Act 1970, under an arrangement approved by the Monetary Authority of Singapore; or
- (l) carries on such other activity as the Minister may prescribe.

[36/2014]

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

**367.** Subject to and in accordance with any written law, a foreign company registered under this Division has power to hold immovable property in Singapore.

[36/2014]

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

**368.**—(1) Every foreign company must, before it establishes a place of business or commences to carry on business in Singapore, lodge with the Registrar for registration —

- (a) the name of the foreign company and the address of the registered office of the company in its place of incorporation or formation;
- (b) a certified copy of the certificate of its incorporation or registration in its place of incorporation or formation or a document of similar effect;
- (c) a certified copy of its charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution but only if such document is required to be registered or lodged under the law relating to the incorporation, formation or registration of the foreign company in its place of incorporation, formation or original registration;
- (d) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of directors of a company incorporated under this Act and, in respect of each director, his or her residential address;
- (e) a notice stating the names, nationalities and other identification particulars of one or more natural persons resident in Singapore who are appointed as the company's authorised representatives and authorised as such to accept on its behalf service of process and any notice required to be served on the company, and in respect of each authorised representative, his or her residential address;
- (f) a statement by or on behalf of the foreign company in the prescribed form confirming that each of its authorised representatives referred to in the notice lodged under paragraph (e) has consented to act as such (called in this section and section 370 the consent statement);
- (g) notice of the situation of its registered office in Singapore and, unless the office is open and accessible to the public during ordinary business hours on each business day, the days and hours during which it is open and accessible to the public;

- (h) a notice in the prescribed form containing the following particulars:
- (i) in the case —
    - (A) where a certificate of the foreign company's incorporation or registration or a document of similar effect is issued in its place of incorporation or formation — the registration number indicated on the certificate of the foreign company's incorporation or registration or a document of similar effect; or
    - (B) where the document referred to in sub-paragraph (A) is not available — the number issued to the foreign company upon its incorporation by or registration with an authority which is responsible for incorporating or registering companies;
  - (ii) a description of the business carried on by the foreign company; and
  - (iii) the type of legal form or legal entity of the foreign company; and
- (i) where the law for the time being applicable to the foreign company in the place of its incorporation or formation requires audited financial statements of its head office to be prepared, a copy of the latest audited financial statements of its head office,

and on payment of the appropriate fees and subject to this Act, the Registrar must register the foreign company under this Division by registration of the documents.

[36/2014]

(2) Any document required to be served under this Act on a director or an authorised representative of a foreign company is sufficiently served if addressed to the director or authorised representative and left at or sent by post to his or her residential address or, if the director

or authorised representative has provided an alternate address under section 370A, his or her alternate address.

[36/2014]

(3) The following must be made available for inspection at the registered office of the foreign company during the hours in which the registered office of the company is accessible to the public:

- (a) a copy of the memorandum of appointment or power of attorney appointing each authorised representative of the company in such manner as to be binding on the company;
- (b) where the memorandum of appointment or power of attorney mentioned in paragraph (a) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner.

[36/2014]

(4) Subsection (1) applies to a foreign company which was not registered under the repealed written laws but which, immediately before 29 December 1967, had a place of business or was carrying on business in Singapore and, on that date, had a place of business or was carrying on business in Singapore, as if it established that place of business or commenced to carry on that business on that date.

[36/2014]

### **Duty of directors and authorised representatives to provide information to foreign company**

**368A.**—(1) A director must give the foreign company any information the company needs to comply with section 372(1) as soon as practicable but not later than 14 days after his or her initial appointment, unless he or she has previously given the information to the company in writing.

[36/2014]

- (2) An authorised representative must give the foreign company —
  - (a) any information the company needs to comply with section 370(4) as soon as practicable but not later than 14 days after his or her initial appointment, unless he or she

has previously given the information to the company in writing; and

- (b) any information the company needs to comply with section 372(1) as soon as practicable but not later than 14 days after any change in his or her particulars.

[36/2014]

(3) Despite subsection (1) or (2), a director or an authorised representative must, subject to subsection (4), if requested by the foreign company, give the company any information referred to in section 368(1)(d) or (e) for the purpose of enabling the company to confirm its record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

[36/2014]

(4) The director or authorised representative mentioned in subsection (3) must furnish the information to the foreign company as soon as practicable but not later than 14 days after receipt of a written request for such information from the company.

[36/2014]

(5) A director or an authorised representative who is bound to comply with a requirement under this section and fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

### **Saving and transitional provisions for existing particulars of directors and authorised representatives**

**368B.**—(1) If a foreign company, whether incorporated before, on or after 3 January 2016 —

- (a) has lodged the name and particulars of one or more directors with the Registrar as a director or directors (as the case may be) of the foreign company under section 368(1)(c) in force immediately prior to that date, the name and particulars of the director or directors (as the case may be) are to be treated as the name and particulars of the company's director or directors (as the case may be)

until a notification of any change to the information is received by the Registrar under section 372(1)(ca); or

- (b) has lodged the name and particulars of one or more agents with the Registrar as an agent or agents (as the case may be) of the foreign company under section 368(1)(e) in force immediately prior to that date, the name and particulars of the agent or agents (as the case may be) are to be treated as the name and particulars of the company's authorised representative or representatives (as the case may be) until a notification of any change to the information is received by the Registrar under section 372(1)(ca).

[36/2014]

(2) For the purposes of subsection (1) —

- (a) the address lodged with the Registrar in respect of a director under section 368(1)(c) in force immediately before 3 January 2016 is to be treated as the director's residential address; and
- (b) the address lodged with the Registrar in respect of an agent under section 368(1)(e) in force immediately before 3 January 2016 is to be treated as the agent's residential address in the agent's capacity as an authorised representative of the foreign company.

[36/2014]

### **Power to refuse registration of a foreign company in certain circumstances**

**369.**—(1) Despite anything in this Act or any rule of law, the Registrar must refuse to register a company under this Division if the Registrar is satisfied that the foreign company is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or it would be contrary to the national security or interest for the foreign company to be registered.

[36/2014]

(2) A foreign company aggrieved by the decision of the Registrar under subsection (1) may, within 30 days of the date of the decision, appeal to the Minister whose decision is final.

**As to registered office and authorised representatives of foreign companies**

**370.**—(1) A foreign company must have a registered office in Singapore to which all communications and notices may be addressed and which must be open and accessible to the public for not less than 5 hours between the hours of 9 a.m. and 5 p.m. each business day.

[36/2014]

(2) An authorised representative, until he or she ceases to be such in accordance with subsection (5) —

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

[36/2014]

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

(4) On the appointment of a new authorised representative, the company must lodge a notice mentioned in section 368(1)(e) and a consent statement in respect of the new authorised representative with the Registrar.

[36/2014]

(5) Subject to subsections (6) and (7), the authorised representative in respect of whom the notice under subsection (3) has been lodged ceases to be an authorised representative on the expiration of a period of 21 days after the date of lodgment of the notice or on the date on which the consent statement in respect of another authorised representative is lodged with the Registrar under section 368(1)(f),

whichever is the earlier, but if the notice states a date on which the firstmentioned authorised representative is to so cease and the date is later than the expiration of that period, on that date.

[36/2014]

(6) Where the authorised representative in respect of whom the notice under subsection (3) has been lodged is the sole authorised representative of a foreign company —

- (a) the foreign company must appoint another authorised representative; and
- (b) the authorised representative ceases to be an authorised representative of the foreign company on the date on which the consent statement in respect of another authorised representative is lodged under subsection (4).

[36/2014]

(7) Where a foreign company's sole authorised representative dies, the company must, within 21 days after the death of the authorised representative, appoint another authorised representative.

[36/2014]

### **Alternate address**

**370A.**—(1) Despite sections 12 and 12A, the Registrar must not disclose or make available for public inspection the particulars of a director's or an authorised representative's residential address that is lodged with the Registrar under this Part or transmitted to the Registrar by the Commissioner of National Registration under section 11 of the National Registration Act 1965 if the requirements of subsection (2) are satisfied.

[36/2014]

(2) The requirements mentioned in subsection (1) are that the director or authorised representative referred to in that subsection maintains with the Registrar an alternate address that complies with the following conditions:

- (a) it is an address at which the director or authorised representative can be located;
- (b) it is not a post office box number;

- (c) it is not the residential address of the director or authorised representative;
    - (d) it is located in the same jurisdiction as the director's or authorised representative's residential address.
- [36/2014]*
- (3) For the purposes of subsection (2) —
- (a) an individual who wishes to maintain an alternate address must lodge an application with the Registrar;
  - (b) an individual may not maintain more than one alternate address at any one time;
  - (c) an individual who wishes to cease to maintain an alternate address must lodge a notice of withdrawal with the Registrar; and
  - (d) an individual who wishes to change his or her alternate address must lodge a notice of change with the Registrar.
- [36/2014]*
- (4) An application to maintain an alternate address, the lodgment of a notice of withdrawal and notice of change are subject to the payment of such fees as may be prescribed.
- [36/2014]*
- (5) Subsection (1) applies from the time at which the Registrar accepts an application to maintain an alternate address mentioned in subsection (3)(a).
- [36/2014]*
- (6) A director or an authorised representative who maintains an alternate address under subsection (2) must ensure that he or she can be located at his or her alternate address.
- [36/2014]*
- (7) A director or an authorised representative who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.
- [36/2014]*
- (8) Despite subsection (1), the Registrar may disclose and make available for public inspection the particulars of a director's or an

authorised representative's residential address despite the maintenance of an alternate address under subsection (2) if —

- (a) communications sent by the Registrar under this Act, or by any officer of the Authority under any ACRA administered Act, to the director or authorised representative at his or her alternate address and requiring a response within a specified period remain unanswered; or
- (b) there is evidence to show that service of any document under this Act or under any ACRA administered Act at the alternate address is not effective to bring it to the notice of the director or authorised representative.

[36/2014]

(9) Before proceeding under subsection (8), the Registrar must give notice to the director or authorised representative affected, and to every foreign company of which the Registrar has been notified under this Act that the individual is a director or an authorised representative, as the case may be —

- (a) stating the grounds on which the Registrar proposes to disclose and make available for public inspection the individual's residential address; and
- (b) specifying a period within which representations may be made before that is done.

[36/2014]

(10) The Registrar is to consider the representations received within the specified period.

[36/2014]

(11) Where the Registrar discloses and makes available for public inspection the particulars of a director's or an authorised representative's residential address, the Registrar must give notice of that fact to the director or authorised representative affected, and to every foreign company of which the Registrar has been notified under this Act that the individual is a director or an authorised representative, as the case may be.

[36/2014]

(12) A notice to a director or an authorised representative under subsection (11) is to be sent to him or her at his or her residential

address unless it appears to the Registrar that service at that address may be ineffective to bring it to his or her notice, in which case it may be sent to any other last known address of the director or authorised representative.

[36/2014]

(13) Where —

- (a) the Registrar discloses and makes available for public inspection the particulars of a director's or an authorised representative's residential address under subsection (8);  
or
- (b) a Registrar appointed under any other ACRA administered Act discloses and makes available for public inspection under that Act the particulars of a director's or an authorised representative's residential address under a provision of that Act equivalent to subsection (8),

the director or authorised representative is not, for a period of 3 years after the date on which the residential address is disclosed and made available for public inspection, allowed to maintain an alternate address under subsection (2).

[36/2014]

(14) Nothing in this section applies to any information lodged or deemed to be lodged with the Registrar before 3 January 2016 or prevents such information from being disclosed or from being made available for public inspection or access.

[36/2014]

(15) Nothing in this section prevents the residential address of an individual that is lodged with the Registrar under this Act, or is transmitted to the Registrar by the Commissioner of National Registration under section 11 of the National Registration Act 1965 from —

- (a) being used by the Registrar for the purposes of any communication with the individual;
- (b) being disclosed for the purposes of issuing any summons or other legal process against the individual for the purposes of this Act or any other written law;

- (c) being disclosed in compliance with the requirement of any court or the provisions of any written law;
- (d) being disclosed for the purpose of assisting any public officer or officer of any statutory body in the investigation or prosecution of any offence under any written law; or
- (e) being disclosed in such other circumstances as may be prescribed.

[36/2014]

(16) Any director or authorised representative aggrieved by the decision of the Registrar under subsection (8) may, within 30 days after the date of receiving the notice under subsection (11), appeal to the Court which may confirm the decision or give such directions in the matter as seem proper or otherwise determine the matter.

[36/2014; 40/2019]

(17) For the purposes of this section —

- (a) “ACRA administered Act” means the Accounting and Corporate Regulatory Authority Act 2004 and any of the written laws specified in the Second Schedule to that Act; and
- (b) a director or an authorised representative can be located at an address if he or she may be physically found at the address after reasonable attempts have been made to find him or her at that address.

[36/2014]

### **Transitory provisions**

**371.**—(1) On the registration of a foreign company under this Division, the Registrar must issue a notice in the prescribed form and the notice is prima facie evidence in all courts of the particulars mentioned in the notice.

(2) Upon the application of the foreign company that has been duly registered and payment of the prescribed fee, the Registrar must issue to the foreign company a certificate confirming the particulars mentioned in the notice, and the certificate is prima facie evidence in all courts of those particulars.

**Return to be filed where documents, etc., altered**

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

- (a) the charter, statutes, constitution, memorandum or articles of the foreign company or other instrument lodged with the Registrar;
- (b) the directors of the foreign company;
- (c) the authorised representative or authorised representatives of the foreign company;
- (ca) the particulars of any director or authorised representative of the foreign company which are lodged with the Registrar under section 368(1), other than the director's or authorised representative's residential address;
- (d) the situation or address or designation of situation or address of the registered office of the foreign company in Singapore or the days or hours during which it is open and accessible to the public;
- (e) the address of the registered office of the foreign company in its place of incorporation or origin;
- (f) the name of the foreign company;
- (g) the description of the business carried on by the foreign company; or
- (h) the type of legal form or legal entity of the foreign company,

the foreign company must, within 30 days or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

[36/2014]

(1A) A director or an authorised representative of a foreign company must lodge with the Registrar a notice of the director's or authorised representative's new residential address within 30 days after the date of change.

[36/2014]

(1B) Where the director or authorised representative mentioned in subsection (1) has changed his or her residential address and has made a report of the change under section 10 of the National Registration Act 1965, the director or authorised representative is to be taken to have informed the Registrar of the change of residential address in compliance with subsection (1A).

[36/2014]

(1C) If default is made by any director or authorised representative of a foreign company in complying with subsection (1A), he or she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

[36/2014]

(2) [Deleted by Act 36 of 2014]

(3) [Deleted by Act 36 of 2014]

(4) If any order is made by a court under any law in force in the country in which a foreign company is incorporated which corresponds to section 210 of this Act or section 71 of the Insolvency, Restructuring and Dissolution Act 2018, the company must, within 30 days or within such further period as the Registrar in special circumstances allows after the order was made, lodge with the Registrar a copy of that order.

[36/2014; 15/2017; 40/2018]

## Financial statements

**373.**—(1) Subject to this section, a foreign company must lodge with the Registrar, within the time specified in subsection (3), financial statements made up to the end of its last financial year together with a declaration in the prescribed form verifying that the copies are true copies of the documents so required and, in the case where the financial statements are audited, a statement of the name of the auditor.

[36/2014]

(2) In this section, “financial statements” means —

- (a) in the case where the foreign company is required by the law for the time being in force in the place of the company’s incorporation or formation to prepare financial statements in accordance with any applicable accounting

standards which are similar to the Accounting Standards or which are acceptable to the Registrar — those financial statements; and

- (b) in any other case — financial statements in such form and containing such particulars as the directors of the company would have been required to prepare or obtain if the foreign company were a public company incorporated under this Act.

[36/2014]

(3) The financial statements mentioned in subsection (1) must be lodged —

- (a) where the foreign company is required by the law of its place of incorporation or formation to table financial statements mentioned in subsection (2)(a) at an annual general meeting — within 60 days after the date on which its annual general meeting is held; or
- (b) in any other case — within such period as the directors of the foreign company would have been required to lodge its financial statements if the company were a public company incorporated under this Act which does not keep a branch register outside Singapore.

[36/2014]

(4) The Registrar may, if the Registrar is of the opinion that the financial statements mentioned in subsection (2)(a) do not sufficiently disclose the foreign company's financial position, require the company —

- (a) to lodge financial statements within such period, in such form and containing such particulars; and
- (b) to annex thereto such documents,

as the Registrar may by written notice to the company require.

[36/2014]

(5) Subsection (4) does not authorise the Registrar to require —

- (a) financial statements to contain any particulars; or
- (b) the company to annex, attach or to send any documents,

that would not be required to be furnished if the company were a public company incorporated under this Act.

[36/2014]

(6) The foreign company must comply with the requirements set out in the notice under subsection (4).

[36/2014]

(7) In addition to the financial statements required to be lodged with the Registrar under subsections (1), (3) and (4), a foreign company must lodge with the Registrar within the time specified in subsection (3) —

- (a) a duly audited statement showing its assets used in and liabilities arising out of its operations in Singapore as at the date to which its balance sheet was made up;
- (b) a duly audited profit and loss account which, insofar as is practicable, complies with the requirements of the Accounting Standards and which gives a true and fair view of the profit or loss arising out of the company's operation in Singapore for the last preceding financial year of the company; and
- (c) a statement of the name of the auditor who audited the documents referred to in paragraphs (a) and (b).

[36/2014]

(8) For the purpose of subsection (7), the foreign company is entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Singapore and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Singapore.

[36/2014]

(9) A foreign company which is dormant in Singapore may, in lieu of satisfying the requirements of subsection (7), lodge with the Registrar —

- (a) an unaudited statement showing its assets used in and liabilities arising out of its operations in Singapore; and

- (b) an unaudited profit and loss account with respect to the company's operations in Singapore.

[36/2014]

(10) The Registrar may, on application by a foreign company and payment of the prescribed application fee, extend the period referred to in subsection (3) within which the company is required to comply with any or all of the requirements of subsections (3)(b) and (7).

[36/2014; 15/2017]

(11) A statement and profit and loss account is deemed to have been duly audited for the purposes of subsection (7) if it is accompanied by a report by an accounting entity appointed to provide auditing services in respect of the foreign company's operations in Singapore which complies, insofar as is practicable, with section 207.

[36/2014]

(12) The Registrar may, upon the written application of a foreign company, waive the requirement of a foreign company to lodge the documents referred to in subsection (7)(a), (b) and (c) if the Registrar is satisfied that —

- (a) it is impractical for the foreign company to comply having regard to the nature of the foreign company's operations in Singapore;
- (b) it would be of no real value having regard to the amount involved;
- (c) it would involve expense unduly out of proportion to its value; or
- (d) it would be misleading or harmful to the business of the foreign company, or to any company which is deemed by virtue of section 6 to be related to the foreign company.

[36/2014]

(13) The Registrar may, upon the written application of a foreign company, by order relieve the foreign company from either or both of the following:

- (a) any requirement relating to audit or the form and content of the documents referred to in subsection (2)(b);

- (b) any requirement relating to audit or the form and content of the documents referred to in subsection (7).

[36/2014]

(14) The Registrar may make the order mentioned in subsection (13) unconditionally or subject to the condition that the foreign company comply with such other requirements relating to audit or the form and content of the documents as the Registrar may determine.

[36/2014]

(15) The Registrar must not make an order under subsection (13) unless the Registrar is of the opinion that compliance with the requirements of this section would render the documents misleading or inappropriate to the circumstances of the foreign company or would impose unreasonable burdens on the company.

[36/2014]

(16) The Registrar may make an order under subsection (13) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

[36/2014]

(17) Without affecting subsections (12), (13) and (14), the Minister may, by order in the *Gazette*, in respect of foreign companies of a specified class or description —

- (a) substitute other accounting standards for the Accounting Standards, and the provisions of this section apply accordingly in respect of such foreign companies; or
- (b) exempt foreign companies of a specified class or description from any or all of the requirements of subsection (7).

[36/2014]

(18) If default is made by a foreign company in complying with this section —

- (a) the company; and
- (b) every director or equivalent person, and every authorised representative of the company, who knowingly and wilfully authorises or permits the default,

shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$50,000.

[36/2014]

(19) For the purposes of this section —

- (a) a foreign company is dormant in Singapore during a period in which no accounting transaction arising out of its operations in Singapore occurs; and the company ceases to be dormant on the occurrence of such a transaction; and
- (b) an “accounting transaction” means a transaction for which accounting or other records would be required to be kept so as to enable the documents referred to in subsection (7) to be prepared.

[36/2014]

**374.** [Repealed by Act 12 of 2002]

### **Obligation to state name of foreign company, whether limited, and country where incorporated**

**375.**—(1) A foreign company must —

- (a) [Deleted by Act 36 of 2014]
- (b) cause its name and the place where it is formed or incorporated to be stated in legible romanised letters on all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and
- (c) if the liability of its members is limited (unless the last word of its name is the word “Limited” or “Berhad” or the abbreviation “Ltd.” or “Bhd.”), cause notice of that fact —
  - (i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices, and other official publications in Singapore; and
  - (ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Singapore.

[36/2014]

(2) Where the name of a foreign company is indicated on any of the documents referred to in subsection (1) in characters or in any other way than by the use of romanised letters, this section relating to the statement of its name is deemed not to have been complied with unless the name of the company is stated on such document in romanised letters not smaller than any of the characters so exhibited or stated on the relevant document.

[36/2014]

(3) The unique entity number of a foreign company, issued by the Registrar, must appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.

[36/2014]

(4) Despite subsection (3), a foreign company incorporated before 3 January 2016 need only comply with subsection (3) after the expiration of 12 months after that date.

[36/2014]

### **Service of document**

**376.** Any document required to be served on a foreign company is sufficiently served —

- (a) if addressed to the foreign company and left at or sent by post to its registered office in Singapore;
- (b) if addressed to an authorised representative of the company and left at or sent by post to his or her registered address; or
- (c) in the case of a foreign company which has ceased to maintain a place of business in Singapore, if addressed to the foreign company and left at or sent by post to its registered office in the place of its incorporation.

[36/2014]

### **Cesser of business in Singapore**

**377.—**(1) If a foreign company ceases to have a place of business in Singapore or to carry on business in Singapore, it must, within 7 days after so ceasing, lodge with the Registrar notice of that fact.

[36/2014]

(1A) Starting on the day on which the foreign company lodged the notice mentioned in subsection (1), the foreign company's obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar ceases.

[36/2014]

(1B) The Registrar must as soon as practicable after the lodgment of the notice mentioned in subsection (1) record in the register that the company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore, as the case may be.

[36/2014]

(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin, each person who immediately before the commencement of the liquidation proceedings was an authorised representative must —

(a) within 14 days after the commencement of the liquidation or the dissolution; or

(b) within such further time as the Registrar in special circumstances allows,

lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment.

[40/2018]

(3) [Deleted by Act 40 of 2018]

(4) [Deleted by Act 40 of 2018]

(4A) [Deleted by Act 40 of 2018]

(5) On receipt of a notice from an authorised representative that the foreign company has been dissolved, the Registrar must record in the register that the foreign company has been dissolved.

[36/2014]

(6) [Deleted by Act 36 of 2014]

(7) [Deleted by Act 40 of 2018]

(8) The Registrar must strike the name of a foreign company off the register if the Registrar is satisfied that the company is being used for an unlawful purpose or for purposes prejudicial to public peace,

welfare or good order in Singapore or against the national security or interest.

[36/2014]

(9) The Registrar may strike the name of a foreign company off the register if —

- (a) the Registrar has reasonable cause to believe that the company has ceased to carry on business or to have a place of business in Singapore; or
- (b) the company has failed to appoint an authorised representative within 6 months after the date of the death of its sole authorised representative.

[36/2014]

(10) The Registrar may strike the name of a foreign company off the register upon the application of the sole authorised representative of the foreign company in the prescribed form if the Registrar is satisfied that —

- (a) the sole authorised representative has given written notice to the foreign company that he or she desires to resign and has lodged a notice under section 370(3) with the Registrar, but the company has failed to respond or appoint another authorised representative within 12 months after the date of lodgment of the notice; or
- (b) the foreign company has failed to give instructions with respect to a written request from the sole authorised representative for instructions as to whether the company wishes to cancel or continue its registration under this Act within 12 months after the date the written request was sent.

[36/2014]

(11) Without limiting subsection (9)(a), in determining whether there is reasonable ground to believe that a company is not carrying on business under that subsection, the Registrar may have regard to such circumstances as may be prescribed.

[36/2014]

(12) For the purposes of subsections (9) and (10), the provisions of this Act relating to the striking off the register of the name of a

defunct company extend and apply with such adaptations as are necessary.

[36/2014]

(13) Any person aggrieved by the decision of the Registrar under subsection (8), (9) or (10) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

[36/2014]

### **Application for administrative restoration of foreign company to register**

**377A.**—(1) Subject to such conditions as may be prescribed, a director or member of a foreign company whose name has been struck off the register under section 377(9) or (10) may apply to the Registrar to restore the name of the company to the register.

[36/2014]

(2) An application under this section is not valid unless the application is received by the Registrar within 6 years after the date on which the name of the foreign company is struck off the register.

[36/2014]

### **Registrar's decision on application for administrative restoration of foreign company**

**377B.**—(1) The Registrar must give notice to the applicant of the decision on an application under section 377A.

[36/2014]

(2) If the Registrar's decision is that the name of the foreign company should be restored to the register, the name of the company is restored to the register on the date on which notice is sent (called in this section the restoration date).

[36/2014]

(3) The Registrar must —

(a) enter in the register a note of the restoration date; and

(b) cause notice of the restoration to be published in the *Gazette* and on the Authority's website.

[36/2014]

- (4) The notice under subsection (3)(b) must state —
- (a) the name of the foreign company or, if the company is restored to the register under a different name, that name and its former name;
  - (b) the unique entity number of the foreign company issued by the Registrar; and
  - (c) the restoration date.

[36/2014]

(5) If the Registrar's decision is that the name of the foreign company should not be restored to the register, the person who made the application under section 377A or any other person aggrieved by the decision of the Registrar, may appeal to the Court.

[36/2014]

- (6) On an appeal made under subsection (5), the Court may —
- (a) confirm the Registrar's decision; or
  - (b) restore the name of the foreign company to the register and give such directions and make such orders as the Court is empowered to give and make under section 377D(3).

[36/2014]

### **Registrar may restore foreign company deregistered by mistake**

**377C.**—(1) The Registrar may, on his or her own initiative, restore the name of a foreign company to the register if the Registrar is satisfied that the name of the company has been struck off the register under section 377(9) or (10) as a result of a mistake of the Registrar.

[36/2014]

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by an applicant in connection with an application for striking the name of the foreign company off the register under section 377(10).

[36/2014]

(3) The Registrar may restore the name of a foreign company to the register by publishing in the *Gazette* and on the Authority's website a

notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

[36/2014]

### **Effect of restoration of foreign company**

**377D.**—(1) If the name of a foreign company is restored to the register under section 377B(2) or 377C, or on appeal to the Court under section 377B(5), the company is to be regarded as having continued its registration under this Act as if the name of the company had not been struck off the register.

[36/2014]

(2) The foreign company, its directors or equivalent persons, and authorised representatives are not liable to a penalty under section 373(18) for a financial year in relation to which the period for filing its balance sheet, cash flow statement, profit and loss statement and other related documents ended —

(a) after the date on which the name of the company was struck off the register; and

(b) before the restoration of the name of the company to the register.

[36/2014]

(3) On the application by any person, the Court may give directions and make orders, as seem just for placing the foreign company and all other persons in the same position (as nearly as may be) as if the name of the company had not been struck off the register.

[36/2014]

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the foreign company to the register.

[36/2014]

### **Restriction on use of certain names**

**378.**—(1) Except with the consent of the Minister or as provided in subsection (2), the Registrar must refuse to register a foreign company under a name, whether on its registration or by a subsequent change of name, under which the company is to carry on business in Singapore that, in the opinion of the Registrar —

- (a) is undesirable;
- (b) is identical to a name of any other foreign company, or any company, limited liability partnership, limited partnership or corporation, or to a registered business name;
- (c) is identical to a name reserved under subsection (15) and section 27(12B) of this Act, section 16 of the Business Names Registration Act 2014, section 23(4) of the Limited Liability Partnerships Act 2005, section 17(4) of the Limited Partnerships Act 2008, or section 27(12B) as applied by section 21(8) of the VCC Act; or
- (d) is a name, or is a name of a kind that the Minister has directed the Registrar not to accept for registration.

*[36/2014; 44/2018]*

(2) In addition to subsection (1), the Registrar must, on or after 3 January 2016, except with the consent of the Minister, refuse to register a foreign company under a name, if —

- (a) it is identical to the name of a company that was dissolved —
  - (i) unless, in a case where the company was dissolved following its winding up under Part 8 of the Insolvency, Restructuring and Dissolution Act 2018, a period of at least 2 years has passed after the date of dissolution; or
  - (ii) unless, in a case where the company was dissolved following its name being struck off the register under section 344 or 344A, a period of at least 6 years has passed after the date of dissolution;
- (b) it is identical to the business name of a person whose registration and registration of that business name has been cancelled under the Business Names Registration Act 2014 or had ceased under section 22 of that Act, unless a period of at least one year has passed after the date of cancellation or cessation;
- (c) it is identical to the name of a foreign company notice of the dissolution of which has been given to the Registrar

under section 377(2), unless a period of at least 2 years has passed after the date of dissolution;

- (d) it is identical to the name of a limited liability partnership that was dissolved —
  - (i) unless, in a case where the limited liability partnership was dissolved following its winding up under section 39 of, and the Fifth Schedule to, the Limited Liability Partnerships Act 2005, a period of at least 2 years has passed after the date of dissolution; or
  - (ii) unless, in a case where the limited liability partnership was dissolved following its name being struck off the register kept under section 63 of the Limited Liability Partnerships Act 2005, a period of at least 6 years has passed after the date of dissolution;
- (e) it is identical to the name of a limited partnership that was cancelled or dissolved —
  - (i) unless, in a case where the registration of the limited partnership was cancelled under section 14(1) or 19(4) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of cancellation; or
  - (ii) unless, in a case where notice was lodged with the Registrar of Limited Partnerships that the limited partnership was dissolved under section 19(2) of the Limited Partnerships Act 2008, a period of at least one year has passed after the date of dissolution; or
- (f) it is identical to the name of a VCC that was dissolved —
  - (i) unless, in a case where the VCC was dissolved following its winding up under Part 11 of the VCC Act, a period of at least 2 years has passed after the date of dissolution; or

- (ii) unless, in a case where the VCC was dissolved following its name being struck off the register under section 344 or 344A of this Act as applied by section 130 of the VCC Act, a period of at least 6 years has passed after the date of dissolution.

*[36/2014; 40/2018; 44/2018]*

(3) Despite subsection (1), the Registrar may, on or after 3 January 2016, register a foreign company under —

- (a) a name that is identical to the name of a foreign company registered under Division 2 of Part 11 —
  - (i) in respect of which notice was lodged under section 377(1) that the foreign company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore, if a period of at least 3 months has passed after the date of cessation; and
  - (ii) the name of which was struck off the register under section 377(8), (9) or (10), if a period of at least 6 years has passed after the date the name was so struck off; and
- (b) a name that is identical to the name of a limited partnership in respect of which notice was lodged under section 19(1) of the Limited Partnerships Act 2008 that the limited partnership ceased to carry on business in Singapore, if a period of at least one year has passed after the date of cessation.

*[36/2014]*

(4) No foreign company to which this Division applies may use in Singapore any name other than —

- (a) the name under which the foreign company is registered under this Division; and
- (b) if the foreign company is registered under the Business Names Registration Act 2014, a business name in respect of which the foreign company is registered under section 8 of that Act.

*[36/2014]*

(5) Despite this section, where the Registrar is satisfied that a foreign company has been registered (whether through inadvertence or otherwise or whether on its registration or by a subsequent change of name) by a name —

- (a) which is one that is not permitted to be registered under subsection (1)(a), (b) or (d);
- (b) which is one that is not permitted to be registered under subsection (2) until the expiry of the relevant period referred to in that subsection; or
- (c) which is one that is permitted to be registered under subsection (3) only after the expiry of the relevant period referred to in that subsection,

the Registrar may direct the foreign company to change its name, and the company must comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

[36/2014]

(6) Any person may apply, in writing, to the Registrar to give a direction to a foreign company under subsection (5) on a ground referred to in that subsection.

[36/2014]

(7) If the foreign company fails to comply with subsection (4), the company and every officer of the company who is in default and every authorised representative of the company who knowingly and wilfully authorises or permits the default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

[36/2014]

(8) In this section, “registered business name” has the meaning given by section 2(1) of the Business Names Registration Act 2014.

[36/2014]

(9) An appeal to the Minister against the following decisions of the Registrar that are made on or after 3 January 2016 may be made by the following persons within the following times:

- (a) in the case of the Registrar's decision under subsection (5) — by the foreign company aggrieved by the decision within 30 days after the decision;
- (b) in the case of the Registrar's refusal to give a direction to a foreign company under subsection (5) pursuant to an application under subsection (6) — by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

[36/2014]

(10) The Minister must cause a direction given by the Minister under subsection (1)(d) to be published in the *Gazette*.

[36/2014]

(11) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as the name under which a foreign company proposes to be registered, either originally or upon change of name.

[36/2014]

(12) A foreign company must not be registered, whether on its initial registration or by a subsequent change of name, by a name unless the name has been reserved under subsection (15).

[36/2014]

(13) The Registrar may approve an application made under subsection (11) only if the Registrar is satisfied that —

- (a) the application is made in good faith; and
- (b) the name to be reserved is one in respect of which a foreign company may be registered having regard to subsections (1), (2) and (3).

[36/2014]

(14) The Registrar must refuse to approve an application to reserve a name under subsection (11) if the Registrar is satisfied that —

- (a) the foreign company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (b) it would be contrary to the national security or interest for the foreign company to be registered.

[36/2014]

(15) Where an application for a reservation of a name is made under subsection (11), the Registrar must reserve the proposed name for a period starting at the time the Registrar receives the application and ending —

- (a) if the Registrar approves the application — 60 days after the date on which the Registrar notifies the applicant that the application has been approved, or such further period of 60 days as the Registrar may, on application made in good faith, extend; or
- (b) if the Registrar refuses to approve the application — on the date on which the Registrar notifies the applicant of the refusal.

[36/2014]

(16) A person aggrieved by a decision of the Registrar —

- (a) refusing to approve an application under subsection (11);  
or
- (b) refusing an application under subsection (15)(a) to extend the reservation period,

may, within 30 days after being informed of the Registrar's decision, appeal to the Minister whose decision is final.

[36/2014]

(17) The reservation of a name under this section in respect of a foreign company does not in itself entitle the foreign company to be registered by that name, either originally or upon change of name.

[36/2014]

### **Register of members of foreign companies**

**379.**—(1) A foreign company registered under this Division on or after 31 March 2017 must, within 30 days after it is registered —

- (a) keep a register of its members at its registered office in Singapore or at some other place in Singapore; and
- (b) lodge a notice with the Registrar specifying the address at which the register of members is kept.

[15/2017]

(2) A foreign company registered under this Division before 31 March 2017 must, within 60 days after that date —

- (a) keep a register of its members at its registered office in Singapore or at some other place in Singapore; and
- (b) lodge a notice with the Registrar specifying the address at which the register of members is kept.

[15/2017]

(3) If there is any change in the address at which the register of members mentioned in subsection (1) or (2) is kept, the foreign company must, within 30 days after the change, lodge a notice of the change with the Registrar.

[15/2017]

### **Contents of register and index of members of foreign companies**

**380.**—(1) The register of members of a foreign company required to be kept under section 379 must contain the following particulars:

- (a) the names and addresses of the members of the foreign company;
- (b) the date on which the name of each person was entered in the register as a member;
- (c) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member;
- (d) in the case of a foreign company having a share capital —
  - (i) 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; and
  - (ii) such particulars of the shares held by each member, including the date of every allotment of shares to members and the number of shares comprised in each allotment;

(e) such other particulars as may be prescribed.

[15/2017]

(2) Every foreign company having more than 50 members must, unless the register of members is in such a form as to constitute in itself an index —

(a) keep an index in convenient form of the names of the members;

(b) within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index; and

(c) keep the index at the same place as the register of members.

[15/2017]

(3) The index must in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

[15/2017]

(4) If there is any change in the particulars mentioned in subsection (1) contained in the register of members of a foreign company, the foreign company must, within 30 days after the change, update the register of members to reflect the change.

[Act 2 of 2022 wef 30/05/2022]

### **Register to be prima facie evidence**

**381.** A register of members of a foreign company kept under section 379 is prima facie evidence of any matter which the register is required under this Division to be contained.

[15/2017]

### **Certificate as to shareholding**

**382.** A certificate made under the seal of a foreign company (or in any manner permitted for certificates of such type by the laws of the country or territory in which the foreign company is incorporated or established) specifying any shares held by any member of that company and registered in the register of members of the foreign company kept under section 379 is prima facie evidence of the title of

the member to the shares and the registration of the shares in that register.

[15/2017]

### **No civil proceedings to be brought in respect of bearer shares or share warrants**

**383.**—(1) Any allotment, issue, sale, transfer, assignment or other disposition in Singapore of any bearer share or share warrant by a foreign company registered under this Division is void.

[15/2017]

(2) No civil proceedings may be brought or maintained in any court for or in respect of any bearer share or share warrant allotted, issued, sold, transferred, assigned or disposed by a foreign company registered under this Division.

[15/2017]

### **Application of provisions of Act**

**384.** Regulations made under section 411 may —

(a) provide for —

- (i) the application of any provision of Division 7 of Part 4 relating to the transfer of shares in a company to the transfer of shares in a foreign company; and
- (ii) the application of Division 4 of Part 5 relating to the register of members to the register of members of a foreign company,

subject to such adaptations, modifications or additions as may be prescribed; and

(b) exempt any foreign company or class of foreign companies from all or any provision of this Division.

[15/2017]

**385.** [Repealed by Act 15 of 2017]

### **Penalties**

**386.** If default is made by any foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company and

every officer of the company who is in default and every authorised representative of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

PART 11A  
REGISTER OF  
CONTROLLERS, NOMINEE DIRECTORS AND NOMINEE  
SHAREHOLDERS OF COMPANIES

[Act 2 of 2022 wef 04/10/2022]

**Application of this Part**

**386AA.**—(1) This Part applies to —

- (a) all companies other than a company that is set out in the Fourteenth Schedule; and
- (b) all foreign companies registered under Division 2 of Part 11 other than a foreign company that is set out in the Fifteenth Schedule.

[15/2017]

(2) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

[15/2017]

(3) This Part extends to acts done or omitted to be done outside Singapore.

[15/2017]

**Interpretation of this Part**

**386AB.** In this Part, unless the context otherwise requires —

“approved exchange” means an approved exchange as defined in section 2(1) of the Securities and Futures Act 2001;

- “controller” means an individual controller or a corporate controller;
- “corporate controller”, in relation to a company or a foreign company, means a legal entity which has a significant interest in, or significant control over, the company or the foreign company, as the case may be;
- “individual controller”, in relation to a company or a foreign company, means an individual who has a significant interest in, or significant control over, the company or the foreign company, as the case may be;
- “legal entity” means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes a foreign company;
- “limited liability partnership” has the meaning given by section 4(1) of the Limited Liability Partnerships Act 2005;
- “member of the public” includes —
- (a) in the case of a company — any member of the company acting in the member’s capacity as such; and
  - (b) in the case of a foreign company — any member of the foreign company acting in the member’s capacity as such;
- “register of controllers” or “register” —
- (a) in relation to a company to which this Part applies — means the register that the company is required to keep of its registrable controllers under section 386AF(1), (2) or (3); and
  - (b) in relation to a foreign company to which this Part applies — means the register that the foreign company is required to keep of its registrable controllers under section 386AF(4), (5) or (6);
- “registered filing agent” means a filing agent registered under section 31 of the Accounting and Corporate Regulatory Authority Act 2004;

“significant control”, in relation to a company or a foreign company, has the meaning given in the Sixteenth Schedule;

“significant interest”, in relation to a company or a foreign company, has the meaning given in the Sixteenth Schedule.

[15/2017]

### Meaning of “registrable”

**386AC.** For the purposes of this Part, in relation to a company (*X*) or a foreign company (*X*), a controller (*A*) is registrable unless —

- (a) *A*'s significant interest in or significant control over *X* is only through one or more controllers (*B*) of *X*;
- (b) *A* is a controller of *B* (or each *B* if more than one); and
- (c) *B* (or each *B* if more than one) is either —
  - (i) a company, or foreign company to which this Part applies, that is required to keep a register of controllers under section 386AF;
  - (ii) a company that is set out in the Fourteenth Schedule;
  - (iii) a foreign company that is set out in the Fifteenth Schedule;
  - (iv) a corporation which shares are listed for quotation on an approved exchange;
  - (v) a limited liability partnership to which Part 6A of the Limited Liability Partnerships Act 2005 applies, that is required to keep a register of controllers of limited liability partnerships under that Act;
  - (vi) a limited liability partnership that is set out in the Sixth Schedule to the Limited Liability Partnerships Act 2005;
  - (vii) a trustee of an express trust to which Part 7 of the Trustees Act 1967 applies; or
  - (viii) a VCC.

[15/2017; 44/2018]

**State of mind of corporation, unincorporated association, etc.**

**386AD.**—(1) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of the officer's, employee's or agent's actual or apparent authority; and

(b) the officer, employee or agent had that state of mind,

is evidence that the corporation had that state of mind.

[15/2017]

(2) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of the employee's or agent's actual or apparent authority; and

(b) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

[15/2017]

**Meaning of “legal privilege”**

**386AE.**—(1) For the purposes of this Part, information or a document is subject to legal privilege if —

(a) it is a communication made between a lawyer and a client, or a legal counsel acting as such and the legal counsel's employer, in connection with the lawyer giving legal advice to the client or the legal counsel giving legal advice to the employer, as the case may be;

(b) it is a communication made between 2 or more lawyers acting for a client, or 2 or more legal counsel acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of

the legal counsel giving legal advice to the employer, as the case may be;

- (c) it is a communication made —
- (i) between a client, or an employer of a legal counsel, and another person;
  - (ii) between a lawyer acting for a client and either the client or another person; or
  - (iii) between a legal counsel acting as such for the legal counsel's employer and either the employer or another person,

in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer (as the case may be) is or may be, or was or might have been, a party;

- (d) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (a) or (b) and that is made or prepared by any person in connection with a lawyer or legal counsel, or one or more of the lawyers or legal counsel, in either paragraph giving legal advice to the client or the employer of the legal counsel, as the case may be; or
- (e) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (c) and that is made or prepared by any person in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the legal counsel (as the case may be) is or may be, or was or might have been, a party,

but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose.

[15/2017]

(2) In subsection (1) —

“client”, in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client;

“employer”, in relation to a legal counsel, includes —

(a) if the employer is one of a number of corporations that are related to each other under section 6, every corporation so related as if the legal counsel is also employed by each of the related corporations;

(b) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act 1893 and the legal counsel is required as part of the legal counsel’s duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the legal counsel is also employed by the other public agency or each of the other public agencies; and

(c) an employee or officer of the employer;

“lawyer” means a solicitor or a professional legal adviser, and includes an interpreter or other person who works under the supervision of a solicitor or a professional legal adviser;

“legal counsel” means a legal counsel as defined in section 3(7) of the Evidence Act 1893, and includes an interpreter or other person who works under the supervision of a legal counsel.

[15/2017]

### **Register of controllers**

**386AF.**—(1) A company incorporated on or after 31 March 2017 must keep a register of its registrable controllers not later than 30 days after the date of the company’s incorporation.

[15/2017]

(2) A company incorporated before 31 March 2017 must keep a register of its registrable controllers not later than 60 days after that date.

[15/2017]

(3) If a company that is not a company to which this Part applies subsequently becomes a company to which this Part applies, the company must keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the company.

[15/2017]

(4) A foreign company registered under Division 2 of Part 11 on or after 31 March 2017 must keep a register of its registrable controllers not later than 30 days after the date of the foreign company's registration.

[15/2017]

(5) A foreign company registered under Division 2 of Part XI before 31 March 2017 must keep a register of its registrable controllers not later than 60 days after that date.

[15/2017]

(6) If a foreign company that is not a foreign company to which this Part applies subsequently becomes a foreign company to which this Part applies, the foreign company must keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the foreign company.

[15/2017]

(7) A company or foreign company must ensure that its register —

(a) contains such particulars of the company's or foreign company's registrable individual controllers and registrable corporate controllers as may be prescribed;

(aa) contains the note and prescribed particulars required under section 386AFA(3), if applicable;

[Act 2 of 2022 wef 04/10/2022]

(b) is updated if any change to the prescribed particulars mentioned in paragraph (a) or (aa) occurs; and

[Act 2 of 2022 wef 04/10/2022]

(c) is kept in such form and at such place as may be prescribed.

[15/2017]

(8) A company or foreign company must enter the particulars in its register and update the register within the prescribed time and in the prescribed manner.

[15/2017]

(9) A company or foreign company must —

- (a) enter the particulars of any controller in its register, or update the particulars of that controller in the register, after the particulars of that controller are confirmed by the controller; or
- (b) if the company or foreign company does not receive the controller's confirmation, enter or update the particulars with a note indicating that the particulars have not been confirmed by the controller.

[15/2017]

(10) For the purposes of subsection (9)(a), the particulars of the controller to be entered, or updated, in a register must be confirmed by the controller in the prescribed manner.

[15/2017]

(11) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, a register or any particulars contained in the register to any member of the public.

[15/2017]

(12) If a company fails to comply with —

- (a) subsection (1), (2) or (3), whichever is applicable; or
- (b) subsection (7), (8), (9) or (11),

the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(13) If a foreign company fails to comply with —

- (a) subsection (4), (5) or (6), whichever is applicable; or
- (b) subsection (7), (8), (9) or (11),

the foreign company, and every officer of the foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

### **Additional particulars**

**386AFA.**—(1) This section applies where a company or foreign company knows, or has reasonable grounds to believe —

- (a) that the company or foreign company has no registrable controller; or
- (b) that the company or foreign company has a registrable controller but has not been able to identify the registrable controller.

(2) Where this section applies, each director with executive control and each chief executive officer of the company or foreign company is, subject to subsection (9), taken to be a registrable controller of the company or foreign company for the purposes of this Part.

(3) Where this section applies, the company or foreign company must enter the following in its register of controllers:

- (a) a note stating —
  - (i) that the company or foreign company knows, or has reasonable grounds to believe, as the case may be —
    - (A) that the company or foreign company has no registrable controller; or
    - (B) that the company or foreign company has a registrable controller but has not been able to identify the registrable controller; and
  - (ii) that each director with executive control and each chief executive officer of the company or foreign company is taken to be a registrable controller of the company or foreign company under subsection (2);
- (b) the prescribed particulars of each director with executive control and each chief executive officer of the company or foreign company.

(4) A company or foreign company must enter the matters mentioned in subsection (3) in its register of controllers within the prescribed period after —

- (a) in the case of a company or foreign company that knows, or has reasonable grounds to believe, that it has no registrable controller — the date on which the company or foreign company knows, or has reasonable grounds to believe, that the company or foreign company has no registrable controller; or
- (b) in the case of a company or foreign company that knows, or has reasonable grounds to believe, that it has a registrable controller but has not been able to identify the registrable controller — the date on which the company or foreign company, having taken the reasonable steps required by section 386AG(1), forms the opinion that it is unable to identify the registrable controller.

(5) A company or foreign company must, within the prescribed period after the date on which the company or foreign company knows, or has reasonable grounds to believe, that any change in the particulars entered in its register of controllers under subsection (3)(b) has occurred, update its register of controllers to reflect the change.

(6) If a company or foreign company mentioned in subsection (1) enters the particulars of a registrable controller in its register of controllers under section 386AF(9), the company or foreign company must, at the same time, enter in its register of controllers a note stating —

- (a) that each director with executive control and each chief executive officer of the company or foreign company is no longer taken to be a registrable controller of the company or foreign company under subsection (2); and
- (b) the date on which the particulars of the registrable controller were entered in its register of controllers under section 386AF(9).

(7) If a company or foreign company fails to comply with subsection (3), (4), (5) or (6), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(8) In this section —

“chief executive officer” —

- (a) in relation to a company, has the meaning given by section 4(1); and
- (b) in relation to a foreign company, has the meaning given by section 4(1), subject to the modification that each reference to a company is a reference to the foreign company;

“director with executive control”, in relation to a company or foreign company, means a director of the company or foreign company who exercises executive control over the daily or regular affairs of the company or foreign company through a senior management position.

(9) Despite anything in this Part, a reference in section 386AF(9) or (10), 386AG(1) or (2), 386AH(1), 386AI(1), 386AJ(1) or 386AK(1) to a controller or a registrable controller does not include a director or chief executive officer taken to be a registrable controller under subsection (2).

[Act 2 of 2022 wef 04/10/2022]

### **Duty of company and foreign company to investigate and obtain information**

**386AG.**—(1) A company or foreign company must take reasonable steps to find out and identify the registrable controllers of the company or foreign company.

[15/2017]

(2) A company (*A*) or foreign company (*A*) —

- (a) must give a notice to any person (*B*) whom *A* knows or has reasonable grounds to believe is a registrable controller in relation to *A*, requiring *B* —

- (i) to state whether *B* is or is not a registrable controller of *A*;
  - (ii) to state whether *B* knows or has reasonable grounds to believe that any other person (*C*) is a registrable controller of *A* or is likely to have that knowledge and to give such particulars of *C* that are within *B*'s knowledge; and
  - (iii) to provide such other information as may be prescribed; and
- (b) must give a notice to any person (*D*) whom *A* knows, or has reasonable grounds to believe knows, the identity of a person who is a registrable controller of *A* or is likely to have that knowledge, requiring *D* —
- (i) to state whether *D* knows or has reasonable grounds to believe that any other person (*E*) is a registrable controller of *A* or is likely to have that knowledge and to give such particulars of *E* that are within *D*'s knowledge; and
  - (ii) to provide such other information as may be prescribed.

[15/2017]

(3) A notice mentioned in subsection (2) —

- (a) must state that the addressee must comply with the notice not later than the time prescribed for compliance;
- (b) must be in such form, contain such particulars and be sent in such manner, as may be prescribed; and
- (c) must be given within such period as may be prescribed after the company or foreign company first knows the existence of, or first has reasonable grounds to believe that there exists, a person to whom a notice must be given under that subsection.

[15/2017]

(4) Subsection (2) does not require a company or foreign company to give notice to any person in respect of any information that is required to be stated or provided pursuant to the notice if the

information was previously provided by that person or by any registered filing agent on behalf of that person.

[15/2017]

(5) If a company or foreign company fails to comply with subsection (2) or (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(6) An addressee of a notice under subsection (2) must comply with the notice within the time specified in the notice for compliance except that an addressee is not required to provide any information that is subject to legal privilege.

[15/2017]

(7) An addressee of a notice under subsection (2) who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

### **Duty of company and foreign company to keep information up-to-date**

**386AH.**—(1) If a company or foreign company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a registrable controller that are stated in the company's or foreign company's register of controllers, the company or foreign company must give notice to the registrable controller —

- (a) to confirm whether or not the change has occurred; and
- (b) if the change has occurred —
  - (i) to state the date of the change; and
  - (ii) to provide the particulars of the change.

[15/2017]

(2) A company or foreign company must give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows of the change or first has reasonable grounds to believe that the change has occurred.

[15/2017]

(3) Section 386AG(3)(a) and (b) applies to a notice under this section as it applies to a notice under that section.

[15/2017]

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was previously provided by that person or by any registered filing agent on behalf of that person.

[15/2017]

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 386AG(3)(a) and (b) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(7) For the purposes of this section, a relevant change occurs if —

- (a) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or
- (b) any other change occurs as a result of which the particulars of the registrable controller in the company's or foreign company's register of controllers are incorrect or incomplete.

[15/2017]

### **Duty of company and foreign company to correct information**

**386AI.**—(1) If a company or foreign company knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the company's or foreign company's register is incorrect, the company or foreign company must give notice to the registrable controller to confirm whether the particulars are correct and, if not, to provide the correct particulars.

[15/2017]

(2) A company or foreign company must give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows or first has reasonable grounds to believe that the information is incorrect.

[15/2017]

(3) Section 386AG(3)(a) and (b) applies to a notice under this section as it applies to a notice under that section.

[15/2017]

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was previously provided by that person or by any registered filing agent on behalf of that person.

[15/2017]

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 386AG(3)(a) and (b) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

### **Controller's duty to provide information**

**386AJ.**—(1) A person who knows or ought reasonably to know that the person is a registrable controller in relation to a company or foreign company must —

- (a) notify the company or foreign company (as the case may be) that the person is a registrable controller in relation to the company or foreign company;
- (b) state the date, to the best of the person's knowledge, on which the person became a registrable controller in relation to the company or foreign company; and

(c) provide such other information as may be prescribed.

[15/2017]

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known that that person was a registrable controller.

[15/2017]

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 386AG(2) and has complied with the requirements of the notice within the time specified in the notice for compliance.

[15/2017]

(4) If a person fails to comply with subsection (1) or (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

### **Controller's duty to provide change of information**

**386AK.**—(1) A person who is a registrable controller in relation to a company or foreign company who knows, or ought reasonably to know, that a relevant change has occurred in the prescribed particulars of the registrable controller must notify the company or foreign company of the relevant change —

(a) stating the date that the change occurred; and

(b) providing the particulars of the change.

[15/2017]

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known of the relevant change.

[15/2017]

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 386AH(1) and has

complied with the requirements of the notice within the time specified in the notice for compliance.

[15/2017]

(4) Any person who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(5) For the purposes of this section, a relevant change occurs if —

- (a) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or
- (b) there is a change in the person's contact details or such other particulars as may be prescribed.

[15/2017]

### **Register of nominee directors**

**386AKA.**—(1) A company must keep a register of its directors who are nominees (called in this Part the register of nominee directors) in the prescribed form and at the prescribed place.

(2) Subject to section 386AM, a company must not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

(3) A company must, within 7 days after the company is informed of any fact and provided with any particulars mentioned in section 386AL(1) or (2), enter that fact and those particulars in its register of nominee directors.

(4) A company must, within 7 days after the company is informed under section 386AL(3)(a) that a director of the company has ceased to be a nominee, enter the following in the company's register of nominee directors:

- (a) the fact that the director has ceased to be a nominee;
- (b) the date on which the director ceased to be a nominee.

(5) A company must, within 7 days after the company is informed under section 386AL(3)(b) of any change to the particulars of a

person for whom a director of the company is a nominee, enter the following in the company's register of nominee directors:

- (a) the new particulars of that person;
- (b) the date on which the particulars of that person changed.

(6) If a company fails to comply with subsection (1), (2), (3), (4) or (5), the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

*[Act 2 of 2022 wef 30/05/2022]*

### **Nominee directors**

**386AL.**—(1) A director of a company incorporated on or after 31 March 2017 —

- (a) who is a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the date of incorporation; and
- (b) who becomes a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

*[15/2017]*

(2) A director of a company incorporated before 31 March 2017 —

- (a) who is a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 60 days after 31 March 2017; and
- (b) who becomes a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

*[15/2017]*

(3) A director of a company mentioned in subsection (1) or (2) must inform the company —

(a) that he or she ceases to be a nominee within 30 days after the cessation; and

(b) of any change to the particulars provided to the company under that subsection within 30 days after the change.

[15/2017]

(4) [Deleted by Act 2 of 2022 wef 30/05/2022]

(5) [Deleted by Act 2 of 2022 wef 30/05/2022]

(6) If a director fails to comply with subsection (1), (2) or (3), the director shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(7) [Deleted by Act 2 of 2022 wef 30/05/2022]

(8) In this section and section 386AKA, a director is a nominee if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person.

[15/2017]

[Act 2 of 2022 wef 30/05/2022]

### Register of nominee shareholders

**386ALA.**—(1) A company or foreign company must keep a register of its shareholders who are nominees (called in this Part the register of nominee shareholders) in the prescribed form and at the prescribed place.

(2) A company or foreign company must, within 7 days after the company or foreign company is informed of any fact and provided with any particulars mentioned in section 386ALB(1), (2), (3) or (4), enter that fact and those particulars in its register of nominee shareholders.

(3) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386ALB(5)(a) that a shareholder of the company or foreign company has ceased to be a nominee, enter the following in its register of nominee shareholders:

(a) the fact that the shareholder has ceased to be a nominee;

(b) the date on which the shareholder ceased to be a nominee.

(4) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386ALB(5)(b) of any change to the particulars of a person for whom a shareholder of the company or foreign company is a nominee, enter the following in its register of nominee shareholders:

(a) the new particulars of that person;

(b) the date on which the particulars of that person changed.

(5) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, the register of nominee shareholders or any particulars contained in the register of nominee shareholders to any member of the public.

(6) If a company or foreign company fails to comply with subsection (1), (2), (3), (4) or (5), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

*[Act 2 of 2022 wef 04/10/2022]*

### **Nominee shareholders**

**386ALB.**—(1) A shareholder of a company incorporated on or after the appointed day —

(a) who is a nominee on the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date of incorporation; or

(b) who becomes a nominee after the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

(2) A shareholder of a company incorporated before the appointed day —

- (a) who is a nominee on the appointed day must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 60 days after the appointed day; or
  - (b) who becomes a nominee after the appointed day must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.
- (3) A shareholder of a foreign company registered under Division 2 of Part 11 on or after the appointed day —
  - (a) who is a nominee on the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date of registration; or
  - (b) who becomes a nominee after the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.
- (4) A shareholder of a foreign company registered under Division 2 of Part 11 before the appointed day —
  - (a) who is a nominee on the appointed day must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 60 days after the appointed day; or
  - (b) who becomes a nominee after the appointed day must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.

(5) A shareholder of a company or foreign company mentioned in subsection (1), (2), (3) or (4) must —

- (a) within 30 days after the shareholder ceases to be a nominee, inform the company or foreign company of the fact that the shareholder has ceased to be a nominee; and
- (b) within 30 days after any change to the particulars provided to the company or foreign company under subsection (1), (2), (3) or (4), inform the company or foreign company of the change.

(6) If a shareholder of a company or foreign company (as the case may be) fails to comply with subsection (1), (2), (3), (4) or (5), the shareholder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(7) In this section and section 386ALA, a shareholder of a company or foreign company is a nominee if the shareholder —

- (a) is accustomed or under an obligation whether formal or informal to vote, in respect of shares in the company or foreign company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person; and
- (b) receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

(8) In this section and section 386ALA —

“appointed day” means the date of commencement of section 2(i) of the Corporate Registers (Miscellaneous Amendments) Act 2022;

“company” means a company having a share capital;

“foreign company” means a foreign company having a share capital;

“shareholder”, in relation to a company or foreign company, means a person who is registered in the register of members

of the company or foreign company as a holder of shares in the company or foreign company.

*[Act 2 of 2022 wef 04/10/2022]*

### **Power to enforce**

**386AM.**—(1) The Registrar or an officer of the Authority may —

- (a) require a company or foreign company to which this Part applies to produce its register, its register of nominee directors, its register of nominee shareholders and any other document relating to those registers or the keeping of those registers;

*[Act 2 of 2022 wef 04/10/2022]*

- (b) inspect, examine and make copies of the registers and any document so produced; and
- (c) make such inquiry as may be necessary to ascertain whether the provisions of this Part are complied with.

*[15/2017]*

(2) Where any register or documents as are mentioned in subsection (1) are kept in electronic form —

- (a) the power of the Registrar or an officer of the Authority in subsection (1)(a) to require the register or any documents to be produced includes the power to require a copy of the register or documents to be made available in legible form and subsection (1)(b) is to accordingly apply in relation to any copy so made available; and
- (b) the power of the Registrar or an officer of the Authority under subsection (1)(b) to inspect the register or any documents includes the power to require any person on the premises in question to give the Registrar or the officer of the Authority such assistance as the Registrar or officer may reasonably require to enable the Registrar or officer to inspect and make copies of the register or documents in legible form, and to make records of the information contained in them.

*[15/2017]*

(3) The powers conferred on the Registrar or an officer of the Authority under subsections (1) and (2) may be exercised by a public agency to enable the public agency to administer or enforce any written law.

[15/2017]

(4) Any person who fails to comply with any requirement imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

[15/2017]

(5) This section applies in addition to any right of inspection conferred by section 396A.

[15/2017]

(6) In this section, “public agency” means a public officer, an Organ of State or a ministry or department of the Government, or a public authority established by or under any public Act for a public purpose or a member, an officer or an employee, or any department, thereof.

[15/2017]

### **Central register of controllers**

**386AN.**—(1) This section applies where the Minister, by notification in the *Gazette*, directs the Registrar to maintain a central register of controllers of companies and foreign companies.

[15/2017]

(2) Where the Minister has directed the Registrar to maintain a central register of controllers of companies and foreign companies under subsection (1) —

- (a) the Registrar must keep a central register of controllers consisting of the particulars contained in the registers kept by companies and foreign companies to which this Part applies; and
- (b) the Registrar must require any company or foreign company to which this Part applies to lodge with the Registrar —
  - (i) all particulars contained in the company’s or foreign company’s register maintained under section 386AF

(including the matters mentioned in section 386AFA(3)); and

*[Act 2 of 2022 wef 04/10/2022]*

- (ii) all updates to the company's or foreign company's register that occur after the lodgment of the particulars under sub-paragraph (i).

*[15/2017]*

(3) Where the Registrar requires a company or foreign company to lodge with the Registrar the particulars, matters and updates mentioned in subsection (2)(b), the company or foreign company must lodge the particulars, matters and updates in the prescribed form and manner and within the prescribed time.

*[Act 2 of 2022 wef 30/05/2022]*

(4) If a company or foreign company fails to comply with subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

*[15/2017]*

*[Act 2 of 2022 wef 30/05/2022]*

(5) Except in such circumstances as may be prescribed, the Registrar must not disclose, or make available for inspection, the central register of controllers of companies and foreign companies kept by the Registrar under this section to any member of the public.

*[15/2017]*

### **Codes of practice, etc.**

**386AO.**—(1) The Registrar may issue one or more codes, guidance, guidelines, policy statements and practice directions for all or any of the following purposes:

- (a) to provide guidance to companies or foreign companies, or to both, in relation to the operation or administration of any provision of this Part;
- (b) generally for carrying out the purposes of this Part.

*[15/2017]*

(2) The Registrar may publish any such code, guidance, guideline, policy statement or practice direction, in such manner as the Registrar thinks fit.

[15/2017]

(3) The Registrar may revoke, vary, revise or amend the whole or any part of any code, guidance, guideline, policy statement or practice direction issued under this section in such manner as the Registrar thinks fit.

[15/2017]

(4) Where amendments are made under subsection (3) —

(a) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guidance, guideline, policy statement and practice direction; and

(b) any reference in this Act or any other written law to the code, guidance, guideline, policy statement or practice direction however expressed is to be treated, unless the context otherwise requires, as a reference to the code, guidance, guideline, policy statement or practice direction as so amended.

[15/2017]

(5) The failure by any person to comply with any of the provisions of a code, guidance, guideline, policy statement or practice direction issued under this section that applies to that person does not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

[15/2017]

(6) Any code, guidance, guideline, policy statement or practice direction issued under this section —

(a) may be of general or specific application; and

(b) may specify that different provisions apply to different circumstances or provide for different cases or classes of cases.

[15/2017]

(7) It is not necessary to publish any code, guidance, guideline, policy statement or practice direction issued under this section in the *Gazette*.

[15/2017]

## **Exemption**

**386AP.** The Minister may, by order in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Part.

## PART 12

### GENERAL

#### *Division 1 — Enforcement of this Act*

## **Interpretation**

**386A.** In this section and sections 387B, 387C, 397 and 401, unless the contrary intention appears —

“consolidated financial statements” and “parent company” have the meanings given by section 209A;

“financial statements” means the financial statements of a company required to be prepared by the Accounting Standards and, in the case of a parent company, means the consolidated financial statements.

[36/2014]

## **Service of documents on company**

**387.** A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company.

## **Electronic transmission of notices of meetings**

**387A.**—(1) Where any notice of a meeting is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to —

- (a) a member of the company; or
- (b) an officer or auditor of the company,

that notice may be given, sent or served using electronic communications to the current address of that person.

[36/2014]

(2) For the purposes of this section, a notice of a meeting is also treated as given or sent to, or served on a person where —

- (a) the company and that person have agreed in writing that notices of meetings required to be given to that person may instead be accessed by the person on a website;
- (b) the meeting is a meeting to which that agreement applies;
- (c) the notice is published on the website such that it is or can be made legible;
- (d) that person is notified, in a manner for the time being agreed between the person and the company for the purpose, of —
  - (i) the publication of the notice on that website;
  - (ii) the address of that website; and
  - (iii) the place on that website where the notice may be accessed, and how it may be accessed; and
- (e) the notice continues to be published on and remains accessible to that person from that website throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

(3) For the purposes of this Act, a notice of a meeting treated in accordance with subsection (2) as given or sent to or served on any person is treated as so given, sent or served at the time of the notification mentioned in subsection (2)(d).

(4) A notice of a meeting given for the purposes of subsection (2)(d) must specify such matters or information as may be required for a notice of that type under any other provision of this Act or the constitution of that company.

[36/2014]

(5) Nothing in subsection (2) invalidates the proceedings of a meeting where —

- (a) any notice of a meeting that is required to be published and remain accessible as mentioned in paragraph (e) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and
  - (b) the failure to publish and make accessible that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.
- (6) A company may, despite any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3), (4) or (5). [36/2014]
- (7) For the purposes of this section and section 387B, the current address of a person of a company, in relation to any notice or document, is a number or address used for electronic communication which —
- (a) has been notified by the person in writing to the company as one at which that notice or document may be sent to the person; and
  - (b) the company has no reason to believe that that notice or document sent to the person at that address will not reach the person.

### **Electronic transmission of documents**

**387B.**—(1) Where any accounts, balance sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to —

- (a) a member of the company; or
  - (b) an officer or auditor of the company,
- that document may be given, sent or served using electronic communications to the current address of that person. [36/2014]

(2) For the purposes of this section, a document is also treated as given or sent to, or served on a person where —

- (a) the company and that person have agreed in writing to the person having access to documents on a website (instead of their being sent to the person);
- (b) the document is a document to which that agreement applies;
- (c) the document is published on the website such that it is or can be made legible; and
- (d) that person is notified, in a manner for the time being agreed for that purpose between the person and the company, of —
  - (i) the publication of the document on that website;
  - (ii) the address of that website; and
  - (iii) the place on that website where the document may be accessed, and how it may be accessed.

(3) Where any provision of this Act or of the constitution of the company requires any document to be given or sent to, or served on a person not less than a specified number of days before a meeting, that document, if treated in accordance with subsection (2) as given or sent to, or served on any person, is treated as given or sent to, or served on the person not less than the specified number of days before the date of a meeting if, and only if —

- (a) the document is published on and remains accessible to that person from the website throughout a period beginning before the specified number of days before the date of the meeting and ending with the conclusion of the meeting; and
- (b) the notification given for the purposes of subsection (2)(d) is given not less than the specified number of days before the date of the meeting.

[36/2014]

(4) Nothing in subsection (3) invalidates the proceedings of a meeting where —

- (a) any document that is required to be published and remain accessible as mentioned in paragraph (a) of that subsection

is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

- (b) the failure to publish and make accessible that document throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(5) A company may, despite any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3) or (4).

[36/2014]

### **Electronic transmission in accordance with constitution, etc.**

**387C.**—(1) Despite sections 387A and 387B, where a notice of meeting or any accounts, balance sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to a member of the company, that notice or document may be given, sent or served using electronic communications with the express, implied or deemed consent of the member in accordance with the constitution of the company.

[36/2014]

(2) For the purposes of this section, a member has given implied consent if the constitution of the company —

- (a) provides for the use of electronic communications;
- (b) specifies the manner in which electronic communications is to be used; and
- (c) provides that the member agrees to receive such notice or document by way of such electronic communications and does not have a right to elect to receive a physical copy of such notice or document.

[36/2014]

(3) For the purposes of this section, but subject to regulations mentioned in subsection (4), a member is deemed to have consented if —

- (a) the member was by written notice given an opportunity to elect, within such period of time specified in the notice,

whether to receive the notice or document by way of electronic communications or as a physical copy; and

- (b) the member failed to make an election within the time so specified.

[15/2017]

(4) The Minister may make regulations under section 411 —

- (a) to exclude any notice or document or any class of notices or documents from the application of this section;
- (b) to provide for safeguards for the use of electronic communications under this section; and
- (c) without limiting paragraph (b), to provide that a member who is deemed to have consented to receive notices or documents by way of electronic communications may make a fresh election to receive such notice or document as a physical copy and the manner in which the fresh election may be made.

[36/2014]

### **Security for costs**

**388.**—(1) Where a corporation is claimant in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in the defendant's defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

[Act 25 of 2021 wef 01/04/2022]

### **Costs**

(2) The costs of any proceeding before a court under this Act must be borne by such party to the proceeding as the court may, in its discretion, direct.

### **As to rights of witnesses to legal representation**

**389.** Any person summoned for examination under Part 9 may, at the person's own cost, employ a solicitor who is at liberty to put to the

person such questions as the inspector, Court or District Judge considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

[40/2018]

### **Disposal of shares of shareholder whose whereabouts unknown**

**390.**—(1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than 10 years, the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the Official Receiver.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

(3) The Official Receiver must sell or dispose of any shares so received in such manner and at such time as the Official Receiver thinks fit and must deal with proceeds of the sale or disposal as if they were moneys paid to the Official Receiver pursuant to section 197 of the Insolvency, Restructuring and Dissolution Act 2018.

[40/2018]

### **Power to grant relief**

**391.**—(1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court before which the proceedings are taken that the person is or may be liable in respect thereof but that the person has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the person's liability on such terms as the court thinks fit.

(1A) To avoid doubt and without limiting subsection (1), “liability” includes the liability of a person to whom this section applies to account for profits made or received.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of duty or breach of trust the person may apply to the Court for relief, and the Court has the same power to relieve the person as under this section it would have had if it had been a court before which proceedings against the person for 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 corporation;
- (b) persons employed by a corporation as auditors, whether they are or are not officers of the corporation;
- (c) experts within the meaning of this Act; and
- (d) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a corporation and all other persons so appointed or so directed.

### **Irregularities**

**392.**—(1) In this section, unless the contrary intention appears, a reference to a procedural irregularity includes a reference to —

- (a) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and
- (b) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares proceedings at the meeting to be void.

(4) Subject to the following provisions of this section and without limiting any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

- (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of, or failure to comply with, a provision of this Act or a provision of any of the constituent documents of a corporation;
- (b) an order directing the rectification of any register kept by the Registrar under this Act;
- (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
- (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned expired before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding,

and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under subsection (4)(a) or (b) even though the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(6) The Court is not to make an order under this section unless it is satisfied —

- (a) in the case of an order mentioned in subsection (4)(a) —
  - (i) that the act, matter or thing, or the proceeding, mentioned in that paragraph is essentially of a procedural nature;
  - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
  - (iii) that it is in the public interest that the order be made;
- (b) in the case of an order mentioned in subsection (4)(c), that the person subject to the civil liability concerned acted honestly; and
- (c) in every case, that no substantial injustice has been or is likely to be caused to any person.

### **Privileged communications**

**393.** No inspector appointed under this Act may require disclosure by a solicitor of any privileged communication made to the solicitor in that capacity, except as respects the name and address of the solicitor's client.

### **Production and inspection of books or papers where offence suspected**

**394.—**(1) If, on an application made to a judge of the Court in chambers by or on behalf of the Minister, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made —

- (a) authorising any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
  - (b) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.
- (2) No appeal lies against any order or decision of a judge on or in relation to an application under this section.

### **Form of company records**

**395.**—(1) A company must adequately record for future reference the information required to be contained in any company records.

[36/2014]

- (2) Subject to subsection (1), company records may be —
- (a) kept in hard copy form or in electronic form; and
  - (b) arranged in the manner that the directors of the company think fit.

[36/2014]

(3) If company records are kept in electronic form, the company must ensure that they are capable of being reproduced in hard copy form.

[36/2014]

- (4) In this section and sections 396 and 396A —

“company” includes a corporation which is required to keep company records under this Act;

“company record” means any register, index, minute book, accounting record, minute or other document required by this Act to be kept by a company;

“in electronic form” means in the form of an electronic record as defined in section 2(1) of the Electronic Transactions Act 2010;

“in hard copy form” means in a paper form or similar form capable of being read.

[36/2014]

**Duty to take precautions against falsification**

**396.**—(1) Where company records are kept otherwise than in hard copy form, reasonable precautions must be taken for —

- (a) ensuring the proper maintenance and authenticity of the company records;
- (b) guarding against falsification; and
- (c) facilitating the discovery of any falsifications.

[36/2014]

(2) In the case where company records are kept in electronic form, the company must provide for the manner by which the records are to be authenticated and verified.

[36/2014]

(3) Where default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

**Inspection of records**

**396A.**—(1) Any company record which is by this Act required to be available for inspection must, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the company is accessible to the public.

[36/2014]

(2) If company records are kept by the company by recording the information in question in electronic form, any duty imposed on the company under subsection (1) or any other provision of this Act to allow inspection of the company records is to be regarded as a duty to allow inspection of —

- (a) a reproduction of the recording, or the relevant part of the recording, in hard copy form; or
- (b) if requested by the person inspecting the recording, the recording, or the relevant part of the recording, by electronic means.

[36/2014]

(3) Any person permitted by this Act to inspect any company records may make copies of or take extracts from it.

[36/2014]

(4) Where company records are kept by the company by recording the information in question in electronic form, the company must ensure that proper facilities are provided to enable the company records to be inspected, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[36/2014]

### **Liability where proper accounts not kept**

**396B.**—(1) If, on an investigation under this Act, it is shown that proper books of account were not kept by the company throughout the shorter of —

- (a) the period of 2 years immediately preceding the commencement of the investigation; or
- (b) the period between the incorporation of the company and the commencement of the investigation,

every officer who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

[40/2018]

(2) Where a person is charged with an offence under subsection (1), it is a defence for the person charged to prove that the person acted honestly and to show that, in the circumstances in which the business of the company was carried on, the default was excusable.

[40/2018]

(3) For the purposes of this section, proper books of account are deemed not to have been kept in the case of a company —

- (a) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in

sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers of the goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or

- (b) if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

[40/2018]

### **Translations of instruments, etc.**

**397.**—(1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the corporation must lodge at the same time with the Registrar a certified translation thereof in the English language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the corporation must keep at its registered office in Singapore a certified translation thereof in the English language.

(3) Where any accounts, financial statements, minute books or other records of a corporation required by this Act to be kept are not kept in the English language, the directors of the corporation must cause a true translation of such accounts, financial statements, minute books and other records to be made from time to time at intervals of not more than 7 days and must cause such translations to be kept with the original accounts, financial statements, minute books and other records for so long as the original accounts, financial statements, minute books and other records are required by this Act to be kept.

[36/2014]

### **Certificate of incorporation conclusive evidence**

**398.** A certificate of incorporation under the hand and seal of the Registrar issued under this Act in force before 13 January 2003, a notice of incorporation issued by the Registrar under this Act, and a certificate of confirmation of incorporation of the Registrar issued under this Act, are each conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company referred to therein is duly incorporated under this Act.

[36/2014]

### **Court may compel compliance**

**399.**—(1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which under this Act he or she is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer is deemed to have the same status, powers and duties as he or she had at the time the act, matter or thing should have been done.

### *Division 2 — Offences*

**400.** [*Repealed by S 236/2002*]

### **False and misleading statement**

**401.**—(1) Every corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading, or in which the amount of capital or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of

subscribed capital is stated, and every officer of the corporation who knowingly authorises, directs or consents to such advertising, circulation or publication shall be guilty of an offence.

(2) Every person who in any return, report, certificate, balance sheet, financial statements or other document required by or for the purposes of this Act wilfully makes or authorises the making of a statement false or misleading in any material particular knowing it to be false or misleading or wilfully omits or authorises the omission of any matter or thing without which the document is misleading in a material respect shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

(2A) Any person who, for any purpose under this Act —

- (a) lodges or files with or submits to the Registrar any document; or
- (b) authorises another person to lodge or file with or submit to the Registrar any document,

knowing that document to be false or misleading in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement mentioned in that subsection the person is deemed to have authorised the making of that statement.

### **False statements or reports**

**402.**—(1) An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to —

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or

(b) in the case of a corporation that is a subsidiary, an auditor of the holding company,

relating to the affairs of the corporation, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1), “officer” includes a person who at any time has been an officer of the corporation.

### **Dividends payable from profits only**

**403.**—(1) No dividend is payable to the share-holders of any company except out of profits.

(1A) Subject to subsection (1B), any profits of a company applied towards the purchase or acquisition of its own shares in accordance with sections 76B to 76G are not payable as dividends to the shareholders of the company.

(1B) Subsection (1A) does not apply to any part of the proceeds received by the company as consideration for the sale or disposal of treasury shares which the company has applied towards the profits of the company.

(1C) Any gains derived by the company from the sale or disposal of treasury shares are not payable as dividends to the shareholders of the company.

(2) Every director or chief executive officer of a company who wilfully pays or permits to be paid any dividend in contravention of this section —

(a) shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months; and

(b) shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits and such amount may be

recovered by the creditors or the liquidator suing on behalf of the creditors.

[36/2014]

(3) If the whole amount is recovered from one director or chief executive officer, he or she may recover contribution against any other person liable who has directed or consented to such payment.

[36/2014]

(4) No liability by this section imposed on any person extends or passes, on the death of such person to the person's executors or administrators nor is the estate of any such person after the person's death liable under this section.

(5) In this section, "dividend" includes bonus and payment by way of bonus.

### **Fraudulently inducing persons to invest money**

**404.**—(1) [*Deleted by Act 42 of 2001*]

(2) [*Deleted by Act 42 of 2001*]

### **Obtaining payment of moneys, etc., to company by false promise of officer or agent of company**

(3) Whoever, being an officer or agent of any corporation, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that corporation or to himself, herself or any other person for the use or benefit or on account of that corporation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 5 years or to both.

### **Evidence of financial position of company**

(4) Upon the trial of a charge of an offence under this section, the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he or she has made an audit or examination of the affairs of the company according to recognised audit practice is admissible either for the prosecution or for the defence as evidence of the financial

position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

**Penalty for carrying on business without registering a corporation and for improper use of words “Limited” and “Berhad”**

**405.**—(1) If any person —

- (a) other than a foreign company, uses any name or title or trades or carries on business under any name or title which “Limited” or “Berhad” or any abbreviation, imitation or translation of any of those words is the final word; or
- (b) in any way holds out that the business is incorporated under this Act,

that person shall, unless at that time the business was duly incorporated under this Act, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

**Restriction on the use of word “Private” or “Sendirian”**

(2) A company must not use the word “Private” or “Sendirian” or any abbreviation thereof as part of its name if it does not fulfil the requirements required by this Act to be fulfilled by private companies and every corporation and every officer of a corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

**Penalty for holding out business as registered foreign company**

(3) If a person carrying on a business, the person’s agent or a person acting on the firstmentioned person’s behalf, in any way holds out that the business is registered as a foreign company under this Act when at the material time the business was not so registered, that person shall be guilty of an offence and shall be liable on conviction

to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

[36/2014]

### **Frauds by officers**

**406.** Every person who, while an officer of a company —

- (a) has by deceitful or fraudulent or dishonest means or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the execution of any enforcement order against, the property of the company; or  
*[Act 25 of 2021 wef 01/04/2022]*
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

### **General penalty provisions**

**407.**—(1) A person who —

- (a) does that which under this Act the person is forbidden to do;
- (b) does not do that which under this Act the person 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.

(2) A person who is guilty of an offence under this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or

punishment for the offence, or if a penalty or punishment is not so mentioned, to a fine not exceeding \$1,000.

(3) Every summons issued for an offence committed by an officer of a company or other person under this Act or any regulations may, despite anything in this Act, be served —

- (a) by delivering it to that person;
- (b) by delivering it to any adult person residing at that person's last known place of abode or employed at that person's last known place of business; or
- (c) by forwarding it by registered post in a cover addressed to that person at the person's last known place of abode or business or at any address furnished by the person.

(4) In proving service by registered post, it is sufficient to prove that the registered cover containing the summons was duly addressed and posted.

### **Default penalties**

**408.**—(1) Where a default penalty is provided in any section of this Act, any person who is convicted of an offence under this Act or who has been dealt with under section 409B for an offence under this Act in relation to that section shall be guilty of a further offence under this Act if the offence continues after the person is so convicted or after the person has been so dealt with 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 as the amount of the default penalty or, if an amount is not so expressed, of not more than \$200.

*[36/2014]*

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

(3) For the purposes of any provision of this Act which provides that an officer of a company or corporation who is in default is guilty

of an offence under this Act or is liable to a penalty or punishment, the phrase “officer who is in default” or any like phrase means any officer of the company or corporation who knowingly and wilfully —

- (a) is guilty of the offence; or
- (b) authorises or permits the commission of the offence.

### **Proceedings how and when taken**

**409.**—(1) Except where provision is otherwise made in this Act, proceedings for any offence under this Act may, with the authorisation of the Public Prosecutor, be taken by the Registrar or with the written consent of the Minister by any person.

[15/2010]

(2) [*Deleted by Act 36 of 2000*]

(3) Proceedings for any offence under this Act, other than an offence punishable with imprisonment for a term exceeding 6 months, may be prosecuted in a Magistrate’s Court and in the case of an offence punishable with imprisonment for a term of 6 months or more may be prosecuted in a District Court.

(4) [*Deleted by Act 36 of 2014*]

(5) [*Deleted by Act 36 of 2014*]

(6) [*Deleted by Act 36 of 2014*]

(7) Any punishment authorised by this Act may be imposed by a District Court, even though it is a greater punishment than that Court is otherwise empowered to impose.

(8) The Registrar and any officer authorised by the Registrar in writing has the right to appear and be heard before a Magistrate’s Court or a District Court in any proceedings for an offence under this Act.

### **Injunctions**

**409A.**—(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of —

- (a) the Registrar; or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the firstmentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of —

- (a) the Registrar; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the firstmentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind mentioned in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised —

- (a) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is

an imminent danger of substantial damage to any person if the firstmentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised —

- (a) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the firstmentioned person refuses or fails to do that act or thing.

(7) Where the Registrar makes an application to the Court for the grant of an injunction under this section, the Court must not require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

### **Composition of offences**

**409B.**—(1) The Registrar may, in his or her discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

- (a) one half of the amount of the maximum fine that is prescribed for the offence;

(b) \$5,000.

[36/2014]

(2) The Registrar may, in his or her discretion, compound any offence under this Act (including an offence under a provision that has been repealed) which —

(a) was compoundable under this Act at the time the offence was committed; but

(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(c) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;

(d) \$5,000.

[36/2014]

(3) On payment of the sum of money referred to in subsection (1) or (2), no further proceedings may be taken against that person in respect of the offence.

[36/2014]

(4) The Minister may prescribe the offences which may be compounded.

[36/2014]

### *Division 3 — Miscellaneous*

#### **Appeal**

**409C.**—(1) Any party aggrieved by an act or a decision of the Registrar under this Act may, within 28 days after the date of the act or decision, appeal to the Court against the act or decision.

[36/2014]

(2) The Court may confirm the act or decision or give such directions in the matter as seem proper or otherwise determine the matter.

[36/2014]

(3) This section does not apply to any act or decision of the Registrar —

- (a) in respect of which any provision in the nature of an appeal or a 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.

[36/2014]

## Rules

**410.** The Rules Committee constituted under section 80 of the Supreme Court of Judicature Act 1969 may, subject to and in accordance with the provisions of that law relating to the making of rules, make rules —

- (a) with respect to proceedings and the practice and procedure of the Court under this Act;
- (b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules; and
- (c) without limiting this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court.

[36/2014; 40/2018]

## Regulations

**411.—**(1) The Minister may make regulations for or with respect to —

- (a) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other persons appointed to assist with the administration of this Act;
- (aa) all matters connected with or arising out of a compromise or an arrangement between a company and its creditors or any class of those creditors;
- (b) *[Deleted by Act 40 of 2018]*
- (ba) *[Deleted by Act 42 of 2001]*
- (c) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;

- (d) prescribing forms for the purposes of this Act;
- (e) prescribing the fees payable for the purposes of this Act, including but not limited to fees for —
  - (i) the lodgment or registration of any document required to be lodged or registered with the Registrar;
  - (ii) the issue of any document by the Registrar;
  - (iii) any act required to be performed by the Registrar; or
  - (iv) the inspection of any document mentioned in sub-paragraphs (i) and (ii);
- (ea) prescribing the fees payable in respect of any of the following required or permitted under any other Act:
  - (i) the lodgment or registration of any document with the Registrar;
  - (ii) the issue of any document by the Registrar;
  - (iii) the performance of any act by the Registrar;
  - (iv) the inspection of any document mentioned in sub-paragraphs (i) and (ii);
- (eb) prescribing the penalties payable for the late lodgment of any document;
- (ec) prescribing the manner in which prescribed fees and penalties are to be paid;
- (ed) the waiver, refund or remission, whether wholly or in part, of any fee or penalty chargeable under this Act;
- (ee) prescribing all matters connected with or arising from the restrictions under this Act as to the reservation or registration of names of companies and foreign companies (including rules for determining when a name falls within those restrictions);
- (f) prescribing times for the lodging of any documents with the Registrar; and

- (g) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.

[36/2014; 15/2017; 40/2018]

- (2) The regulations may provide that a contravention of a specified provision of the regulations shall be an offence.

[36/2014]

## FIRST SCHEDULE

Section 3(1)

### REPEALED WRITTEN LAWS

<i>Number in 1955 Edition</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Cap. 15	The Foreign Corporations (Execution of Instruments under Seal) Ordinance	The whole.
Cap. 174	The Companies Ordinance	The whole.
Cap. 277	The Companies (Special Provisions) Ordinance	The whole.

## SECOND SCHEDULE

[Repealed by Act 36 of 2014]

## THIRD SCHEDULE

[Repealed by Act 5 of 2004]

## FOURTH SCHEDULE

[Repealed by Act 36 of 2014]



SIXTH SCHEDULE — *continued*

proposed or agreed to be issued as fully or partly paid up otherwise than in cash

3. shares upon which \$ \_\_\_\_\_ per share credited as paid

debentures \$ \_\_\_\_\_

The consideration for the issue or intended issue of those shares and debentures

4. Consideration:

Number, description, and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to the firstmentioned person offering them for sale

1. shares of \$ \_\_\_\_\_ and debentures of \$ \_\_\_\_\_

Period during which option is exercisable

2. Until \_\_\_\_\_

Price to be paid for shares or debentures subscribed for or acquired under option

3. \$ \_\_\_\_\_

Consideration for option or right to option

4. Consideration:

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures

5. Names and addresses:

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for the purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material

Amount (in cash, shares or debentures) payable to each separate vendor

Amount (if any) paid or payable (in cash, shares or debentures) for any such

Total purchase price \$ \_\_\_\_\_

Cash \_\_\_\_\_ ... \$ \_\_\_\_\_

SIXTH SCHEDULE — *continued*

property, specifying amount (if any) paid or payable for goodwill	Shares	... \$
	Debentures	... \$ _____
	Goodwill	... \$ _____

Short particulars of any transaction relating to any such property which was completed within the 2 preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Amount paid: \$  
Amount payable: \$

Rate of the commission per cent

Amount or rate of brokerage

The number of shares (if any) which persons have agreed for a commission to subscribe absolutely

Amount or estimated amount of preliminary expenses \$

By whom those expenses have been paid or are payable

Amount paid or intended to be paid to any promoter

Name of promoter:  
Amount: \$

Consideration for the payment

Consideration:

Any other benefit given or intended to be given to any promoter

Name of promoter:  
Nature and value of benefit:

Consideration for giving of benefit

Consideration:

Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered

SIXTH SCHEDULE — *continued*

into more than 2 years before the delivery of this statement)

Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English, a copy of a certified translation thereof in English or embodying a translation in English of the parts in a language other than English (as the case may be) may be inspected

Names and addresses of the auditors of the company

Full particulars of the nature and extent of the interest, direct or indirect, of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm or limited liability partnership or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm or limited liability partnership or corporation and where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or her or to the firm or limited liability partnership or corporation in cash or shares, or otherwise, by any person (in the case of a director) either to induce him or her to become, or to qualify him

SIXTH SCHEDULE — *continued*

or her as a director or otherwise for service rendered by him or her or by the firm or limited liability partnership or corporation in connection with the promotion or formation of the company (in the case of an expert) for services rendered by him or her or the firm or limited liability partnership or corporation in connection with the promotion or formation of the company. For the purposes of this paragraph a director or expert is deemed to have an indirect interest in a corporation if he or she has any beneficial interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the company or if he or she has a beneficial interest in shares or debentures in a corporation which is by virtue of section 6 of the Act deemed to be related to that firstmentioned corporation

*And also, in the case of a statement to be lodged by a private company on becoming a public company, the following items:*

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the 3 financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

SIXTH SCHEDULE — *continued*

## PART 2

## Reports to be set out

1. Where it is proposed to acquire a business or limited liability partnership, a report by a public accountant appointed as auditor of the company (who must be named in the statement) with respect to —

- (a) the profits or losses of the business or limited liability partnership in respect of each of the 3 financial years immediately preceding the lodging of the statement with the Registrar; and
- (b) the assets and liabilities of the business or limited liability partnership at the last date to which the accounts of the business or limited liability partnership were made up.

2.—(1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by a public accountant appointed as auditor of the company (who must be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with sub-paragraph (2) or (3) (as the case requires) indicating how the profits and losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other corporation has no subsidiaries, the report mentioned in sub-paragraph (1) must —

- (a) so far as regards profits and losses — deal with the profits or losses of the other corporation in respect of each of the 3 financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) so far as regards assets and liabilities — deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.

(3) If the other corporation has subsidiaries, the report mentioned in sub-paragraph (1) must —

- (a) so far as regards profits and losses — deal separately with the other corporation's profits or losses as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —

SIXTH SCHEDULE — *continued*

- (i) as a whole — with the combined profits or losses of its subsidiaries; or
  - (ii) individually — with the profits or losses of each subsidiary, or, instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and
- (b) so far as regards assets and liabilities — deal separately with the other corporation's assets and liabilities as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —
- (i) as a whole — with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or
  - (ii) individually — with the assets and liabilities of each subsidiary,
- and must indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

*Note.—Where a company is not required to furnish any of the reports mentioned in this Part, a statement to that effect giving the reasons therefor should be furnished.*

(Signatures of the persons abovenamed as directors \_\_\_\_\_ or proposed directors or of their agents authorised \_\_\_\_\_ in writing)

Date:

## PART 3

## Provisions applying to Parts 1 and 2 of this Schedule

3. In this Schedule “vendor” includes any person who is a vendor for the purposes of the repealed Fifth Schedule, and “financial year” has the meaning assigned to it in Part 3 of that Schedule.

4. If, in the case of a business which has been carried on or of a corporation or limited liability partnership which has been carrying on business for less than 3 years, the accounts of the business or corporation or limited liability partnership have only been made up in respect of 2 years or one year, Part 2 of this Schedule has effect as if references to 2 years or one year (as the case may be) were substituted for references to 3 years.

SIXTH SCHEDULE — *continued*

5. Any report required by Part 2 of this Schedule must either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or must make those adjustments and indicate that adjustments have been made.

[36/2014]

## SEVENTH SCHEDULE

[Repealed by S 236/2002]

## EIGHTH SCHEDULE

[Repealed by Act 36 of 2014]

## NINTH SCHEDULE

[Repealed by Act 12 of 2002]

## TENTH SCHEDULE

[Repealed by Act 40 of 2018]

## ELEVENTH SCHEDULE

[Repealed by Act 40 of 2018]

## TWELFTH SCHEDULE

Sections 8(7) and 201(16)

## CONTENTS OF DIRECTORS' STATEMENT

1. A statement as to whether in the opinion of the directors —
  - (a) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the company and

TWELFTH SCHEDULE — *continued*

(if applicable) of the financial position and performance of the group for the period covered by the financial statements or consolidated financial statements; and

(b) at the date of the statement there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

2. Where any option has been granted by a company, other than a parent company for which consolidated financial statements are required, during the period covered by the financial statements to take up unissued shares of a company —

(a) the number and class of shares in respect of which the option has been granted;

(b) the date of expiration of the option;

(c) the basis upon which the option may be exercised; and

(d) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.

3. Where any of the particulars required by paragraph 2 have been stated in a previous directors' statement, they may be stated by reference to that statement.

4. Where a parent company or any of its subsidiary corporations has at any time granted to a person an option to have shares issued to the person in the company or subsidiary corporation, the directors' statement of the parent company must state the name of the corporation in respect of the shares in which the option was granted and the other particulars required under paragraphs 2, 5 and 6.

5. The particulars of shares issued during the period to which the statement relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period.

6. The number and class of unissued shares of the company under option as at the end of the period to which the statement relates, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights (if any) of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.

7. The names of the persons who are the directors in office at the date of the statement.

8. Whether at the end of the financial year to which the financial statements or, where the company is a parent company, consolidated financial statements relate —

TWELFTH SCHEDULE — *continued*

- (a) there subsist arrangements to which the company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate; or
- (b) there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired pursuant to the arrangements.

9. As respects each person who, at the end of the financial year, was a director of the company —

- (a) whether or not (according to the register kept by the company for the purposes of section 164 relating to the obligation of a director of a company to notify it of his or her interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company) he or she was, at the end of that year, interested in shares in, or debentures of, the company or any other such body corporate; and
- (b) if he or she was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he or she was then interested and whether or not, according to that register, he or she was, at the beginning of that year (or, if he or she was not then a director, when he or she became a director), interested in shares in, or debentures of, the company or any other such body corporate and, if he or she was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he or she was interested at the beginning of that year or (as the case may be) when he or she became a director.

[36/2014]

## THIRTEENTH SCHEDULE

Sections 8(7) and 205C(5)

## CRITERIA FOR SMALL COMPANY AND SMALL GROUP

1. For the purposes of section 205C —
  - (a) a company is a small company if it qualifies as a small company under paragraph 2, 3 or 4, whichever may be applicable, and the company continues to be a small company until it ceases to be a small company under paragraph 5; and
  - (b) a group is a small group if it qualifies as a small group under paragraph 7, 8 or 9, whichever may be applicable, and the group continues to be a small group until it ceases to be a small group under paragraph 10.
2. A company is a small company from a financial year if —
  - (a) it is a private company throughout the financial year; and
  - (b) it satisfies any 2 of the following criteria for each of the 2 financial years immediately preceding the financial year:
    - (i) the revenue of the company for each financial year does not exceed \$10 million;
    - (ii) the value of the company's total assets at the end of each financial year does not exceed \$10 million;
    - (iii) it has at the end of each financial year not more than 50 employees.
3. Despite paragraph 2, where a company has not reached its third financial year after incorporation, a company is a small company —
  - (a) from its first financial year after incorporation if —
    - (i) it is a private company throughout its first financial year; and
    - (ii) it satisfies any 2 of the following criteria for its first financial year:
      - (A) the revenue of the company for its first financial year does not exceed \$10 million;
      - (B) the value of the company's total assets at the end of its first financial year does not exceed \$10 million;
      - (C) it has at the end of its first financial year not more than 50 employees; or

THIRTEENTH SCHEDULE — *continued*

- (b) from its second financial year after incorporation if —
- (i) it is a private company throughout its second financial year; and
  - (ii) it satisfies any 2 of the following criteria for its second financial year:
    - (A) the revenue of the company for its second financial year does not exceed \$10 million;
    - (B) the value of the company's total assets at the end of its second financial year does not exceed \$10 million;
    - (C) it has at the end of its second financial year not more than 50 employees.

4. Despite paragraph 2, a company which was incorporated before 1 July 2015 is a small company —

- (a) from the first financial year that commences on or after 1 July 2015 if —
- (i) it is a private company throughout the first financial year; and
  - (ii) it satisfies any 2 of the following criteria for the first financial year:
    - (A) the revenue of the company for the first financial year does not exceed \$10 million;
    - (B) the value of the company's total assets at the end of the first financial year does not exceed \$10 million;
    - (C) it has at the end of the first financial year not more than 50 employees; or
- (b) from the second financial year that commences on or after 1 July 2015 if —
- (i) it is a private company throughout the second financial year; and
  - (ii) it satisfies any 2 of the following criteria for the second financial year:
    - (A) the revenue of the company for the second financial year does not exceed \$10 million;
    - (B) the value of the company's total assets at the end of the second financial year does not exceed \$10 million;

THIRTEENTH SCHEDULE — *continued*

(C) it has at the end of the second financial year not more than 50 employees.

5. Subject to paragraph 6, a small company ceases to be a small company from a financial year if —

- (a) it ceases to be a private company at any time during the financial year;  
or
- (b) it does not satisfy any 2 of the following criteria for each of the 2 consecutive financial years immediately preceding the financial year:
  - (i) the revenue of the company for each financial year does not exceed \$10 million;
  - (ii) the value of the company's total assets at the end of each financial year does not exceed \$10 million;
  - (iii) it has at the end of each financial year not more than 50 employees.

6. Paragraph 5 does not apply —

- (a) to a company that has not reached its third financial year after incorporation; or
- (b) in the case of a company that was incorporated before 1 July 2015, to a company that has not reached its third financial year after that date.

7. A group is a small group from a financial year if the group satisfies any 2 of the following criteria for each of the 2 consecutive financial years immediately preceding the financial year:

- (a) the consolidated revenue of the group for each financial year does not exceed \$10 million;
- (b) the value of the consolidated total assets of the group at the end of each financial year does not exceed \$10 million;
- (c) the group has at the end of each financial year an aggregate number of employees of not more than 50.

8. Despite paragraph 7, a group is a small group —

- (a) from its first financial year after it is formed if it satisfies any 2 of the following criteria for its first financial year:
  - (i) the consolidated revenue of the group for its first financial year does not exceed \$10 million;

THIRTEENTH SCHEDULE — *continued*

- (ii) the value of the consolidated total assets of the group at the end of its first financial year does not exceed \$10 million;
  - (iii) the group has at the end of its first financial year an aggregate number of employees of not more than 50; or
- (b) from its second financial year after it is formed if it satisfies any 2 of the following criteria for its second financial year:
- (i) the consolidated revenue of the group for its second financial year does not exceed \$10 million;
  - (ii) the value of the consolidated total assets of the group at the end of its second financial year does not exceed \$10 million;
  - (iii) the group has at the end of its second financial year an aggregate number of employees of not more than 50.

9. Despite paragraph 7, a group which is formed before 1 July 2015 is a small group —

- (a) from the first financial year that commences on or after 1 July 2015, if it satisfies any 2 of the following criteria for the first financial year:
- (i) the consolidated revenue of the group for the first financial year does not exceed \$10 million;
  - (ii) the value of the consolidated total assets of the group at the end of the first financial year does not exceed \$10 million;
  - (iii) the group has at the end of the first financial year an aggregate number of employees of not more than 50; or
- (b) from the second financial year that commences on or after 1 July 2015 if it satisfies any 2 of the following criteria for the second financial year:
- (i) the consolidated revenue of the group for the second financial year does not exceed \$10 million;
  - (ii) the value of the consolidated total assets of the group at the end of the second financial year does not exceed \$10 million;
  - (iii) the group has at the end of the second financial year an aggregate number of employees of not more than 50.

10. Subject to paragraph 11, a small group ceases to be a small group from a financial year if it does not satisfy any 2 of the following criteria for 2 consecutive financial years immediately preceding the financial year:

THIRTEENTH SCHEDULE — *continued*

- (a) the consolidated revenue of the group for each financial year does not exceed \$10 million;
- (b) the value of the consolidated total assets of the group at the end of each financial year does not exceed \$10 million;
- (c) the group has at the end of each financial year an aggregate number of employees of not more than 50.

## 11. Paragraph 10 does not apply —

- (a) to a group that has not reached its third financial year after it is formed;  
or
- (b) in the case of a group that was formed before 1 July 2015, to a group that has not reached its third financial year after that date.

## 12. For the purposes of this Schedule —

- (a) the question whether an entity is part of a group is to be decided in accordance with the Accounting Standards;
- (b) in the case —
  - (i) where consolidated financial statements are prepared by a parent in relation to a group, the “consolidated total assets” and “consolidated revenue” of the group are to be determined in accordance with the accounting standards applicable to the group; or
  - (ii) where consolidated financial statements are not prepared by a parent in relation to a group —
    - (A) “consolidated total assets” means the aggregate total assets of all the members of the group; and
    - (B) “consolidated revenue” means the aggregate revenue of all the members of the group; and
- (c) “parent” has the meaning given by the Accounting Standards, but does not include any entity which is a subsidiary of any other entity within the meaning of the Accounting Standards.

## 13. For the purposes of this Schedule —

- (a) a reference to a company being a small company from a financial year means that the company is a small company for that financial year and every subsequent financial year until it ceases to be a small company under paragraph 5;

THIRTEENTH SCHEDULE — *continued*

- (b) a reference to a group being a small group from a financial year means that the group is a small group for that financial year and every subsequent financial year until it ceases to be a small group under paragraph 10.

## 14. To avoid doubt —

- (a) a company that has ceased to be a small company under paragraph 5 may become a small company again if it subsequently qualifies as a small company under paragraph 2; and
- (b) a group that has ceased to be a small group under paragraph 10 may become a small group again if it subsequently qualifies as a small group under paragraph 7.

[36/2014]

## FOURTEENTH SCHEDULE

Sections 8(7), 386AA(1) and 386AC(c)  
and Fifteenth Schedule

## COMPANIES TO WHICH PART 11A DOES NOT APPLY

## 1. Part 11A does not apply to any of the following companies:

- (a) a public company which shares are listed for quotation on an approved exchange in Singapore;
- (b) a company that is a Singapore financial institution;
- (c) a company that is wholly-owned by the Government;
- (d) a company that is wholly-owned by a statutory body established by or under a public Act for a public purpose;
- (e) a company that is a wholly-owned subsidiary of a company mentioned in sub-paragraph (a), (b), (c) or (d);
- (f) a company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to —
- (i) regulatory disclosure requirements; and
  - (ii) requirements relating to adequate transparency in respect of its beneficial owners,
- imposed through stock exchange rules, law or other enforceable means.

FOURTEENTH SCHEDULE — *continued*

2. For the purposes of paragraph 1, a Singapore financial institution is —
- (a) any financial institution that is licensed, approved, registered (including a fund management company registered under paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations) or regulated by the Monetary Authority of Singapore but does not include —
    - (i) [*Deleted by Act 2 of 2019*]
    - (ii) a person (other than a person mentioned in sub-paragraphs (b) and (c)) who is exempted from licensing, approval or regulation by the Monetary Authority of Singapore under any Act administered by the Monetary Authority of Singapore, including a private trust company exempted from licensing under section 15 of the Trust Companies Act 2005 read with regulation 4 of the Trust Companies (Exemption) Regulations;
  - (b) any person exempted under section 20(1)(g) of the Financial Advisers Act 2001 read with regulation 27(1)(d) of the Financial Advisers Regulations; or
  - (c) any person exempted under section 99(1)(h) of the Securities and Futures Act 2001 read with paragraph 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.

[15/2017; 2/2019]

## FIFTEENTH SCHEDULE

Sections 8(7), 386AA(1) and 386AC(e)

FOREIGN COMPANIES TO WHICH PART 11A  
DOES NOT APPLY

1. Part 11A does not apply to any of the following foreign companies:
- (a) a foreign company that is a Singapore financial institution;
  - (b) a foreign company that is a wholly-owned subsidiary of a foreign company that is a Singapore financial institution;
  - (c) a foreign company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to —
    - (i) regulatory disclosure requirements; and

FIFTEENTH SCHEDULE — *continued*

- (ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through stock exchange rules, law or other enforceable means.

2. In paragraph 1, “Singapore financial institution” has the meaning given in paragraph 2 of the Fourteenth Schedule.

[15/2017]

## SIXTEENTH SCHEDULE

Sections 8(7) and 386AB

MEANINGS OF “SIGNIFICANT CONTROL”  
AND “SIGNIFICANT INTEREST”**Definition of “significant control”**

1. For the purposes of Part 11A, an individual or a legal entity has significant control over a company or foreign company if the individual or legal entity —

- (a) holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company or foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;
- (b) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the company or foreign company; or
- (c) has the right to exercise, or actually exercises, significant influence or control over the company or foreign company.

**Definition of “significant interest”**

2.—(1) For the purposes of Part 11A, an individual or a legal entity has a significant interest in a company or foreign company having a share capital —

- (a) if the individual or legal entity (as the case may be) has an interest in more than 25% of the shares in the company or foreign company; or
- (b) if —
  - (i) the individual or legal entity (as the case may be) has an interest in one or more voting shares in the company or foreign company; and

SIXTEENTH SCHEDULE — *continued*

- (ii) the total votes attached to that share, or those shares, is more than 25% of the total voting power in the company or foreign company.

(2) In sub-paragraph (1)(b), “voting share” does not include any treasury share or any share mentioned in section 21(4B) or (6C).

3. For the purposes of Part 11A, an individual or a legal entity has a significant interest in a company or foreign company that does not have a share capital if the individual or legal entity holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the company or foreign company.

**Supplementary provisions**

4.—(1) Subject to sub-paragraphs (2), (3) and (5), subsections (1A) to (6A), (8), (9) and (10) of section 7 apply in determining whether a person has an interest in a share.

(2) If 2 or more persons jointly have an interest in a share, or jointly hold a right, each of the persons is considered for the purposes of this Schedule as having an interest in that share, or as holding that right, as the case may be.

(3) If shares in respect of which a person has an interest and the shares in respect of which another person has an interest are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as having an interest in the combined shares of both of them.

(4) If the rights held by a person and the rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined rights of both of them.

(5) A share or right held by a person as nominee for another is to be considered for the purposes of this Schedule as held by the other (and not by the nominee).

(6) In this paragraph —

(a) a “joint arrangement” is an arrangement between the persons having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is predetermined by the arrangement; and

(b) “arrangement” includes —

- (i) any scheme, agreement or understanding, whether or not it is legally enforceable; and
- (ii) any convention, custom or practice of any kind,

SIXTEENTH SCHEDULE — *continued*

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

*[15/2017]*

## LEGISLATIVE HISTORY

### COMPANIES ACT 1967

This Legislative History is provided for the convenience of users of the Companies Act. It is not part of the Act.

#### 1. Act 42 of 1967 — Companies Act 1967

Date of First Reading	:	5 December 1966 (Bill No. 58/66 published on 12 December 1966)
Date of Second Reading	:	21 December 1966
Date Committed to Select Committee	:	21 December 1966
Date of Presentation of Select Committee Report	:	7 December 1967 (Parl. 11 of 1967)
Date of Third Reading	:	21 December 1967
Date of commencement	:	29 December 1967

#### 2. 1970 Revised Edition — Companies Act

Date of operation	:	1 July 1971
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#### 3. Act 62 of 1970 — Companies (Amendment) Act 1970

Date of First Reading	:	4 November 1970 (Bill No. 53/70 published on 10 November 1970)
Date of Second and Third Readings	:	30 December 1970
Date of commencement	:	1 October 1971

#### 4. Act 49 of 1973 — Companies (Amendment) Act 1973

Date of First Reading	:	25 July 1973 (Bill No. 46/73 published on 28 July 1973)
Date of Second and Third Readings	:	28 July 1973
Date of commencement	:	5 October 1973

**5. Act 10 of 1974 — Companies (Amendment) Act 1974**

Date of First Reading	:	14 March 1974 (Bill No. 11/74 published on 15 March 1974)
Date of Second and Third Readings	:	27 March 1974
Date of commencement	:	15 November 1974

**6. Act 19 of 1975 — Companies (Amendment) Act 1975**

Date of First, Second and Third Readings	:	19 August 1975 (Bill No. 44/75)
Date of commencement	:	23 August 1975

**7. Act 39 of 1975 — Companies (Amendment No. 2) Act 1975**

Date of First Reading	:	11 November 1975 (Bill No. 56/75 published on 11 November 1975)
Date of Second and Third Readings	:	20 November 1975
Date of commencement	:	1 November 1975

**8. 1979 Reprint — Companies Act**

Date of operation	:	25 October 1979
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**9. G. N. No. S 177/1980 — Companies Act (Amendment of Second Schedule) Notification 1980**

Date of commencement	:	23 June 1980
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**10. G. N. No. S 228/1982 — Companies Act (Amendment of Second Schedule) Notification 1982**

Date of commencement	:	1 September 1982
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**11. Act 15 of 1984 — Companies (Amendment) Act 1984**

Date of First Reading	:	20 December 1983 (Bill No. 16/83 published on 27 December 1983)
Date of Second Reading	:	17 January 1984
Date Committed to Select Committee	:	17 January 1984

- Date of Presentation of Select Committee Report : 12 June 1984 (Parl. 3 of 1984)
- Date of Third Reading : 29 June 1984
- Date of commencement : 15 August 1984
- 12. G. N. No. S 215/1984 — Companies Act (Amendment of Second Schedule) Notification 1984**
- Date of commencement : 27 August 1984
- 13. 1985 Reprint — Companies Act**
- Date of operation : 15 February 1985
- 14. Act 15 of 1986 — Securities Industry Act 1986**  
(Consequential amendments made to Act by)
- Date of First Reading : 26 February 1986  
(Bill No. 3/86 published on 7 March 1986)
- Date of Second and Third Readings : 31 March 1986
- Date of commencement : 15 August 1986
- 15. G. N. No. S 263/1986 — Companies Act (Amendment of Second Schedule) Notification 1986**
- Date of commencement : 24 October 1986
- 16. 1985 Revised Edition — Companies Act**  
(G.N. No. S 337/1987, S 22/1989, S 143/1989 — Rectification Order)
- Date of operation : 30 March 1987
- 17. Act 13 of 1987 — Companies (Amendment) Act 1987**
- Date of First Reading : 31 March 1986  
(Bill No. 9/86 published on 10 April 1986)
- Date of Second Reading : 5 May 1986
- Date Committed to Select Committee : 5 May 1986
- Date of Presentation of Select Committee Report : 12 March 1987 (Parl. 5 of 1987)
- Date of Third Reading : 26 March 1987
- Date of commencement : 15 May 1987

**18. G. N. No. S 139/1987 — Companies Act (Amendment of Second and Eighth Schedules) Notification 1987**

Date of commencement : 15 May 1987

**19. 1988 Revised Edition — Companies Act (Chapter 50)**

(G.N. No. S 130/1988 — Rectification Order)

Date of operation : 30 April 1988

**20. G. N. No. S 203/1988 — Companies Act (Amendment of Second Schedule) Notification 1988**

Date of commencement : 5 August 1988

**21. G. N. No. S 204/1988 — Companies Act (Amendment of Eighth Schedule) Notification 1987**

Date of commencement : 1 September 1988

**22. G. N. No. S 7/1989 — Companies Act (Amendment of Second Schedule) Notification 1989**

Date of commencement : 13 January 1989

**23. 1990 Revised Edition — Companies Act**

Date of operation : 15 March 1990

**24. G. N. No. S 107/1990 — Companies Act (Amendment of Second Schedule) Notification 1990**

Date of commencement : 16 March 1990

**25. G. N. No. S 113/1990 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 1990**

Date of commencement : 23 March 1990

**26. Act 40 of 1989 — Companies (Amendment) Act 1989**

Date of First Reading : 22 March 1989  
(Bill No. 24/89 published on 23 March 1989)

Date of Second Reading : 7 April 1989

Date Committed to Select Committee : 7 April 1989

Date of Presentation of Select Committee Report : 27 October 1989 (Parl. 4 of 1989)

Date of Third Reading : 30 November 1989

Date of commencement : 23 March 1990

**27. G. N. No. S 429/1990 — Companies Act (Amendment of Second Schedule) (No. 3) Notification 1990**

Date of commencement : 1 December 1990

**28. G. N. No. S 279/1991 — Companies Act (Amendment of Second Schedule) Notification 1991**

Date of commencement : 1 July 1991

**29. G. N. No. S 339/1991 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 1991**

Date of commencement : 8 August 1991

**30. Act 22 of 1993 — Companies (Amendment) Act 1993**

Date of First Reading : 31 July 1992  
(Bill No. 33/92 published on 1 August 1992)

Date of Second Reading : 14 September 1992

Date Committed to Select Committee : 14 September 1992

Date of Presentation of Select Committee Report : 26 April 1993 (Parl. 2 of 1993)

Date of Third Reading : 28 May 1993

Date of commencement : 12 November 1993

**31. Act 31 of 1993 — Goods and Services Tax (Amendment) Act 1993**  
(Consequential amendments made to Act by)

Date of First Reading : 26 February 1993  
(Bill No. 14/93 published on 27 February 1993)

Date of Second Reading : 19 March 1993

Date Committed to Select Committee : 19 March 1993

Date of Presentation of Select Committee Report : 7 September 1993 (Parl. 4 of 1993)

Date of Third Reading : 12 October 1993

Dates of commencement : 26 November 1993  
(except paragraph (3) of Fifth Schedule)

**32. 1994 Revised Edition — Companies Act**

(G.N. No. S 227/1995 — Rectification Order)

Date of operation : 15 March 1994

**33. Act 28 of 1994 — National Registration (Amendment) Act 1994**

(Consequential amendments made to Act by)

Date of First Reading : 31 October 1994  
(Bill No. 30/94 published on  
1 November 1994)Date of Second and Third : 5 December 1994  
Readings

Date of commencement : 1 March 1995

**34. G. N. No. S 119/1995 — Companies Act (Amendment of Second Schedule) Notification 1995**

Date of commencement : 1 April 1995

**35. Act 15 of 1995 — Bankruptcy Act 1995**

(Consequential amendments made to Act by)

Date of First Reading : 25 July 1994  
(Bill No. 16/94 published on 29 July  
1994)

Date of Second Reading : 25 August 1994

Date Committed to Select : 25 August 1994  
CommitteeDate of Presentation of Select : 7 March 1995 (Parl. 1 of 1995)  
Committee Report

Date of Third Reading : 23 March 1995

Date of commencement : 15 July 1995

**36. Act 22 of 1995 — Companies (Amendment) Act 1995**Date of First Reading : 25 May 1995  
(Bill No. 17/95 published on 26 May  
1995)Date of Second and Third : 7 July 1995  
Readings

Date of commencement : 4 August 1995

**37. G. N. No. S 61/1997 — Companies Act (Amendment of Second Schedule) Notification 1997**

Date of commencement : 15 February 1997

**38. G. N. No. S 344/1997 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 1997**

Date of commencement : 1 August 1997

**39. Act 7 of 1997 — Statutes (Miscellaneous Amendments) Act 1997**

Date of First Reading : 11 July 1997  
(Bill No. 6/97 published on 12 July 1997)

Date of Second and Third Readings : 25 August 1997

Dates of commencement : 1 October 1997 (except section 3)

**40. Act 38 of 1998 — Companies (Amendment) Act 1998**

Date of First Reading : 4 September 1998  
(Bill No. 36/98 published on 5 September 1998)

Date of Second and Third Readings : 12 October 1998

Date of commencement : 18 November 1998

**41. Act 37 of 1999 — Bankruptcy (Amendment) Act 1999**

(Consequential amendments made to Act by)

Date of First Reading : 3 August 1999  
(Bill No. 26/99 published on 4 August 1999)

Date of Second and Third Readings : 18 August 1999

Date of commencement : 15 September 1999

**42. Act 39 of 1999 — Police Force (Amendment) Act 1999**

(Consequential amendments made to Act by)

Date of First Reading : 11 October 1999  
(Bill No. 32/99 published on 12 October 1999)

Date of Second and Third Readings : 23 November 1999

Date of commencement : 10 January 2000

**43. G. N. No. S 387/2000 — Companies Act (Amendment of Second Schedule) Notification 2000**

Date of commencement : 29 August 2000

**44. Act 36 of 2000 — Companies (Amendment) Act 2000**

Date of First Reading : 9 October 2000  
(Bill No. 28/2000 published on  
10 October 2000)

Date of Second and Third Readings : 13 November 2000

Date of commencement : 22 January 2001

**45. G. N. No. S 29/2001 — Companies Act (Amendment of Second Schedule) Notification 2001**

Date of commencement : 22 January 2001

**46. G. N. No. S 99/2001 — Companies Act (Amendment of Fifth Schedule) Notification 2001**

Date of commencement : 22 February 2001

**47. Act 26 of 2001 — Statutes (Miscellaneous Amendments and Repeal) Act 2001**

Date of First Reading : 11 July 2001  
(Bill No. 24/2001 published on  
12 July 2001)

Date of Second and Third Readings : 25 July 2001

Date of commencement : 1 September 2001 (section 6)

**48. Act 42 of 2001 — Securities and Futures Act 2001**

(Consequential amendments made to Act by)

Date of First Reading : 25 September 2001  
(Bill No. 33/2001 published on  
26 September 2001)

Date of Second and Third Readings : 5 October 2001

Date of commencement : 1 January 2002 (Parts I, VIII, IX, X  
and XV (except sections 314 and 342  
(1) and (3)), First Schedule, Second

Schedule and items (4)(o) and (q) and  
(7)(c) of Fourth Schedule)

1 July 2002

1 October 2002

**49. G. N. No. S 675/2001 — Securities and Futures (Repeal of Provisions)  
Notification 2001**

Date of commencement : 1 January 2002

**50. G. N. No. S 28/2002 — Companies Act (Amendment of Second Schedule)  
Notification 2002**

Date of commencement : 15 January 2002

**51. G. N. No. S 236/2002 — Securities and Futures (Repeal of Provisions)  
Notification 2002**

Date of commencement : 1 July 2002

**52. G. N. No. S 239/2002 — Companies Act (Amendment of Second  
Schedule) (No. 2) Notification 2002**

Date of commencement : 1 July 2002

**53. Act 12 of 2002 — Companies (Amendment) Act 2002**

Date of First Reading : 23 May 2002  
(Bill No. 16/2002 published on  
24 May 2002)

Date of Second and Third  
Readings : 8 July 2002

Dates of commencement : 15 August 2002 (sections 2(a) and 36)  
1 January 2003  
13 January 2003

**54. G. N. No. S 684/2002 — Companies (Accounts of Public Listed  
Companies) (Substitution of Period)  
Order 2002**

Date of commencement : 1 January 2003

**55. G. N. No. S 19/2003 — Companies Act (Amendment of Second Schedule)  
Notification 2003**

Date of commencement : 13 January 2003

**56. G. N. No. S 20/2003 — Companies Act (Amendment of Eighth Schedule)  
Notification 2003**

Date of commencement : 13 January 2003

**57. G. N. No. S 213/2003 — Companies (Accounts of Public Listed Companies) (Substitution of Period) Order 2003**

Date of commencement : 28 April 2003

**58. Act 8 of 2003 — Companies (Amendment) Act 2003**

Date of First Reading : 28 February 2003  
(Bill No. 3/2003 published on 1 March 2003)

Date of Second and Third Readings : 24 April 2003

Date of commencement : 15 May 2003

**59. Act 9 of 2003 — Statutes (Miscellaneous Amendments) Act 2003**

Date of First Reading : 20 March 2003  
(Bill No. 7/2003 published on 21 March 2003)

Date of Second and Third Readings : 24 April 2003

Date of commencement : 16 May 2003

**60. G. N. No. S 75/2004 — Companies Act (Amendment of Second Schedule) Notification 2004**

Date of commencement : 1 March 2004

**61. Act 3 of 2004 — Accounting and Corporate Regulatory Authority Act 2004**

(Consequential amendments made to Act by)

Date of First Reading : 5 January 2004  
(Bill No. 1/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Date of commencement : 1 April 2004

**62. Act 5 of 2004 — Companies (Amendment) Act 2004**

Date of First Reading : 5 January 2004  
(Bill No. 3/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Dates of commencement : 1st April 2004  
1st October 2004

**63. Act 4 of 2004 — Accountants Act 2004**

(Consequential amendments made to Act by)

Date of First Reading : 5 January 2004  
(Bill No. 2/2004 published on 6 January 2004)

Date of Second and Third Readings : 6 February 2004

Date of commencement : 1 April 2004

**64. G. N. No. S 193/2004 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 2004**

Date of commencement : 1 April 2004

**65. G. N. No. S 262/2004 — Companies Act (Amendment of Second Schedule) (No. 3) Notification 2004**

Date of commencement : 1 April 2004

**66. Act 28 of 2004 — Statutes (Miscellaneous Amendments) (No. 2) Act 2004**

Date of First Reading : 15 June 2004  
(Bill No. 27/2004 published on 16 June 2004)

Date of Second and Third Readings : 20 July 2004

Date of commencement : 1 April 2004 (section 3 only)

**67. G. N. No. S 57/2005 — Companies Act (Amendment of Second Schedule) Notification 2005**

Date of commencement : 1 February 2005

**68. Act 5 of 2005 — Limited Liability Partnerships Act 2005**

(Consequential amendments made to Act by)

Date of First Reading : 19 October 2004  
(Bill No. 64/2004 published on 20 October 2004)

Date of Second and Third Readings : 25 January 2005

Date of commencement : 11 April 2005

**69. Act 17 of 2005 — Statutes (Miscellaneous Amendments and Repeal) Act 2005**

Date of First Reading : 18 April 2005  
(Bill No. 7/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 15 July 2005

**70. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005**

Date of First Reading : 17 October 2005  
(Bill No. 30/2005 published on 18 October 2005)

Date of Second and Third Readings : 21 November 2005

Dates of commencement : 30 January 2006 (sections 10, 12, 19 and 20(c))  
1 April 2006

**71. Act 21 of 2005 — Companies (Amendment) Act 2005**

Date of First Reading : 18 April 2005  
(Bill No. 11/2005 published on 19 April 2005)

Date of Second and Third Readings : 16 May 2005

Date of commencement : 30 January 2006

**72. G. N. No. S 880/2005 — Companies Act (Amendment of Second Schedule) (No. 2) Notification 2005**

Date of commencement : 30 January 2006

**73. G. N. No. S 55/2006 — Companies Act (Amendment of Second Schedule) Notification 2006**

Date of commencement : 30 January 2006

**74. G. N. No. S 56/2006 — Companies Act (Amendment of Eighth Schedule) Notification 2006**

Date of commencement : 30 January 2006

**75. Act 11 of 2005 — Trust Companies Act 2005**

Date of First Reading : 25 January 2005  
(Bill No. 1/2005 published on  
26 January 2005)

Date of Second and Third : 18 February 2005  
Readings

Date of commencement : 1 February 2006

**76. Act 9 of 2006 — Residential Property (Amendment) Act 2006**

(Consequential amendments made to Act by)

Date of First Reading : 16 January 2006  
(Bill No. 1/2006 published on  
17 January 2006)

Date of Second and Third : 14 February 2006  
Readings

Date of commencement : 31 March 2006

**77. Act 1 of 2006 — Payment Systems (Oversight) Act 2006**

Date of First Reading : 21 November 2005  
(Bill No. 39/2005 published on  
22 November 2005)

Date of Second and Third : 16 January 2006  
Readings

Date of commencement : 23 June 2006

**78. 2006 Revised Edition — Companies Act**

Date of operation : 31 October 2006

**79. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007**

Date of First Reading : 8 November 2006  
(Bill No. 14/2006 published on  
9 November 2006)

Date of Second and Third : 22 January 2007  
Readings

Dates of commencement : 1st March 2007  
(with the exception of Sections 6, 8  
and 11)

**80. Act 1 of 2007 — Banking (Amendment) Act 2007**

Date of First Reading	:	8 November 2006 (Bill No. 13/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Date of commencement	:	31 March 2007

**81. Act 39 of 2007 — Accounting Standards Act 2007**

(Consequential amendments made to Act by)

Date of First Reading	:	16 July 2007 (Bill No. 27/2007 published on 17 July 2007)
Date of Second and Third Readings	:	27 August 2007
Date of commencement	:	1 November 2007

**82. G. N. No. S 604/2007 — Companies Act (Amendment of Second Schedule) Notification 2007**

Date of commencement	:	5 November 2007
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**83. G. N. No. S 605/2007 — Companies Act (Amendment of Eighth Schedule) Notification 2007**

Date of commencement	:	5 November 2007
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**84. Act 5 of 2008 — Workmen's Compensation (Amendment) Act 2008**

(Consequential amendments made to Act by)

Date of First Reading	:	12 November 2007 (Bill No. 50/2007 published on 13 November 2007)
Date of Second and Third Readings	:	22 January 2008
Date of commencement	:	1 April 2008

**85. Act 7 of 2009 — Civil Law (Amendment) Act 2009**

(Consequential amendments made to Act by)

Date of First Reading	:	17 November 2008 (Bill No. 38/2008 published on 18 November 2008)
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Date of Second and Third Readings : 19 January 2009

Dates of commencement : 1st March 2009

**86. Act 5 of 2009 — International Interests in Aircraft Equipment Act 2009**  
(Consequential amendments made to Act by)

Date of First Reading : 17 November 2008  
(Bill No. 37/2008 published on 18 November 2008)

Date of Second and Third Readings : 19 January 2009

Date of commencement : 1 May 2009

**87. Act 21 of 2008 — Mental Health (Care and Treatment) Act 2008**  
(Consequential amendments made to Act by)

Date of First Reading : 21 July 2008  
(Bill No. 11/2008 published on 22 July 2008)

Date of Second and Third Readings : 16 September 2008

Date of commencement : 1 March 2010

**88. Act 22 of 2008 — Mental Capacity Act 2008**  
(Consequential amendments made to Act by)

Date of First Reading : 21 July 2008  
(Bill No. 13/2008 published on 22 July 2008)

Date of Second and Third Readings : 15 September 2008

Date of commencement : 1 March 2010

**89. Act 15 of 2010 — Criminal Procedure Code 2010**  
(Consequential amendments made to Act by)

Date of First Reading : 26 April 2010  
(Bill No. 11/2010 published on 26 April 2010)

Date of Second and Third Readings : 19 May 2010

Date of commencement : 2 January 2011

**90. Act 34 of 2010 — Charities (Amendment) Act 2010**

(Consequential amendments made to Act by)

Date of First Reading : 18 October 2010  
(Bill No. 29/2010 published on  
18 October 2010)

Date of Second and Third : 22 November 2010  
Readings

Date of commencement : 1 March 2011

**91. Act 16 of 2011 — Insurance (Amendment) Act 2011**

(Consequential amendments made to Act by)

Date of First Reading : 10 March 2011  
(Bill No. 11/2011 published on  
10 March 2011)

Date of Second and Third : 11 April 2011  
Readings

Date of commencement : 1 May 2011

**92. G.N. No. S 718/2011 — Companies Act (Amendment of Second Schedule) Notification 2011**

Date of commencement : 1 January 2012

**93. Act 2 of 2009 — Securities and Futures (Amendment) Act 2009**

(Consequential amendments made to Act by)

Date of First Reading : 15 September 2008  
(Bill No. 23/2008 published on  
16 September 2008)

Date of Second and Third : 19 January 2009  
Readings

Date of commencement : 19 November 2012 (Sections 2(*p*), (*t*),  
(*u*), (*v*) and (*w*), 42, 76, 113(*b*) and (*c*),  
118(*a*) to (*e*) and (*h*) and 119)

**94. Act 10 of 2013 — Financial Institutions (Miscellaneous Amendments) Act 2013**

(Consequential amendments made to Act by)

Date of First Reading : 4 February 2013 (Bill No. 4/2013  
published on 4 February 2013)

Date of Second and Third : 15 March 2013  
Readings

- Date of commencement : 18 April 2013
- 95. Act 11 of 2013 — Insurance (Amendment) Act 2013**  
(Consequential amendments made to Act by)
- Date of First Reading : 4 February 2013 (Bill No. 5/2013  
published on 4 February 2013)
- Date of Second and Third Readings : 15 March 2013
- Date of commencement : 18 April 2013
- 96. Act 34 of 2012 — Securities and Futures (Amendment) Act 2012**  
(Consequential amendments made to Act by)
- Date of First Reading : 15 October 2012 (Bill No. 31/2012  
published on 15 October 2012)
- Date of Second and Third Readings : 15 November 2012
- Date of commencement : 1 August 2013
- 97. G.N. No. S 704/2013 — Companies Act (Amendment of Eighth Schedule) Notification 2013**
- Date of commencement : 2 December 2013
- 98. G.N. No. S 97/2014 — Companies Act (Amendment of Eighth Schedule) Notification 2014**
- Date of commencement : 24 February 2014
- 99. Act 5 of 2014 — Subordinate Courts (Amendment) Act 2014**  
(Consequential amendments made to Act by)
- Date of First Reading : 11 November 2013 (Bill No. 26/2013  
published on 11 November 2013)
- Date of Second and Third Readings : 21 January 2014
- Date of commencement : 7 March 2014
- 100. Act 36 of 2014 — Companies (Amendment) Act 2014**
- Date of First Reading : 8 September 2014  
(Bill No. 25/2014)
- Date of Second and Third Readings : 8 October 2014

Date of commencement : 1 July 2015  
 3 January 2016  
 20 April 2018

**101. G.N. No. S 382/2015 — Companies Act (Amendment of Second Schedule) Notification 2015**

Date of commencement : 1 July 2015

**102. G.N. No. S 383/2015 — Companies Act (Amendment of Eighth Schedule) Notification 2015**

Date of commencement : 1 July 2015

**103. Act 15 of 2017 — Companies (Amendment) Act 2017**

Date of First Reading : 28 February 2017 (Bill No. 13/2017  
 published on 28 February 2017)

Date of Second and Third Readings : 10 March 2017

Date of commencement : 31 March 2017  
 23 May 2017  
 11 October 2017  
 31 August 2018

**104. Act 21 of 2016 — Employment Claims Act 2016**

Date of First Reading : 11 July 2016  
 (Bill No. 20/2016)

Date of Second and Third Readings : 16 August 2016

Date of commencement : 1 April 2017

**105. Act 31 of 2017 — Monetary Authority of Singapore (Amendment) Act 2017**

Date of First Reading : 8 May 2017 (Bill No. 25/2017  
 published on 8 May 2017)

Date of Second and Third Readings : 4 July 2017

Date of commencement : 4 June 2018

**106. Act 35 of 2018 — Companies (Amendment) Act 2018**

Date of First Reading : 9 July 2018 (Bill No. 27/2018  
 published on 9 July 2018)

Date of Second and Third Readings : 6 August 2018

Date of commencement : 1 October 2018

**107. Act 4 of 2017 — Securities and Futures (Amendment) Act 2017**

Date of First Reading : 7 November 2016  
(Bill No. 35/2016)

Date of Second and Third Readings : 9 January 2017

Date of commencement : 8 October 2018

**108. Act 44 of 2018 — Variable Capital Companies Act 2018**

Date of First Reading : 10 September 2018  
(Bill No. 40/2018)

Date of Second and Third Readings : 1 October 2018

Date of commencement : 14 January 2020

**109. Act 28 of 2019 — Variable Capital Companies (Miscellaneous Amendments) Act 2019**

Date of First Reading : 5 August 2019  
(Bill No. 23/2019)

Date of Second and Third Readings : 3 September 2019

Date of commencement : 15 January 2020

**110. Act 2 of 2019 — Payment Services Act 2019**

Date of First Reading : 19 November 2018 (Bill No. 48/2018  
published on 19 November 2018)

Date of Second and Third Readings : 14 January 2019

Date of commencement : 28 January 2020

**111. Act 40 of 2018 — Insolvency, Restructuring and Dissolution Act 2018**

Date of First Reading : 10 September 2018  
(Bill No. 32/2018)

Date of Second and Third Readings : 31 October 2018

Date of commencement : 30 July 2020

**112. Act 40 of 2019 — Supreme Court of Judicature (Amendment) Act 2019**

Date of First Reading	:	7 October 2019 (Bill No. 32/2019)
Date of Second and Third Readings	:	5 November 2019
Date of commencement	:	2 January 2021

**113. Act 27 of 2016 — Credit Bureau Act 2016**

(Amendments made by the above Act)

Date of First Reading	:	10 October 2016 (Bill No. 27/2016 published on 10 October 2016)
Second and Third Readings	:	9 November 2016
Date of Commencement	:	31 May 2021

**114. Act 1 of 2020 — Banking (Amendment) Act 2020**

Date of First Reading	:	4 November 2019 (Bill No. 35/2019)
Date of Second and Third Readings	:	6 January 2020
Date of commencement	:	1 July 2021

**115. 2020 Revised Edition — Companies Act 1967**

Date of operation	:	31 December 2021
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**116. Act 25 of 2021 — Courts (Civil and Criminal Justice) Reform Act 2021**

Date of First Reading	:	26 July 2021 (Bill No. 18/2021)
Date of Second and Third Readings	:	14 September 2021
Date of commencement	:	1 April 2022

**117. Act 2 of 2022 — Corporate Registers (Miscellaneous Amendments) Act 2022**

Date of First Reading	:	1 November 2021 (Bill No. 42/2021)
Date of Second and Third Readings	:	10 January 2022
Date of commencement	:	30 May 2022 (Section 2(a), (f), (g), (h), (l) and (m))

4 October 2022 (Sections 2(b), (c),  
(d), (e), (i), (j) and (k) and 3(1)(a), (b),  
(c) and (d) and (2))

## Abbreviations

(updated on 29 August 2022)

G.N.	Gazette Notification
G.N. Sp.	Gazette Notification (Special Supplement)
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian)
M.	Malaya/Malaysia (including Federated Malay States, Malayan Union, Federation of Malaya and Federation of Malaysia)
Parl.	Parliament
S	Subsidiary Legislation
S.I.	Statutory Instrument (United Kingdom)
S (N.S.)	Subsidiary Legislation (New Series)
S.S.G.G.	Straits Settlements Government Gazette
S.S.G.G. (E)	Straits Settlements Government Gazette (Extraordinary)

**COMPARATIVE TABLE**  
**COMPANIES ACT 1967**

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

<b>2020 Ed.</b>	<b>2006 Ed.</b>
—	<b>3—(4)</b> [ <i>Deleted by Act 40 of 2018</i> ]
—	<b>12B—(3)</b> [ <i>Deleted by Act 36 of 2014</i> ]
—	<b>(4)</b> [ <i>Deleted by Act 36 of 2014</i> ]
[ <i>Omitted as having had effect</i> ]	<b>29—(14)</b>
—	<b>71—(4)</b> [ <i>Deleted by Act 21 of 2005</i> ]
—	<b>(5)</b> [ <i>Deleted by Act 21 of 2005</i> ]
—	<b>76F—(5)</b> [ <i>Deleted by Act 36 of 2014</i> ]
—	<b>(6)</b> [ <i>Deleted by Act 36 of 2014</i> ]
—	<b>76K—(5)</b> [ <i>Deleted by Act 36 of 2014</i> ]
—	<b>81—(5)</b> [ <i>Deleted by Act 21 of 2005</i> ]
—	<b>144—(3)</b> [ <i>Deleted by Act 5 of 2004</i> ]
<b>149—(9) and (9A)</b>	<b>149—(9)</b>
—	<b>158—(4)</b> [ <i>Deleted by Act 36 of 2014</i> ]
<b>171—(4A)</b>	Proviso to <b>171—(4)</b>
—	<b>177—(5)</b> [ <i>Deleted by Act 40 of 1989</i> ]
[ <i>Omitted as having had effect</i> ]	<b>198—(8)</b>
—	<b>377—(14)</b> [ <i>Deleted by Act 40 of 2018</i> ]
[ <i>Omitted as having had effect</i> ]	<b>379—(4)</b>
[ <i>Omitted as having had effect</i> ]	<b>386AF—(14)</b>
[ <i>Omitted as having had effect</i> ]	<b>386AL—(9)</b>