

(6) Where an application for an injunction under subsection (1) or (2) has been made, the Court may grant an injunction by consent of all parties to the proceedings, if the Court determines it to be appropriate, whether or not the Court is satisfied that that subsection applies.

(7) The Court may grant an interim injunction pending determination of an application under subsection (1) if in the opinion of the Court it is desirable to do so.

(8) The Court may revoke or vary an injunction granted under subsection (1), (2) or (7).

(9) In granting an injunction to restrain a person from engaging in particular conduct, or to require a person to do a particular act or thing, the Court may order that person to pay damages to any other person, either in addition to or in substitution of the grant of the injunction.

## Division 7

### *Charges, Arrangements and Reconstructions and Receivership*

#### Subdivision 1

##### *Charges*

### **Registration of charges**

**352.** (1) A company that creates a charge over its property or any of its undertakings to which this section applies shall lodge within thirty days from the creation of the charge, together with the prescribed fee with the Registrar for registration, a statement of particulars of the charge in the form and manner as may be determined by the Registrar.

(2) If a company contravenes with subsection (1), the charge shall be void against the liquidator and any creditor of the company, so far as any security on the company's property or undertaking is conferred.

(3) Nothing in subsection (2) shall prejudice any contract or obligation for the repayment of the money secured by a charge and when a charge becomes void under this section, the money secured shall immediately become payable.

(4) Any charge created, before the lapse of thirty days before a prior charge is registered with respect of the same debts, or a part of the debts, the charge shall not be valid or operative unless the Court is satisfied that the charge was created 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 Subdivision.

(5) Failure to register a charge created over a company's property or undertaking other than those relating to land, shall not affect the validity or limit the effect of the charge created under subsection (1).

(6) Subsection (1) shall not apply—

- (a) to a charge created to secure payment or performance of a financial obligation arising from any instruments or transactions effected in the money market in such manner and to such extent as may be specified by the Central Bank of Malaysia under the Financial Services Act 2013 or the Islamic Financial Services Act 2013; or
- (b) if the person interested in the charge is the Central Bank of Malaysia.

(7) For the purposes of subsection (6), the charge shall be treated as if it is a charge registered under subsection (1) and shall be valid against the liquidator and any creditor of the company.

(8) Notwithstanding subsection (1), any person interested in the charge may lodge with the Registrar the particulars of the charge before the end of the period allowed for registration.

(9) If a registration is effected by any person interested in the charge other than the company, that person shall be entitled to recover from

the company the amount of any fees properly paid by that person on the registration.

(10) The company and every officer who contravene subsection 352(1) and section 354 commit an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Types of charges require registration**

**353.** The requirement for registration under section 352 shall apply to the following charges:

- (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 the company which are owned by the company;
- (d) a charge or an assignment created or evidenced by an instrument which if executed by an individual within Peninsular Malaysia and affecting property within Peninsular Malaysia, would be invalid or of limited effect if not filed or registered under the Bills of Sale Act 1950 [*Act 268*];
- (e) a charge on land wherever situate or any interest in the 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 licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and
- (k) a charge on the credit balance of the company in any deposit account.

### **Registration of charges created over property outside Malaysia**

**354.** If a charge created in Malaysia affects property outside Malaysia, the statement of the particulars as determined by the Registrar may be lodged for registration in accordance with section 352 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

### **Registration of charges in series of debentures**

**355.** (1) 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 shall be sufficient if there is lodged with the Registrar for registration within thirty days from the date of 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 authorizing 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; and
- (d) the names of the trustee, if any, for the debenture holders.

(2) For the purposes of subsection (1), if more than one issues are made of debenture in the series, particulars of the date and amount of

each issue shall be lodged within thirty days from each issue, but an omission to do so shall not affect the validity of the debentures issued.

(3) If any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his—

- (a) subscribing or agreeing to subscribe; or
- (b) procuring or agreeing to procure subscriptions,

whether absolute or conditional for any debentures, the particulars required to be lodged under this section shall include particulars as to the amount or rate percentage of the commission, allowance or discount paid or made, but omission to do so shall not affect the validity of the debentures issued.

(4) The deposit of any debentures as security for any debt of the company shall not, for the purposes of subsection (3), be treated as the issue of the debentures at a discount.

### **Duty of company to register charges existing on property acquired**

**356.** (1) If—

- (a) a company acquires property which is subject to a charge and which would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Subdivision;
- (b) a foreign company becomes registered in Malaysia and has prior to such registration created a charge which would, if it had been created by the company while it was registered in Malaysia, have been required to be registered under this Subdivision; or
- (c) a foreign company becomes registered in Malaysia 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 Malaysia, have been required to be registered under this Subdivision,

the company or foreign company shall lodge a statement of the particulars of the charge as determined by the Registrar within thirty days from the date on which the acquisition is completed or the date of the registration of the foreign company in Malaysia, as the case may be, with the Registrar for registration.

(2) The company or a foreign company and every officer of the company or the foreign company who contravene subsection (1) commit an offence, and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

### **Register of charges to be kept by Registrar**

**357.** (1) The Registrar shall keep and maintain a register of all charges lodged for registration under this Subdivision.

(2) The Registrar shall 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, the particulars as are required to be contained in a statement furnished under subsection 355(1); and
- (b) in the case of any other charge—
  - (i) the date of creation, if the charge is a charge created by the company;
  - (ii) the date of acquisition of the property, if the charge is a charge existing on property acquired by the company;
  - (iii) the amount secured by the charge;