

19

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 6 of 1973

ON APPEAL
FROM THE FEDERAL COURT IN MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

LAM KEE YING Sdn. Bhd.

Appellants
(Plaintiffs)

- and -

1. LAM SHES TONG t/a
LIAN JOO CO

2. SHARIKAT LIAN JOO
TEXTILES Sdn. Bhd.

Respondents
(Defendants)

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 4 JAN 1975
25 RUSSELL SQUARE
LONDON, W.C.1.

Coward Chance,
Royex House,
Aldermanbury Square,
London, EC2V 7LD.

Solicitors for the Appellants

Sole, Sawbridge & Co.,
9, Gray's Inn Square,
Gray's Inn,
London, WC1R 5JD.

Solicitors for the Respondents

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RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 6 of 1973

O N A P P E A L
FROM THE FEDERAL COURT IN MALAYSIA
(Appellate Jurisdiction)

BETWEEN:-

LAM KEE YING Sdn. Bhd.

Appellants
(Plaintiffs)

- and -

- 10 1. LAM SHES TONG t/a
LIAN JOO CO
2. SHARIKAT KIAN JOO
TEXTILES Sdn. Bhd.

Respondents
(Defendants)

RECORD OF PROCEEDINGS

No. 1

Specially Indorsed Writ

In the High
Court in Malaya
at Kuala Lumpur

No. 1

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 2305 OF 1969

Specially
indorsed Writ

24th December
1969

Between

20 Lam Kee Ying Sdn. Bhd.

Plaintiffs

- and -

1. Lam Shes Tong
t/a Lian Joo Co.
2. Sherikat Lian Joo
Textiles Sdn. Bhd.

Defendants

The Honourable Tan Sri Ong Hock Thye P.S.M.,
D.P.M.S., Chief Justice of the High Court, Malaya,
in the name and on behalf of His Majesty the Yang
di-Pertuan Agong.

In the High
Court in Malaya
at Kuala Lumpur

No. 1

Specially
indorsed Writ
24th December
1969
(continued)

To:

1. Lam Shes Tong
32 Jalan Silang,
Kuala Lumpur.
2. Sharikat Lian Joo Textiles Sdn. Bhd.,
c/o Tan Kim Leong & Chan,
9th Floor, Kwong Yik Bank Building,
75, Jalan Bandar,
Kuala Lumpur.

WE COMMAND YOU, that within eight days after
the service of this Writ on you, inclusive of the
day of such service, you do cause an appearance to
be entered for you in an action at the suit of
Lam Kee Ying Sdn. Bhd. 10

AND TAKE NOTICE that in default of your so
doing the Plaintiff may proceed therein and
judgment may be given in your absence.

WITNESS: Mohd. Kamil b. Awang, Senior
Assistant Registrar of the High Court in Malaya,
this 24th day of December, 1969. 20

Sd. SHOOK LIN & BOK	Sd. MOHD. KAMIL,
Solicitors for the Plaintiff.	Senior Assistant Registrar, High Court, Kuala Lumpur.

N.B. - This Writ is to be served within twelve months
from the date thereof, or, if renewed, within six
months from the date of last renewal, including
the day of such date, and not afterwards.

The Defendant (or Defendants) may appear
hereto by entering an appearance (or appearances)
either personally or by solicitor at the Registry
of the High Court at Kuala Lumpur. 30

A Defendant appearing personally, may, if he
desires, enter his appearance by post, and the
appropriate forms may be obtained by sending a
Postal Order for \$3 with an addressed envelope to
the Registrar of the High Court at Kuala Lumpur.

If the Defendant enters an appearance he must
also deliver a Defence within 14 days from the
last day of the time limited for appearance, unless 40

such time is extended by the Court or a Judge, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

In the High
Court in Malaya
at Kuala Lumpur

No. 1

STATEMENT OF CLAIM

Specially
indorsed Writ

24th December
1969
(continued)

10 1. The Plaintiff is a limited company incorporated in Malaysia and having its registered office at No.32, Jalan Silang, Kuala Lumpur (hereinafter referred to as "the Premises" and is the owner and landlord of the Premises.

2. The 1st Defendant is the lessee of the ground floor of the Premises (excluding the Mezzanine Floor) and is at all material time carrying on a partnership business thereat under the name and style of Lian Joo Co.

20 3. The 2nd Defendant is a company incorporated in Malaysia and having its registered office at c/o Tan Kim Leong & Chan, 9th Floor, Kwong Yik Bank Building, 75, Jalan Bandarn, Kuala Lumpur and is at all material time carrying on business on the ground floor of the Premises.

30 4. By a Memorandum of Lease made on May 19, 1964 between the previous owners of the Premises namely Messrs. Lam Kee Ying and Lam Yoo Choo of the one part (hereinafter referred to as the "Lessors") and the 1st Defendant of the other part the Lessors demised to the 1st Defendant the Premises for the term of 25 years from May 1, 1964 at a yearly rental of \$6,000.00 payable in advance by equal monthly payments of \$500.00 per month.

5. The Premises was eventually transferred to the Plaintiff who is the Successor in title of the Premises and takes subject to the said lease and the rights and liabilities therein.

6. By the terms of the Memorandum of Lease the 1st Defendant expressly covenanted (inter alia) not to assign underlet or part with the possession of the Premises or any part thereof without the consent in writing of the Plaintiff first obtained.

40 7. It is expressly provided in the said Lease that the Plaintiff is entitled to re-enter the Premises in case of any breach of non-observance of any of the covenants contained therein.

In the High
Court in Malaya
at Kuala Lumpur

No. 1

Specially
indorsed Writ
24th December
1969
(continued)

8. In breach of the said covenant the 1st Defendant on or about August 13, 1969 assigned or underlet or parted with the possession of part of the Premises to the 2nd Defendant without the consent in writing of the Plaintiff first obtained.

9. On December 10, 1969 the Plaintiff's Solicitors served on the 1st Defendant a notice in writing specifying the said breach of covenant and requiring him to remedy the same and to make compensation in money therefor. 10

10. The 1st Defendant has failed to remedy the said breach or to make compensation within the time given or at all and the Defendants retain possession of the said Premises and the said Lease has become forfeited to the Plaintiff.

11. On December 10, 1969 the Plaintiff's Solicitors served a notice on the 2nd Defendants to vacate the premises forthwith as the 2nd Defendant is in unlawful occupation.

12. The 2nd Defendant has failed to comply with the aforesaid notice and is still in unlawful occupation of the whole or part of the premises. 20

And the Plaintiff claims:-

(a) An order requiring the Defendants and all persons claiming under them to deliver up vacant possession of the premises forthwith to the Plaintiff.

(b) against the 1st Defendant

(1) mesne profit from December 15, 1969 until possession is delivered up. 30

(2) damages for breach of Contract.

(c) Damages against the 2nd Defendant for wrongful occupation of the Premises

(d) Costs against the Defendants.

Dated this 24th day of December, 1969.

Sd. SHOOK LIN & BOK.

Solicitors for the Plaintiff.

And the sum of \$60.00 (or such sum as may be allowed on taxation) for costs, and also, in case the Plaintiff obtains an order for substituted service, the further sum of \$300.00 (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or his advocate and solicitor or agent within four days from the service hereof further proceedings will be stayed.

In the High Court in Malaya at Kuala Lumpur

No. 1

Specially indorsed Writ

24th December 1969

(continued)

10 Provided that if it appears from the indorsement of the Writ that the Plaintiff is resident outside the schedule territories as defined in the Exchange Control Ordinance, 1953 or is acting by order or on behalf of a person so resident, or if the Defendant is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff, his advocate and solicitor or agent.

20 This Writ was issued by Messrs. Shook Lin & Bok, whose address for service is Nos. 801-809, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur, solicitors for the Plaintiff/s whose registered address is at 32 Jalan Silang, Kuala Lumpur.

This Writ was served by me at on the defendant on the day of 196 .

Indorsed this day of 196 at the hour of

(Signed)

30 (Address)

In the High
Court in Malaya
at Kuala Lumpur

No. 2

Amended State-
ment of Claim

30th April 1970

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is a limited company incorporated in Malaysia and having its registered office at No.32, Jalan Silang, Kuala Lumpur (hereinafter referred to as "the Premises") and is the owner and landlord of the Premises.

2. The 1st Defendant is the Lessee of the ground floor of the premises (excluding the Mezzanine Floor) and is at all material time carrying on a partnership business thereat under the name and style of Lian Joo Co. 10

3. The 2nd Defendant is a company incorporated in Malaysia and having its registered office at c/o Tan Kim Leong & Chan, 9th Floor, Kwong Yik Bank Building, 75 Jalan Bandar, Kuala Lumpur and is at all material times carrying on business on the Ground Floor of the Premises.

4. By a Memorandum of Lease made on May 19, 1964 between the previous owners of the premises namely Messrs. Lam Kee Ying and Lam Yoo Choo of the one part (hereinafter referred to as the "Lessors") and the 1st Defendant of the other part the Lessors demises to the 1st Defendant the premises for the term of 25 years from May 1, 1964 at a yearly rental of \$6,000.00 payable in advance by equal monthly payments of \$500.00 per month. 20

5. The premises was eventually transferred to the Plaintiff who is the successor in title of the premises and takes subject to the said lease and the rights and liabilities therein. 30

6. By the terms of the Memorandum of Lease the 1st Defendant expressly covenanted (inter alia) not to assign, underlet or part with the possession of the premises or any part thereof without the consent in writing of the Plaintiff first obtained.

7. It is expressly provided in the said lease that the Plaintiff is entitled to re-enter the premises in case of any breach or non-observance of any of the covenants contained therein.

8. In breach of the said covenant the 1st Defendant on or about November 13, 1969 assigned or underlet or parted with the possession of part 40

of the premises to the 2nd Defendant without the consent in writing of the Plaintiff first obtained.

8.(a) On or about November 13, 1969 the Plaintiff's solicitors served on the 1st and 2nd Defendants two Notices to quit on account of the breach of covenant in the Lease.

10 9. On December 10, 1969 the Plaintiff's solicitors served on the 1st Defendant a Notice in writing specifying the said breach of covenant and requiring him to remedy the same and to make compensation in money therefor.

10. The 1st Defendant has failed to remedy the said breach or to make compensation within the time given or at all and the Defendants retain possession of the said premises and the said Lease has become forfeited to the Plaintiff.

20 11. On December 10, 1969 the Plaintiff's solicitors served a Notice on the 2nd Defendants to vacate the premises forthwith as the 2nd Defendant is in unlawful occupation.

12. The 2nd Defendant has failed to comply with the aforesaid Notice and is still in unlawful occupation of the whole or part of the premises.

AND the Plaintiff claims:-

(a) An Order requiring the Defendants and all persons claiming under them to deliver up vacant possession of the premises forthwith to the Plaintiff;

(b) Against the 1st Defendant

30 (1) mesne profit from December 15, 1969 until possession is delivered up.

(2) damages for breach of contract.

(c) Damages against the 2nd Defendant for wrongful occupation of the premises.

(d) Costs against the Defendants.

Dated this 24th day of December, 1969.

In the High Court in Malaya at Kuala Lumpur

No. 2

Amended Statement of Claim

30th April 1970
(continued)

In the High Court in Malaya at Kuala Lumpur

No. 2

Amended Statement of Claim

30th April 1970 (continued)

Sd. SHOOK LIN & BOK.

Solicitors for the Plaintiff.

Amended this 30th day of April, 1971.

Sd. SHOOK LIN & BOK.

Solicitors for the Plaintiff.

This Amended Statement of Claim is filed by Messrs. Shook Lin & Bok, Solicitors for the Plaintiff herein and whose address for service is 801 Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

No. 3

Amended Defence of First and Second Defendants

31st May 1970

No. 3

10

AMENDED DEFENCE OF FIRST AND SECOND DEFENDANTS

1. The Defendants have no knowledge of paragraphs 1 and 5 of the Statement of Claim and put the Plaintiffs to strict proof thereof.

2. Paragraphs 2 and 4 of the Statement of Claim are admitted.

3. With regard to paragraph 3 of the Statement of Claim, the Defendants say that the registered office of the Company was c/o Tan Kim Leong & Chen who are none other but the secretaries of the Company.

20

4. The Defendants deny paragraphs 6, 7, 8, 9, 10, 11 and 12 of the Statement of Claim, and the first Defendant says that he has not assigned, underlet or part with the possession of the premises or any part thereof because the second Defendant Company belongs to him and his family. In his own name he holds more than 50% of the shares of the limited company.

5. By the terms of the Memorandum of Lease the Lessors expressly also agreed that the first defendant could carry on business either as a sole-proprietor or in partnership.

30

6. The Defendants further plead that the Plaintiffs have waived their rights under the Memorandum of Lease.

7. Save as herein expressly admitted all the allegations contained in the Statement of Claim are denied and traversed seriatim.

In the High Court in Malaya at Kuala Lumpur

8. The Defendants further say that this suit is misconceived and be dismissed with costs.

No. 3

Dated this 22nd day of January, 1970.

Sd. KAM WOON WAH & CO.

Amended Defence of First and Second Defendants

Solicitors for the Defendants.

31st May 1970
(continued)

10 Amended and redelivered this 31st day of May, 1971 pursuant to the Order of Court dated the 22nd day of April, 1971.

Sd. KAM WOON WAH & CO.

Solicitors for the Defendants.

This Amended Statement of Defence is filed by Messrs. Kam Woon Wah & Co., Solicitors for the Defendants abovenamed whose address for service is No. 54 Jalan Klyne (1st Floor), Kuala Lumpur.

No. 4

No. 4

STATEMENT OF AGREED FACTS

Statement of Agreed Facts

20 1. In the later part of 1969 Lian Joo Co. applied to the Central Electricity Board and the Selangor Water Works Department to discontinue the supply of electricity and water to the ground floor of 32, Jalan Silang, Kuala Lumpur (the said premises).

3rd November 1971

2. At the same time Lian Joo Textiles Sdn. Bhd. applied for fresh supply of electricity and water to the said premises to be held in its own name.

30 3. The respective departments approved the application for discontinuance of supply and the applications for fresh supply, and new supply agreements were entered into between the respective departments and Lian Joo Textiles Sdn. Bhd.

4. In the later part of 1969 Lian Joo Textiles Co. applied to the Telecoms Department for the cancellation of its name in respect of the telephone installation at the said premises.

In the High Court in Malaya at Kuala Lumpur

No. 4

Statement of Agreed Facts
3rd November 1971
(continued)

5. At the same time Lian Joo Textiles Sdn. Bhd. applied for the telephone installation to be under its own name. A new telephone service agreement was entered into between the Telecoms Department and Lian Joo Textiles Sdn. Bhd.

6. On the coming into effect of the new telephone service agreement the telephone number 24531 became listed in the Telephone Directory against Lian Joo Textiles Sdn. Bhd., 32 Jalan Silang, Kuala Lumpur.

7. In the later part of 1969 Lian Joo Textiles Sdn. Bhd. put up a new signboard with its name on it at the front of the said premises.

10

8. All receipts, bills invoices from the later part of 1969 were issued in the name of Lian Joo Textiles Sdn. Bhd.

Dated this 3rd day of November, 1971.

Sd. KAM WOON WAH & CO.

Sd. SHOOK LIN & BOK.

Messrs. Kam Woon Wah & Co.
Solicitors for the Defendants.

Messrs. Shook Lin & Bok.
Solicitors for the Plaintiffs.

20

This Statement of Agreed Facts is filed by Messrs. Shook Lin & Bok, Solicitors for the Plaintiffs whose address for service is 801, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

No. 5

Judge's Notes of Evidence
8th November 1971

No. 5

JUDGE'S NOTES OF EVIDENCE

In Open Court

8th November 1971

NOTES OF EVIDENCE
BEFORE MOHD. AZMI J.

30

Mr. J.L. Tan for Plaintiffs.

Mr. Kam Woon Wah with Mr. Leong Tuck Onn for defendants.

Two agreed Bundles of Documents containing 21 documents marked Exhibit ABl - 21.

Statement of Agreed Facts marked A.F.

Further & Better Particulars of para 6 of Defence filed.

Four receipts produced as agreed documents in addition to those in the Agreed Bundles of Documents marked Exhibit AB22.

Mr. Tan submits:

10 Case involving Lease containing a clause prohibiting assignment, sub-letting and parting possession of premises or part thereof without consent of Landlord. The breach of this covenant (clause 1(g) will entitle Landlord to forfeiture of Lease under Clause 3(a) of Exhibit AB1 at page 7.

The issues are:-

- (1) Whether the defendant 1 has committed a breach of covenant in clause 1(g).
- (2) If so, whether plaintiff is entitled to re-possession.

20 The Defence Counsel says there is no breach because -

- (1) Clauses 1(g) & (i) do not prohibit sub-letting, assignment or parting of possession of premises.
- (2) Even if there was such prohibition, defendant No.1 holds a majority share in the 2nd Defendant Company and the Plaintiffs have waived their rights.
- 30 (3) Whether plaintiffs have complied with Notice before forfeiture under section 235 of the National Land Code.
- (4) Whether Equity should be invoked.

Mr. Tan calls:

P.W. 1 Lam Kee Ying affirmed, states in Hokkien:

Age 63 years. A businessman residing at No.2A, Jalan Hampshire, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

8th November 1971
(continued)

Plaintiff's Evidence

Lam Kee Ying Examination

8th November 1971

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence

Plaintiff's
Evidence

Lam Kee Ying
Examination

8th November
1971
(continued)

I am the Chairman of Board of Directors of Plaintiff Company. Lam Kee Ying Sdn. Bhd. was formed in the latter part of 1966. (Refers to Exhibit AB13). There was a change of name from TYMA Co. Ltd. to Lam Kee Ying Ltd. on 14.3.1966.

I personally bought the premises No. 32 Jalan Silang, Kuala Lumpur, on May 1964 for \$225,000/- from the liquidators of three companies referred to in Exhibit AB18, viz. Ban Joo & Co. Singapore, Ban Joo & Co. Kuala Lumpur and Lian Joo & Co. (the 1st Defendant).

10

After I bought the premises, I leased it out to Lian Joo Co. I leased it to Lam Shes Tong trading as Lian Joo Co. (Refers to Exhibit AB1). After I had leased it to 1st Defendant, I sold the property to Lam Kee Ying Sdn. Bhd. - the Plaintiff company. (Refers to Exhibit AB12 - the fourth entry on the reverse of Exhibit B12). The transfer on 18.11.1966 does not affect the lease.

Under the lease, the tenant i.e. 1st Defendant cannot sub-let, assign or part with possession of the premises. If he did one of these things, I would take legal action to cancel the lease.

20

I first came to know of sub-letting by 1st Defendant in early part of November 1969.

I first came to know the 2nd Defendant Company occupying the premises in early part of November 1969. I came to know, when 2nd Defendant paid me rent for November 1969 by cheque. The cheque was issued in the name of 2nd Defendant Company. (Refers to Exhibit AB9) for \$500/-.

30

As a result of consulting my solicitors, I take out legal proceedings against both defendants. My solicitors sent 4 notices to both defendants.

First notice to 1st defendant was dated November 13, 1969. (Refers to Exhibit AB2). On the same date, first notice was sent to 2nd Defendant. (Refers to Exhibit AB3).

Second notice to 1st Defendant was dated 10.12.69. (Refers to Exhibit AB10). On the same date second notice was sent to 2nd Defendant. (Refers to Exhibit AB11).

40

The defendants' solicitors sent a reply to the first notice on same date 13.11.69. (Refers to Exhibit AB 4).

The cheque of \$500/- sent by 2nd Defendant was handed by me to my solicitors with instructions to return it to the sender. (Refers to Exhibit AB8 dated 19.11.69).

Before the receipt of the \$500/- cheque, I did not know 2nd Defendant was occupying the premises.

10 A Apart from instructing my solicitors, I made investigation into the Signboard of the Company at the premises. I found the signboard of the 1st Defendant had been replaced by the name of the 2nd Defendant viz. Lian Joo Textiles Sdn. Bhd. I made a check with Telecoms about the telephone. As a result of my investigation, I found that the telephone of 1st Defendant Company had been cancelled at the premises, and the 2nd Defendant Company had applied for a telephone to be installed
20 at the premises under their name. (Refers to Exhibit A.F. paras 4, 5 and 6).

As regards water and electricity - refers to Exhibit A.F. paras 1, 2 and 3.

As regards signboard - refers to Exhibit A.F. para 1.

30 I made a check with Registrar of Companies regarding the 2nd Defendant Company. (Refers to Exhibit AB5 page 13). In their Memorandum & Articles of Association I found they had completely purchased the 1st Defendant Company. (Refers to clause 3(a), at page 15 of Exhibit AB5). All the directors of 2nd Defendant Company have agreed to the purchase and sale agreement in respect of 1st Defendant Company. (Refers to clause 4, on the reverse of page 18 in Exhibit AB5). By purchase and sale agreement, I refer to the Agreement made on 30.6.1969. (Refers to Exhibit AB6). From this agreement I find the sale and purchase agreement
40 in respect of 1st Defendant Company. The three partners of the 1st Defendant Company sold the Company to the 2nd Defendant Company. (Refers to para 4(1) of Exhibit AB6).

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Plaintiff's Evidence

Lam Kee Ying Examination

8th November 1971

(continued)

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence

Plaintiff's
Evidence

Lam Kee Ying
Cross-
examination

8th November
1971

(continued)

Cross-examination by Mr. Kam Woon Wah:

I am related to the 1st Defendant Lam Shes Tong. He is my grand-nephew (Lam Shes Tong identified).

Before 1964 I was a business colleague of the 1st Defendant for 11 years under the style of Ban Joo Co. Later we had one branch in Singapore and one branch in Kuala Lumpur.

In or about 1962 1st Defendants, I and 7 others formed another company in Kuala Lumpur called Lian Joo Co. Later I bought over the premises No. 32, Jalan Silang, where Lian Joo Company was doing business. 10

On 1.3.1964 Ban Joo Company & Lian Joo Company were dissolved. (Refers to Exhibits AB18). Before dissolution my Company had bought the premises for \$225,000/-. When I bought it, it was not an old building. It was erected after 2nd World War. The old building was demolished in 1961 after the joint company had bought it and a new building was built. (Joint Company means Ban Joo Co., Kuala Lumpur & Singapore and Lian Joo Company before dissolution). The Joint Company bought the old building at a slightly more than \$70,000/- without vacant possession. Then the Joint Company evicted the then tenants, demolished the old building and built a new one. The Joint Company paid some compensation to the then tenants. I remember the Joint Company paying \$20,000/- to the then three tenants. The new building was put up at a cost of \$50,000/- to \$60,000/-. 20 30

After putting up the new building, the Joint Company set up a new company called Lian Joo Company. Now I say the Joint Company only consisted of Singapore Ban Joo Company and Kuala Lumpur Ban Joo Co. (Witness corrects himself).

1st Defendant was then made in charge of the Lian Joo Company in Kuala Lumpur No. 32, Jalan Silang.

Before dissolution of Joint Company (1.3.1964) 40 the premises No. 32, Jalan Silang, was registered in my name personally.

Now I say when the premises were first purchased it was in my name jointly with Lam Yoo Chu. (Lam Yoo Chu called and identified). On dissolution, I received the premises as my share and so it was transferred into my own name alone. I then became the sole owner of the premises. The value was \$225,000/-. I had to pay about \$60,000/-.

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Plaintiff's Evidence

Lam Kee Ying Cross-examination

8th November 1971

(continued)

10 (At this stage two statement of accounts with translations produced by consent and marked Exhibit D1 (31.3.64) and Exhibit D2 (15.5.64).

(Exhibits D1 and D2 shown to witness).

I did pay slightly more than \$60,000/- for the premises. My share of the Joint Company when it was dissolved was only slightly over \$130,000/-. Hence I had to pay the difference of about \$60,000/-.

20 On dissolution the 1st Defendant was to take the business of Lian Joo Company at 32 Jalan Silang for \$45,000/-. (Refers to para D.2 of Exhibit AB18 and Exhibit D1). It was agreed he was to take the business and carry on trade there under the same name.

(Refers to Exhibit AB16). On the same day 1.3.64 I signed an agreement with 1st Defendant allowing him to carry on business at the premises at a rental of \$500/- per month, but he cannot under-let or assign the premises for other business. At that time Lian Joo Company was dealing in textile. Today Lian Joo Textiles Sdn. Bhd. i.e. 2nd Defendant Company is dealing with textile.

30 Both Lian Joo Company and Lian Joo Textiles Sdn. Bhd. are dealing in the same business i.e. textile.

(Original Chinese contract dated 1.3.1964 - Exhibit AB15 shown to witness).

I do not agree that as long as 1st Defendant does same kind of business, he can sub-let or assign the premises.

40 I agree that Defendant No.1 cannot sub-let the premises for other kind of business such as rubber shop or goldsmith shop. I do not agree that under the agreement he is permitted to sub-let or assign the premises for the same kind of business.

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence
Plaintiff's
Evidence

Lam Kee Ying
Cross-
examination

8th November
1971
(continued)

COURT resumed after 15 minutes.

P.W.1 on his former oath.

Continued cross-examination:

On dissolution I allowed 1st Defendant to carry on business at the premises. Even if his Company has 5 or 10 partners I would not object.

I object now because in the 2nd Defendant Company there are other people, and it is entirely a different company. It is distinct from Lian Joo Co.

10

(Exhibit AB19 shown to witness)

I see there are 7 partners in Lian Joo Company. I knew it was a partnership company. I do not at any time object to the partnership. My objection is that the 2nd defendant company is a limited company as distinct from Defendant No. 1's Company.

If 1st Defendant had sold all his shares in Lian Joo Company, I would object. I leased the premises to the 1st defendant to carry on business as Lian Joo Company.

20

(Exhibit AB17 shown to witness).

I agree there is no prohibition for 1st defendant to sell his shares in Lian Joo Company.

The agreement of 19.5.1964 (Exhibit AB1) was between myself and Lam Yoo Chu on the one part and 1st defendant on the other. Lam Yoo Chu is the person whom I identified just now. I am not calling him as my witness. (Clause 2(d) of Exhibit AB1 shown to witness). After the agreement was signed, I let out the Mezzanine Floor to Tyma Co. Ltd. on 25.11.1964. (See Exhibit AB12 on the reverse). Tyma Co. Ltd. belongs to me. I agree Tyma Company is a limited company. It has three shareholders - myself, my son and a relative of mine (Lam Chet Khoy and Lian Siak Fah). Tyma Company pays me \$50/- per month. When 1st Defendant questioned me why I did not give him the First option I told him Tyma Company was mine. There is no difference between me and Tyma Co. Ltd.

30

40

Now I am doing construction business to lease out to people. My business address is at the premises at the Mezzanine Floor. The name Tyna Co. Ltd. has since been changed to Lam Kee Ying Sdn. Bhd. (the plaintiff company). The Company is run by my son Lam Chet Khoy. I am the Chairman of the Company. I do not go to the Company every day. I go there once a week. In 1969, I went there only once a week. My son went there every day in 1969 - probably. In that year he was living together with me in the same house.

10

In early part of September 1969, my son did not tell me that he saw a signboard named Sharikat Lian Joo Textile Sdn. Berhad hanging at the premises. Nor did I see it in early part of September 1969.

(Exhibit AB2 and AB3 referred to witness).

When I saw my Solicitors I instructed them to issue summons against the defendants. I took the cheque and gave it to my solicitors and instructed my solicitors to issue summons. I instructed them to give defendants five days. In the notice I asked both defendants to see me. If Defendant No.1 had come to see me and explain, I would discuss the matter. I would question him about the 2nd Defendant Company and whether he had sub-let, assign or part with possession of the premises.

20

It is not true that my relationship with 1st Defendant broke off after I had rented out the mezzanine floor.

30

(Exhibits AB10 and AB11 shown to witness).

I instructed the second notice to be sent in order to return the cheque and to eject the defendants.

(NOTE - see Exhibit AB8 - cheque returned on 19.11.69).

I issued the first notice on 13.11.1969. I transferred the premises from myself (Lam Kee Ying) to Lam Kee Ying Ltd. on 18.11.1966.

40

COURT adjourned to 9.00 a.m. tomorrow.

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Plaintiff's Evidence

Lam Kee Ying Cross-examination

8th November 1971

(continued)

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence

Plaintiff's
Evidence

Lam Kee Ying
Cross-
examination

9th November
1971

(continued)

9.11.1971

Parties as before.

Hearing resumed.

P.W.1 re-affirmed.

Continued cross-examination:

The intention of the Joint Company was to allow the 1st Defendant to carry on business at the premises. As long as he was trading there I have no objection, provided he did not change the name on the signboard.

10

Q. How do you reconcile this with the Agreement in Chinese (Exhibit AB16)?

A. I agree in this agreement there is nothing prohibiting him to change the name of the signboard. When I say I did not allow him to change the signboard, I mean that he cannot underlet or assign the premises.

After receiving the cheque I asked my solicitors to issue notices. There was a reply to the first notice by solicitors of both defendants (Exhibit AB4). Then I instructed my solicitors to issue a second notice after the defendants had failed to give a satisfactory explanation.

20

Q. Would it surprise you that in the second notice dated 10.12.1969 (Exhibit AB10) there was no request for 1st Defendant to quit from the premises?

A. I agree there was no request for 1st Defendant to quit. I am not surprised.

Q. Up to 10.12.1969 your intention was only to rectify the position - (para 4 of Exhibit AB10 read to witness)?

30

A. I agree.

On 24.12.1969 my solicitors issued a Writ.

Between the time I first instructed my solicitors up to 24.12.1969, the plaintiff company did hold a shareholders' meeting which was not attended by the official secretary. The minutes of the meeting were recorded in Company's book by my

son Lam Chet Khoy. I do have the minutes book here. The book is in my house. It is not really a minute book, but just a resolution written on a piece of paper.

10 The minutes of the Annual General Meeting of the Plaintiff company is kept by my official Secretary. His name is Tan Toh Hwa. At the end of the year all the resolutions and minutes of the meeting were passed to the Secretary for recording in the book.

The meeting was held in 1969. It is not necessary for me to hand over the minutes of that particular meeting at the end of 1969. I myself could decide on this matter. There was no necessity to hand it to my Secretary.

I decided on this matter myself. I then informed my wife and my son of my decision to take action against defendants.

20 (NOTE: Witness' son requested to fetch the resolution).

I did not put my decision in writing. We only sat down together and had a conference viz. myself, my wife and my son. At that time, there were two other shareholders - Lam Lim Khoy and Lam Fook Khoy. My six grandsons are also shareholders. Altogether there are 12 shareholders in plaintiff company viz.-

- 30 (a) myself
(b) my wife
(c) three sons
(d) six grandsons
(e) wife of my eldest son - Mrs. Lam Kim Khoy.

The paid-up capital of my Company is in the region of \$500,000/- of \$1/- share each. Personally I hold \$3,000/- shares.

From September 1969, it is not true that I was already aware of the change of signboard. I first became aware when I received the cheque. Although I went to the premises once a week I did not pay attention to it.

40 I agree this is the photograph of my shop (shown for identification only).

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Plaintiff's evidence

Lam Kee Ying
Cross-examination

9th November 1971
(continued)

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence

Plaintiff's
evidence

Lam Kee Ying
Cross-
examination

9th November
1971

(continued)

Re-examination

After receiving the cheque in November 1969 I first saw the new signboard being hung on the top of the collapsible iron gate. The signboard is as big as the old signboard. The length is about this distance (shows a length of about 6 feet).

Re-examination:

(Exhibit AB15) - Chinese Agreement shown to witness).

This was a temporary agreement drawn up during the discussion of the dissolution of the joint company. It was my intention to hand it over to my solicitors to prepare an agreement in English. The deciding agreement is the English Agreement drawn up by my then solicitors M/s Kam Woon Wah & Company. The temporary agreement in Chinese is dated 1.3.1964. The final Agreement (Exhibit AB1) is dated 19.5.1964. The English Agreement was stamped and registered - unlike the Chinese Agreement (Exhibit AB15).

10

I would not permit any person other than 1st Defendant to carry on business at the premises.

20

In 1969 my position in Plaintiff Company was the Chairman of the Board of Directors. I am still holding that position.

As Chairman I am empowered to take legal action.

(Mr. Tan undertakes to provide the Memorandum of Association of Plaintiff Company).

If I had seen the new signboard before November 1969 I would still make investigation and instruct my lawyer to take legal action against defendants.

30

The size of the new and old signboards are almost the same. The new signboard is placed in the same position as the old one. In the old signboard was written "Lain Joo Co. Textile", and in the new signboard the name reads "Lian Joo Textile Sdn. Bhd." Without taking a closer look at the new signboard I would not be able to see the difference between the old and new signboard.

40

In November 1969, I took a closer look at the signboard as a result of receiving the \$500/- cheque. I am certain I was not aware of the new signboard before November 1969.

CASE FOR PLAINTIFF

Case resumed after 15 minutes.

D.W.1 Lam Shes Tong affirmed, states in Hakka:

Age 46 years. A Merchant residing at 2½ milestone Cheras Road, Kuala Lumpur.

10 I am the Managing Partner of 1st Defendant's Company. I am also the Managing Director of 2nd Defendant Company.

I am authorised by the 2nd Defendant Company to defend this case. This is the resolution passed by the 2nd Defendant Company. (Put in and marked Exhibit D3).

20 The total paid-up capital of the 2nd Defendant Company is \$180,000/- of \$1/- per share.. In my own name I own \$100,000/- shares. My wife does not hold any share. The Company has three shareholders viz. -

- (a) myself
- (b) Low Yeo Foong
- (c) Lam Sie Gin

Lam Sie Gin is my younger brother. He holds \$30,000/- share. The balance of \$50,000/- shares are held by Low Yeo Foong.

Lam Kee Ying (P.W.1) is my grand-uncle.

30 He was one of the partners in the Joint Company. I was also a partner of the Joint Company.

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Plaintiff's evidence

Lam Kee Ying
Re-examination

9th November
1971
(continued)

Defendants' evidence

Lam Shes Tong
Examination

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence

Defendants'
evidence

Lam Shes Tong
Examination

9th November
1971

(continued)

The Joint Company was dissolved on 1.3.1964.

The Joint Company consisted of Singapore Ban Joo Co. and Kuala Lumpur Ban Joo Co. at the beginning. On dissolution on 1.3.1964, it consisted of the two Ban Joo Companies and Lian Joo Co. Kuala Lumpur. On date of dissolution the Joint Company (which is a partnership) had the following assets:-

- (1) Singapore Ban Joo Co.
- (2) Kuala Lumpur Ban Joo Co.
- (3) Lian Joo Co. Kuala Lumpur
- (4) The premises No.32 Jalan Silang,
Kuala Lumpur.

10

On dissolution the partners agreed to share the assets and agreed to a certain mode of distribution, and to pay the difference in the value of assets received by the partners.

P.W.1 was to take the premises which were valued at \$225,000/-. His share in the distribution was \$130,000/-. He paid a sum of \$195,000/-. (Witness corrects himself).

20

I now say P.W.1's share in the distribution is \$132,645.25. He paid a sum of \$195,000/- less \$132,645.25. He still has not paid the difference between \$225,000/- and \$195,000/-. (Refers to Exhibit D1 and D2).

In the distribution, I was to take over the business Lian Joo Company which was then operating at the premises, and I was to be given a lease of the premises for 25 years at a monthly rental of \$500/-.

30

(Exhibit AB15 shown to witness).

Under the Chinese Agreement (Exhibit AB15) I cannot underlet or assign the premises for other business. I mean I cannot sublet or assign or do any other kind of business such as coffee shop. I owned Lian Joo Company wholly. When the Chinese Agreement was made on 1.3.1964 Lian Joo Company wholly belonged to me, but not now. The lease of the premises was given to me personally.

(Both counsel agree that is the true interpretation).

40

On 1.6.1964 Lian Joo Company was registered with Registrar of Businesses together with other partners. There were 7 partners but 2 have since withdrawn. (Exhibit AB19).

P.W.1 did not object to the setting up of the partnership in June 1964. He knew about it as he was in the same premises with me. He often visited the first floor.

10 (Agreement Exhibit AB1 page 6 shown to witness).

Under clause 2(d) I was to be given the first option of the lease of the mezzanine floor at the extra rental of \$100/-.

20 The mezzanine floor has been leased to Lam Kee Ying Sdn. Bhd. - the plaintiff Company. I was not given the first option. I came to know about the renting in 1966 when the Company put up the signboard. I went to first floor to see P.W.1 about the matter. He explained the plaintiff company was his. He said there was no difference. I then said in that case I would follow what he had done.

Eventually I set up the 2nd Defendant Company. Since my discovery of the renting of the Mezzanine Floor to the Plaintiff Company, the relationship between P.W.1 and myself deteriorated.

30 Under clause 1(i) of Exhibit AB1, I could use the premises to carry on any kind of business whether as sole proprietor or in partnership with others. I can carry on business like coffee shop, but not in the Chinese Agreement. There is no prohibition in the English Agreement (Exhibit AB1) to set up a limited company.

I put up my signboard in respect of 2nd Defendant Company on 1.9.1969. It was put up by Yap Siew Meow (called and identified).

40 When the signboard was put up, P.W.1 knew about it. He continued to receive rent for September and October 1969. (Refers to receipts in Exhibit AB22).

From the time I put up the new signboard up to

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Defendants' evidence

Lam Shes Tong Examination

9th November 1971
(continued)

In the High
Court in Malaya
at Kuala Lumpur

No. 5

Judge's Notes
of Evidence

Defendants'
evidence

Lam Shes Tong
Examination

9th November
1971
(continued)

Cross-
examination

the time first notice was issued to me, I saw P.W.1 and spoke to him about the limited company. He said nothing but gave me two receipts for months of September and October 1969.

Cross-examination:

In 1966 I came to know the Mezzanine Floor was let out to Plaintiff Company by P.W.1. The action that I took was to approach P.W.1. I complained to him. Since he said that there is no difference between plaintiff company and himself, I said I would do the same. 10

On 13.8.1969 I set up the 2nd Defendant Company.

I did not actually follow what P.W.1 had done. I did not sub-let or assign the premises to 2nd Defendant Company. I only changed Lian Joo Company into a limited company. The partners of Lian Joo Company are the shareholders of the limited company i.e. 2nd Defendant Company. There is no change, and the shares in the original company are the same in the 2nd Defendant Company. The shareholders in 20
2nd Defendant Company are:-

- (a) myself
- (b) Low Yeo Foong
- (c) Lam Sie Gin

(Refers to Exhibit AB5 - pages 5 and 30 of Articles & Memorandum of Association).

(Clause 3(a) of Memorandum of Association Exhibit AB5 read to witness).

I have been in the textile business for more than 20 years. When one took over business it would include the tenancy of premises. 30

(Clause 4 of Articles of Association Exhibit AB5 read to witness, and Agreement dated 30.6.1969 Exhibit AB6 also read to him).

I see clause 4(1) of Exhibit AB6. There is in fact no sale agreement. It is not true that I have concealed it because it contains something unfavourable to me.

(Mr. Tan says a notice to purchase (sic) the sale agreement had been served. Mr. Kam Woon Wah says it is not produced because there is no such agreement).

In the High Court in Malaya at Kuala Lumpur

No. 5

The change of name regarding water, electricity and telephone was made because P.W.1 issued the two rent receipts in the name of 2nd Defendant Company for September and October 1969.

Judge's Notes of Evidence

Defendants' evidence

10 (NOTE: Exhibit AB22 - both receipts issued in the name of Lian Joo Co., i.e. 1st Defendant Company).

Lam Shes Tong Cross-examination

I made the change in the name because we want our clients to know this is a limited company. (Witness corrects himself). I agree that the change indicates transfer or assignment of tenancy to the 2nd Defendant Co.

9th November 1971 (continued)

20 I say that P.W.1 knew about the limited company because I went to first floor and informed him personally. There are no witnesses to the incident. I did inform him.

Re-examination:

Re-examination

The three partners in Lian Joo Company are the three shareholders in the 2nd Defendant Company and they took the same number of shares.

D.W.2 Yap Siew Meow affirmed, states in Hakka:

Yap Siew Meow Examination

Age 40 years. Proprietor of Signboard Shop, residing at 78 Cross Street, Kuala Lumpur.

30 My Company made a signboard for 2nd Defendant Company in September 1969. I hung up the signboard with the help of my assistants, on the beam separating the ground and first floor. It is the usual place where signboard is placed. It is conspicuous.

I put it up in early part of September 1969. I sent the Bill on 27.9.1969. (Bill for \$45/- put in and marked Exhibit D4).

I billed it to 2nd Defendant Company.

In the High Court in Malaya at Kuala Lumpur

No. 5

Judge's Notes of Evidence

Defendants' evidence

Yap Siew Meow Cross-examination

9th November 1971 (continued)

Cross-examination: Nil

CASE FOR DEFENCE.

By consent Memorandum & Articles of Association of Plaintiff Company produced and marked Exhibit AB23.

Both parties undertake to submit written submissions on or before 11.11.1971.

NOTE: No resolution was produced by P.W.1's son.

COURT:

C.A.V.

Sd. Mohd. Azmi
JUDGE
HIGH COURT
KUALA LUMPUR

Certified true copy

Sd. Illegible

Secretary to Judge
Kuala Lumpur.
8/FEB/72.

No. 6

Judgment of Mohd. Azmi J.

18th January 1972

No. 6

JUDGMENT OF MOHD. AZMI J.

This is a claim for vacant possession of business premises comprising the whole ground floor (excluding the mezzanine floor) of shop No. 32 Jalan Silang, Kuala Lumpur. The premises are not protected by rent control. The first defendant obtained the tenancy of the demised premises vide Tenancy Agreement dated May 19, 1964 from the then landlords, namely Lam Kee Ying (P.W.1) and Lam Yoo Chu, wherein the demised premises were leased to the first defendant for a period of twenty five years commencing from May 1, 1964 at a yearly rental of \$6,000/- payable monthly

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in advance at the rate of \$500/- per month (see Exhibit AB1), Subsequently, on November 4, 1965 Lam Kee Ying became the sole owner of No. 32 Jalan Silang, Kuala Lumpur (see Certificate of Title No. 26929 - Exhibit AB12). The premises were then sold by Lam Kee Ying to the Plaintiff company, namely Lam Kee Ying Sdn. Bhd., on November 18, 1966 (see the reverse of Exhibit AB12) subject to the lease to the first defendant. By their pleadings the plaintiff company allege that on or about November 13, 1969 the first defendant assigned or underlet or parted with the possession of part of the demised premises to the second defendant company without their written consent and thereby committed a breach of the terms of the Memorandum of Lease dated May 19, 1964 (Exhibit AB1). Both the defendants were served with notice to quit and deliver up vacant possession dated November 13, 1969 (see Exhibit AB2 and Exhibit AB3) followed by notice before forfeiture to the first defendant under section 235 of the National Land Code dated December 10, 1969 (see Exhibit AB10) and a further notice to quit to the second defendant (see Exhibit AB11).

The defendants by their Amended Statement of Defence deny that the first defendant has committed a breach of the covenant as alleged because the second defendant company belong to the first defendant and his family, and that in his own name he holds more than 50% of the shares of the limited company. By paragraph 6 of the Statement of Defence, the defendants also plead that the plaintiffs have waived their rights under the Memorandum of Lease.

Although counsel for both parties contend that there are five issues to be decided in this case, having regard to the pleadings, I find the main issues in this case are as follows:-

- (1) whether the first defendant has committed a breach of the terms of the Memorandum of Lease so as to entitle the plaintiffs to vacant possession of the demised premises; and
- (2) assuming that the first defendant has committed a breach, whether the plaintiffs have waived their rights under the Memorandum of Lease.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judgment of Mohd. Azmi J.

18th January 1972

(continued)

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Court in Malaya
at Kuala Lumpur

No. 6

Judgment of
Mohd. Azmi J.

18th January
1972

(continued)

On the first issue, it is necessary to refer to the relevant covenants in the Memorandum of Lease (Exhibit ABl). By clause 1(g) and clause 1(i), the first defendant covenants:-

(g) not to assign, underlet or part with the possession of the demised premises or any part thereof without the prior written consent of the lessors such consent not to be unreasonably withheld.

(i) to use the demised premises for carrying on business as general merchants whether trading as a sole-proprietor or in partnership thereof. 10

By clause 3(a), it is also expressly agreed that if the lessee shall make any default in the observance or performance of any of the covenants, it shall be lawful for the lessors at any time thereafter to re-enter upon the demised premises or any part thereof and thereupon the lease shall absolutely determine. 20

In this case, I find the following facts have been proved:-

(a) that Lam Shes Tong trading as Lian Joo Company (first defendant) is the lessee of the ground floor of the premises (excluding the mezzanine floor) with effect from May 1, 1964 under a Memorandum of Lease dated May 19, 1964 (Exhibit ABl);

(b) that the lease of the premises is given by the lessors to the first defendant in his personal capacity (see the evidence of Lam Shes Tong (D.W.1) in evidence-in-Chief). This fact is also admitted by Counsel for both parties; 30

(c) that at all material times the first defendant is carrying on a partnership business at the demised premises under the name and style of Lian Joo Company (see paragraph 2 of Amended Statement of Claim which is admitted in the Statement of Defence). By December 19, 1966 some of the partners withdrew, leaving him 40

(as Managing Partner), his younger brother (Lam Sie Gin) and one Low Yeo Foong as partners (see Exhibit AB19);

In the High Court in Malaya at Kuala Lumpur

No. 6

Judgment of Mohd. Azmi J.

18th January 1972

(continued)

- 10 (d) that on August 13, 1969 the first defendant together with his two partners of Lian Joo Company incorporated a private company known as the Sharikat Lian Joo Textiles Sendirian Berhad (the Second defendant). The prime object of the private company is to acquire and take over the partnership business of Lian Joo Company (see Exhibit AB5).

20 On the first issue, the question to be decided is whether the first defendant has, in breach of the covenant, assigned, underlet or parted with the possession of the demised premises in favour of the second defendant. From the following evidence, I am satisfied on the balance of probabilities that the first defendant has committed a breach of the covenant as contained in clause 1(g) so as to entitle the plaintiffs to vacant possession of the demised premises:-

- 30 (1) Clause 3(a) of the Memorandum of Association and clause 4 of the Articles of Association of the second defendant company (Exhibit AB5) read together with the agreement dated June 30, 1969 (Exhibit AB6), clearly indicate that not only the partnership business of the first defendant at No.32, Jalan Silang has been taken over by the second defendant company but also from the "Sales Agreement" referred to in clause 4(1) of the agreement (Exhibit AB6) it can reasonably be inferred that the demised premises have been assigned or transferred to the second defendant company as part of the taking over of the first defendant's partnership business at No. 32, Jalan Silang. In those documents there is specific reference not only to Lian Joo Company, the partnership business of the first defendant, but also to the demised premises.
- 40 (2) From paragraphs 1 to 6 of the Statement of Agreed Facts, Lian Joo Company has ceased to be the consumer of water and electricity

In the High
Court in Malaya
at Kuala Lumpur

No. 6

Judgment of
Mohd. Azmi J.

18th January
1972
(continued)

of the ground floor of No. 32 Jalan Silang. It has also cancelled its name in respect of the telephone installation at the demised premises. At the same time, fresh water, electricity and telephone supply agreements were entered into between the second defendant company and the respective Departments.

- (3) From paragraph 7 of the Statement of Agreed Facts, the second defendant company have put up a new signboard with their name on it at the front of the demised premises, and from the evidence of witnesses it is not in dispute that the name of Lian Joo Textiles Sdn. Bhd. was put up in place of the old signboard bearing the name of Lian Joo Company. 10
- (4) From paragraph 8 of the Statement of Agreed Facts, all receipts, bills and invoices of the business at the demised premises were issued in the name of the second defendant company commencing from the latter part of 1969. 20
- (5) The tender made by the second defendant company to the plaintiffs of the November 1969 rent with their own cheque (see Exhibit AB9).
- (6) The admission under cross-examination made by D.W.1, who is both the Managing Partner of Lian Joo Company and Managing Director of second defendant company that "when one took over business, it would include the tenancy of the premises", and that the change in name in respect of water, electricity and telephone supplies "indicates transfer or assignment of tenancy to the second defendant company." 30

From their pleadings, only two substantial defences are raised by both the defendants. On the first ground it is averred that because the second defendant company belong to the first defendant and his family and that in his own name he holds more than 50% of the shares, there is no breach of the covenant contained in paragraph 1(g) of the Memorandum of Lease. It is submitted that the 40

first defendant merely converted Lian Joo Company (a partnership) into Sharikat Lian Joo Textiles Sdn. Bhd., which is a limited public company (second defendant). The three partners of Lian Joo Company became the three shareholders of the limited company; and the type of business remained the same, and the first defendant still holds the majority share of the limited company. Reference has been made to the case of Chew Khan v. Lam Weng Yoon & Anor. (1) where the Federal Court held that under the principle of English common law applicable here under section 3 of the Civil Law Ordinance 1956, a person cannot grant a valid tenancy to himself or to himself and another. But in the present case, it is not a case of a man entering into a contract with himself or with himself and another. The assignment or transfer of the lease is made by the first defendant to a limited company incorporated under the Companies Act. The mere fact that the first defendant holds a majority share in the company is of no consequence. As was stated by Ormerod L.J. in Tunstall v. Steigmann (2)

"It was decided in Salomon v. Salomon & Co. Ltd. (3) that a company and the individual or individuals forming a company were separate legal entities, however complete the control might be by one or more of those individuals over the company. That is the whole principle of the formation of limited liability companies and it would be contrary to the scheme of the Companies Acts to depart from that principle."

Thus, even if the three partners of Lian Joo Company are the only shareholders of the second defendant company, one cannot run away from the admitted fact that the lease of the premises was given to the first defendant in his personal capacity and, as such, the first defendant is a separate legal entity from the second defendant company although the first defendant holds a major share in the company. The cumulative effects of the six sources of evidence as set out earlier on, leave me in no doubt that the first defendant has

In the High Court in Malaya at Kuala Lumpur

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18th January 1972

(continued)

(1) (1965) 2 M.L.J. 136

(2) (1962) 2 Q.B. 593, 600.

(3) (1897) A.C. 22.

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1972
(continued)

assigned or sub-let the tenancy to the second defendant company or parted with the possession of the demised premises. It is argued that the first defendant has merely converted the partnership into a limited company. But there is no evidence that the partnership has ever been dissolved to support such argument. Further, assuming that the first defendant was merely converting the partnership business into the second defendant company, he has in effect committed another breach of covenant under clause 1(i) which only allows him to trade at the demised premises as a sole-proprietor or in partnership. There is nothing in the tenancy agreement to permit the first defendant to carry on business at the demised premises as an incorporated company. In my view, the intention of the parties in the tenancy agreement, in so far as the usage of the demised premises is concerned, is so clear that it can be ascertained within the four corners of the agreement itself without invoking the assistance of either the Chinese Agreement dated March 1, 1964 (Exhibit AB16) or other extrinsic evidence.

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The next issue to be decided in this case is whether the plaintiffs have waived their rights under the Memorandum of Lease. It is submitted on behalf of the defence that in this case the plaintiff company knew about the breach of the covenant in the early part of September 1969 when the new signboard of the second defendant company was put up at the demised premises. Further, it is alleged that P.W.1, the Chairman of the Board of Directors of plaintiff company, was also informed orally about the new company by D.W.1. It is also submitted that the plaintiffs had accepted the rents for September and October 1969 and, therefore, assuming a forfeiture had accrued it was waived by the receipt of the rents (see *Davenport v. The Queen*⁽⁴⁾).

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On the authorities, it is clear that the onus to prove waiver is on the lessee - in this case, the first defendant (see *Redman's Law of Landlord & Tenant*, 15th Edition at page 512, paragraph 395; *Matthews v. Smallwood*⁽⁵⁾ and *Fuller's Theatre & Vaudeville & Co. Ltd. v. Rofe*⁽⁶⁾).

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(4) (1877) 3 A.C. 115.
(5) (1910) Ch. 777 @ 786
(6) (1923) A.C. 435.

Having regard to the evidence adduced before me, I have come to the conclusion that the defence has not discharged the onus of proof. It is my finding of fact that the plaintiffs were not aware of the breach of covenant until the early part of November 1969 when they received for the first time a cheque dated November 1 1969 for \$500/- (see Exhibit AB9) from the second defendant company in purported payment of the November 1969 rent of the demised premises. I accept the evidence of P.W.1 that on receipt of second defendant company's cheque he consulted his solicitors which eventually led to the present legal proceedings against both the defendants. Thus, his solicitors issued notices to quit to both defendants vide letters dated November 13, 1969 (see Exhibits B2 and AB3). The defendants' solicitors replied on the same date denying that the defendants had committed a breach of the covenant and therefore were unable to comply with the notices (see Exhibit AB4). This was followed by a letter dated November 19, 1969 (Exhibit AB8) wherein the second defendant company's cheque of \$500/- was returned. Finally, a notice dated December 10, 1969 was sent to the first defendant in compliance with the requirements of section 235 of the National Land Code (see Exhibit AB10) and on the same date a second notice to quit was also sent to the second defendant (see Exhibit AB11). From these correspondence, it is obvious that P.W.1 as Chairman of the Board of Directors of the plaintiff company, was put into enquiry as to the breach of covenant by the first defendant, only after he had received the cheque dated November 1, 1969 issued in the name of the second defendant. This, to my mind, is consistent with the plaintiffs' contention that they only had knowledge of the breach in the early part of November 1969. I cannot accept the defence allegation that P.W.1 knew of the breach in the early part of September 1969 when the new signboard was put up at the demised premises. Although D.W.2 has testified that he put up a new signboard at the demised premises in the early part of September 1969, to my mind, the new signboard by itself is insufficient to import knowledge on the part of the plaintiffs as regards the breach of covenant without other proof. In any case, although D.W.2 has not been cross-examined as to the date when the new signboard was put up, having regard to paragraph 7 of the Statement of Agreed Facts that

In the High Court in Malaya at Kuala Lumpur

No. 6

Judgment of Mohd. Azmi J.

18th January 1972
(continued)

In the High
Court in Malaya
at Kuala Lumpur

No. 6

Judgment of
Mohd. Azmi J.

18th January
1972

(continued)

the signboard was put up "in the latter part of 1969", it gives rise to suspicion why D.W.2 should be called at all. If the specific month was already known to the defence, it should either have been specifically pleaded or put in the Statement of Agreed Facts if the Plaintiffs so agree. I am doubtful that the relevant signboard was put up in the early part of September 1969 as alleged by D.W.2. I also do not accept the evidence of D.W.1 that he informed P.W.1 about the new company and the plaintiffs had accepted the rents for September and October 1969 from the second Defendant. The two rent receipts for September and October were clearly issued by the Plaintiffs to the partnership business of the first Defendant and not to the second Defendant Company (see Exhibit AB22 and translations). By necessary inference, it is obvious to me that the rents were paid by the business partnership of the first defendant, and as such the contention of the defence that the plaintiffs have waived their rights by accepting rentals from the second defendant company cannot be supported by the evidence. If P.W.1 had been informed of the new company by D.W.1 and had acquiesced to the assignment or transfer of the lease in early September 1969, it would be more probable that the second defendant company would have paid the September and October rents themselves with their own cheques. The second defendant company were incorporated on August 13, 1969. Why wait till November 1969 to issue their first own cheque to pay for the monthly rent if the plaintiffs had in fact waived their rights in the early part of September? Under the circumstances, I reject the story of the defence and accept the evidence of P.W.1 that he only knew of the breach of the covenant in early November 1969 and, as such, there can be no waiver on the plaintiff's part.

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On the question of whether the plaintiffs have complied with notices before forfeiture under section 235 of the National Land Code, I find this has been done vide plaintiffs' solicitors' letter dated December 10, 1969 (Exhibits AB10 and AB11). It is submitted by the defence that the time given in this case is unreasonable as the notice gave the first defendant only five days within which to remedy the breach. In this case, the Writ was filed on December 24, 1969 and was served on the

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10 first defendant on January 5, 1970. The first defendant therefore had about 26 days' actual notice although in the letter only five days were given. In any event, it is clear from the letter sent by the solicitors of both defendants dated November 13, 1969 (Exhibit AB4) that they completely deny the breach of covenant and, in view of the stand which they have taken, it is reasonable to infer there can be no intention on the defendants' part to remedy the breach. Under the circumstances of this particular case, I find reasonable notice has been given to the first defendant and he should not be heard to complain of insufficiency of notice within which to remedy the breach.

20 The next contention of the defence is that equity should be invoked in this case so as to protect the occupation of the first defendant in the demised premises on the following grounds. Firstly, it is submitted that the plaintiffs do not come to Court with clean hands because they had themselves committed a breach of covenant by not giving the first option to the first defendant to rent the mezzanine floor as stipulated under clause 2(d) of the Lease Agreement. But under cross-examination, D.W.1 admitted that he came to know of the alleged breach as long ago as 1966 and as the first defendant has done nothing about it, it can safely be assumed that he has waived his rights under the agreement. Secondly, it is submitted
30 that Lam Kee Ying (P.W.1) the predecessor in title of the premises had obtained the property by virtue of distribution of a certain partnership as contained in the Agreement of Dissolution dated March 1, 1964 (see Exhibits AB17 and AB18). Under the terms of distribution, the premises, No. 32 Jalan Silang, were to be purchased by Lam Kee Ying (P.W.1) from the liquidators on the understanding that the ground floor should be leased to the first defendant upon the execution of an Agreement of
40 Lease, the term of tenancy for which should be twenty five years at a monthly rental of \$500/-. It is therefore in pursuance of this understanding that the Agreement of Lease dated May 19, 1964 was entered into, although it should be noted that, apart from the period of Lease and the monthly rental, there is nothing in the Dissolution Agreement to restrict the parties from making stipulations on other matters connected with the lease. The case of Yong Tong Hong v. Siew Soon Wah & Ors.(7)

(7) (1971) 2 M.L.J. 105.

In the High Court in Malaya at Kuala Lumpur

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No. 6

Judgment of Mohd. Azmi J.

18th January 1972

(continued)

In the High
Court in Malaya
at Kuala Lumpur

No. 6

Judgment of
Mohd. Azmi J.

18th January
1972
(continued)

was cited as authority for the proposition that equity should be invoked in the instant case. In my view, the facts in Yong Tong Hong's case were completely different from the case under consideration. In the instant case, there is no question of the duration of the lease being uncertain or that the lessee (the first defendant) had paid any money towards the construction of the premises before he was let into occupation. The issue in this case is simply whether the first defendant has committed a breach of covenant of the tenancy agreement dated May 19, 1964, and, in my view, the facts of this case do not justify the application of equity. 10

Lastly, it is submitted at the late state of the proceedings that P.W.1 has not authority to initiate the present action as there is no evidence to show that a resolution has been passed by the plaintiff company to authorise P.W.1 to act on their behalf. In my view, under section 114(f) of the Evidence Ordinance, the Court may presume that the common course of business has been followed especially in the present case when the action is instituted in the name of the plaintiff company. P.W.1 is the Chairman of the Board of Directors of the plaintiff company, and there is no evidence to suggest that the company have objected to the institution of the present action. 20

I therefore give Judgment for the plaintiffs in the following terms:-

- (1) that both the defendants and all persons claiming under them to deliver vacant possession of the whole ground floor of the premises (excluding the mezzanine floor) to the plaintiffs within six months from today; 30
- (2) that the first defendant to pay mesne profit to the plaintiffs from December 15, 1969 until possession is delivered;
- (3) costs.

As counsel for the plaintiffs is not pressing for prayers b(2) and c, I make no order for damages for breach of contract against the first defendant; nor against the second defendant for wrongful

occupation of the demised premises.

Kuala Lumpur.
18th January, 1972.

Sd. Mohd. Azmi
JUDGE
High Court,
Kuala Lumpur.

Mr. J.L. Tan of M/s Shook Lin & Bok for plaintiffs.
Mr. Kam Woon Wah with Mr. Leong Tuck Onn of M/s
Kam Woon Wah & Co. for both defendants.

In the High
Court in Malaya
at Kuala Lumpur

No. 6

Judgment of
Mohd. Azmi J.
18th January
1972
(continued)

Certified true copy.

10 Sd. Illegible.

Secretary to Judge
Kuala Lumpur
5/FEB/72.

No. 7

ORDER

BEFORE THE HONOURABLE MR. JUSTICE
MOHD. AZMI

THIS 18TH DAY OF JANUARY 1972

IN OPEN COURT

O R D E R

No. 7

Order

18th January
1972

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This action coming on for hearing this day in
the presence of Mr. Tan Jake Lian of Counsel for the
plaintiff and Mr. Kam Woon Wah of Counsel for both
the Defendants AND UPON READING the Pleadings
IT IS ORDERED that the Defendants and all persons
claiming under them do deliver up vacant possession
of the premises known as ground floor (excluding the
Mezzanine Floor) No; 32, Jalan Silang, Kuala Lumpur,
to the Plaintiff within six (6) months from the date
of this Order AND IT IS ORDERED that the 1st
30 Defendant do pay to the Plaintiff mesne profit at
the rate of \$1,000.00 per month from the 15th day
of December 1969 until possession is delivered up
AND IT IS LASTLY ORDERED that the Defendants do pay
the Plaintiff the costs of this suit to be taxed by
a proper officer of the Court.

In the High
Court in Malaya
at Kuala Lumpur

No. 7

Order
18th January
1972
(continued)

In the Federal
Court of
Malaysia

No. 8

Notice of
Appeal
18th January
1972

GIVEN under my hand and the seal of the Court
this 18th day of January, 1972.

Sd. Lamin H.M. Yunus.

Senior Assistant Registrar,
High Court, Kuala Lumpur.

No. 8

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 7 OF 1972

10

BETWEEN

1. Lam Shes Tong
t/a Lian Joo Co.
2. Sharikat Lian Joo
Textiles Sdn. Berhad

Appellants

And

Lam Kee Ying Sdn. Bhd.

Respondents

(In the Matter of Kuala Lumpur High Court
Civil Suit No. 2305 of 1969)

Between

20

Lam Kee Ying Sdn. Bhd.

Plaintiffs

And

1. Lam Shes Tong
t/a Lian Joo Co.
2. Sharikat Lian Joo
Textiles Sdn. Berhad

Defendants)

NOTICE OF APPEAL

TAKE NOTICE that Lam Shes Tong and Sharikat
Lian Joo Textiles Sdn. Berhad, the Appellants

abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Haji Mohamed Azmi bin Dato Haji Kamaruddin given at Kuala Lumpur on the 18th day of January, 1972 appeal to the Federal Court against the whole of the said decision.

In the Federal
Court of
Malaysia

No. 8

Dated this 18th day of January, 1972.

Notice of
Appeal

18th January
1972
(continued)

Sd. in Chinese

Sd. in Chinese
Sharikat Lian Joo
Textiles Sdn. Berhad
No.32, Jalan Silang
(Cross Street),
Kuala Lumpur.

Sd. Kam Woon Wah & Co.

Signature of the
Appellants

Solicitors for the
Appellants.

TO:

The Registrar,
Federal Court,
Malaysia, Kuala Lumpur.

20 And to

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

And to

The Respondents abovenamed
or their solicitors,
Messrs. Shook Lin & Bok,
8th Floor, Lee Wah Bank Building,
Kuala Lumpur.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 9

MEMORANDUM OF APPEAL

No. 9

Memorandum of
Appeal

25th February
1972

1. The Learned Trial Judge had erred in law in applying, without any necessity, the presumption under sec. 114(5) of the Evidence Ordinance in favour of the Plaintiff Company where FWL himself as Chairman of the said Company expressly, clearly and unmistakably admitted.

(a) He decided on this matter himself and then informed his wife and son of his decision. 10

(b) There was no meeting among shareholders of the Plaintiff Company and therefore there was no decision in writing or otherwise of the Plaintiff Company to commence this action.

(c) There is no provision in the Memorandum and Articles of Association of the Company to authorise FWL who is the Chairman of the Plaintiff Company to commence this Legal action without reference to the Company.

(d) The Plaintiff Company up to this date has not ratified this action by FWL himself and 20

(e) The onus of proof of having authority to act alone in this action without reference to the Company is on the Plaintiff himself.

2. The Learned Trial Judge was wrong in law in holding that the Plaintiff Company had complied with sec. 235 of the National Land Code on notices before forfeiture in that:

(a) The Notices first issued on 13/11/69 were bad as they were not issued in the name of the Plaintiff Company, 30

(b) There was no termination of the lease by the Plaintiff Company in the second notices both dated 13/11/69 and 10/12/69,

(c) The second notice dated 10/12/69, if right, was unreasonable in only allowing the Defendants 5 days even though the Writ was served on 5/1/70 i.e. 26 days after the said notice in

view of the facts that this lease is for a period of 25 years and the relationship between the parties, and

(d) Up to 10/12/69 of the second notice, the intention of the Plaintiff was only to rectify the position and not to determine the lease.

3. The Learned Trial Judge was wrong in law in:

10 (a) Holding that the Defendants had not discharged the onus of proof in respect of waiver instead of holding that the Defendants need only prove the balance of probabilities,

(b) Placing too heavy an onus on the Defendants that the new signboard by itself was insufficient to impute knowledge on the part of the Plaintiffs,

(c) Holding that FW1 was not aware of the breach until early part of November 1969 despite the fact that the new signboard as large as the old one which was hung up there in September 1969 did not attract the attention of FW1,

20 (d) Holding that FW1's son, also a director of the said Company, went to the said premises every-day and lived with FW1 in the same house and could by reasonable diligence have been so aware of the new signboard,

30 (e) Holding that the evidence of DW2 is disbelievable, even though his evidence was never challenged, and in questioning why he should be called without realising that the Plaintiffs did not agree to state the specific month in the Statement of Agreed Facts, and

(f) Holding that the Plaintiffs had not waived their rights under the Memorandum of Lease.

4. The Learned Trial Judge was wrong in holding that if the Plaintiffs had acquiesced in the assignment or transfer of lease in September 1969 it would be more probable that the 2nd Defendant would have paid the September and October 1969 rental with their own cheques.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 9

Memorandum of
Appeal

25th February
1972
(continued)

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 9

Memorandum of
Appeal

25th February
1972
(continued)

5. The Learned Trial Judge was wrong in law in holding that the 1st Defendant had committed a breach of the covenant as contained in clause 1(g) of the said Lease.

6. The Learned Trial Judge had erred in law in holding that the intention of the parties was so clear that extrinsic evidence was not necessary.

7. The Learned Trial Judge was wrong in holding that in the tenancy agreement there was nothing to permit the 1st Defendant to carry on business as an incorporated company. 10

8. In any event the Learned Trial Judge was wrong in not applying the rules of equity to this case as the facts clearly deserve such application.

9. The Learned Trial Judge was wrong in rejecting the evidence of the Defendants in favour of the Plaintiffs.

Dated this 25th day of February, 1972.

Sd. KAM WOON WAH & CO.

Solicitors for the Appellants. 20

To: (1) The Registrar,
Federal Court,
Kuala Lumpur.

(2) The Respondents and/or their
Solicitors,
Messrs. Shook Lin & Bok,
8th Floor, Lee Wah Bank Building,
Kuala Lumpur.

The address for service of the Appellants is
c/o Messrs. Kam Woon Wah & Co., Advocates &
Solicitors, No. 54 Jalan Klyne, (3rd Floor),
Kuala Lumpur. 30

No. 10

JUDGMENT

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

 No.10

Judgment

14th June 1972

10 The respondents were plaintiffs in an action claiming possession of leased premises from the first appellant, as lessee, for breach of a covenant not to assign, underlet or part with the possession of the demised premises without the consent of the respondents first obtained. The second appellants, a company incorporated in Malaysia and carrying on business at the premises, were sued for trespass. We allowed this appeal and now state in full the grounds of our decision.

20 The demised premises, comprising the entire ground floor of a shophouse No.32 Jalan Silang, Kuala Lumpur, were leased originally by Lam Kee Ying and Lam Yoo Choo, then the registered proprietors, to Lam Shes Tong, trading as Lain Joo Company, for a term of 25 years from May 1, 1964 at a yearly rent of \$6,000/- payable monthly in advance at the rate of \$500/- per month. The lease contained the following relevant covenants by the lessee in clause (1):-

"(g) Not to assign underlet or part with the possession of the demised premises or any part thereof without the prior written consent of the Lessors such consent not to be unreasonably withheld.

30 (i) To use the demised premises for carrying on business as general merchants whether trading as a sole-proprietor or in partnership thereof."

The lessors' covenants including the following under clause (2):-

"(d) In the event of MR. LAM KEE YING or his nominee is desirous of letting out the Mezzanine Floor, the Lessee shall be given the first option to rent it at an additional monthly rental of \$100/-, failing which the Lessors are entitled to let it to others."

40 Lam Kee Ying became the sole proprietor and lessor of the premises on November 4, 1965. In

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.10

Judgment

14th June 1972
(continued)

succession to him the respondents, Lam Kee Ying Sendirian Berhad, became the registered proprietors on November 18, 1966. This company was formed by Lam Kee Ying to take over his personal assets and he is in control thereof as manager and governing director.

Lam Shes Tong, the first appellant, is a grand-nephew of Lam Kee Ying. Before 1964 they were business colleagues and partners, with other persons, for eleven years, as textile merchants carrying on business in Malaya and Singapore under the style of Ban Joo Co. This partnership set up business at No. 32 Jalan Silang, Kuala Lumpur in 1962 with Lam Shes Tong having the management and control. On March 1, 1964 the partnership was dissolved. As his share of the assets Lam Kee Ying took over the premises No. 32 Jalan Silang and by an agreement in Chinese dated March 1, 1964 Lam Kee Ying agreed to lease the ground floor of these premises except the mezzanine floor to Lam Shes Tong as "the representative of Lian Joo Company" for a term of 25 years from April 1, 1964 at a monthly rent of \$500/-. The terms set out in this Chinese document were reproduced in the memorandum of lease whereby the lessors expressly covenanted to give the lessee the first option to rent the mezzanine floor for an additional \$100/- per month: see clause (2)(d). 10 20

On November 25, 1964, however, this mezzanine floor was let to Tyma Co. Ltd. by Lam Kee Ying, without the lessee Lim Shes Tong being given the first refusal of the tenancy in accordance with the provisions of clause (2)(d). The excuse or explanation given by Lam Kee Ying was this:- 30

"Tyma Co. Ltd. belongs to me. I agree Tyma Company is a limited company. It has three shareholders - myself, my son and a relative of mine (Lam Chet Khoy and Liau Siak Fah). Tyma Company pays me \$50/- per month. When 1st defendant questioned me why I did not give him the first option I told him Tyma Company was mine. There is no difference between me and Tyma Co. Ltd. 40

Now I am doing construction business to lease out to people. My business address is at the premises at the Mezzanine Floor. The

name Tyna Co. Ltd. has since been changed to Lam Kee Ying Sdn. Bhd. (the plaintiff company)."

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.10

Judgment

14th June 1972
(continued)

Turning now to the lessee, Lam Shes Tong, he was at all times the managing partner of the firm Lian Joo Company. He is now the managing director of Sharikat Lian Joo Textiles Sendirian Berhad, the second appellants. The partnership had been converted into a company on August 13, 1969. The metamorphosis was only to this limited extent, as stated by Lam Shes Tong, the lessee:-

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"I did not sublet or assign the premises to 2nd defendant company. I only changed Lian Joo Company into a limited company. The partners of Lian Joo Company are the shareholders of the limited company i.e. 2nd defendant company. There is no change and the shares in the original company are the same in the 2nd defendant company. The shareholders in the 2nd defendant company are:

20

- (a) myself
- (b) Low Yeo Foong
- (c) Lam Sie Gin."

The respondent company on this ground, and this ground only, claimed forfeiture of the lease, alleging that, on or about August 13, 1969 - altered subsequently by amendment to November 13, 1969 - the lessee had assigned, underlet or parted with the possession of part of the premises to the second appellants without the consent in writing of the lessor first obtained. Giving evidence, Lam Kee Ying stated as the ground of his objection "that the 2nd defendant company is a limited company as distinct from defendant No. 1's company".

30

It is clear from the judgment of the learned trial judge that he gave judgment for the respondents solely on the principle enunciated in Salomon v. Salomon & Co. Ltd. (1) "that a company and the individual or individuals forming a company were separate legal entities, however complete the control might be by one or more of these individuals over the company" - following the judgment of Ormerod L.J. in Tunstall v. Steigmann.(2)

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(1) (1897) A.C. 22
(2) (1962) 2 Q.B. 593, 600.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.10

Judgment

14th June 1972
(continued)

The judgment contained a brief reference to the maxim of equity - that he who comes into equity must come with clean hands. This point was raised concerning the failure by the lessors in breach of clause (2)(d) to give the first offer of the mezzanine floor for rent to the lessee. The application of equitable principles was, however, rejected by the judge on the following ground:-

"But under cross-examination D.W.1 (Lam Shes Tong) admitted that he came to know of the alleged breach as long ago as 1966 and as the first defendant has done nothing about it, it can safely be assumed that he has waived his rights under the agreement."

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With respect, we think that maxim in that light had no relevance at all and the judge thus misdirected himself. In the instant case, the lessee was not claiming his right to the mezzanine floor, but equitable relief against forfeiture as provided under section 237 of the National Land Code. This most material section was nowhere referred to by the judge or either counsel. It reads:-

20

"(1) Any lessee, sub-lessee or tenant against whom any person or body is proceeding to enforce a forfeiture may apply to the Court for relief against the forfeiture; and the Court -

(a) may grant or refuse relief as it thinks fit, having regard to all the circumstances of the case (including, if the case is one to which the provisions of section 235 applied, the proceedings and conduct of the parties under that section); and

30

(b) if it grants relief, may do so on such terms as it thinks fit.

(2) The provisions of sub-section (1) shall have effect notwithstanding any provision to the contrary in the lease, sub-lease or tenancy in question."

40

In this connection it is essential to remember the contra proferentem rule when construing the

covenants in this lease. It is a cardinal rule in the interpretation of documents that an agreement is to be construed as the parties themselves intended it to mean. Where the covenant was binding on him, Lam Kee Ying had clearly considered that Tyma Co. Ltd. and Sharikat Lam Kee Ying Sdn. Bhd. were merely his alter ego and he conducted himself and his companies on that footing. In our view what is sauce for the goose should also be sauce for the gander. He had, by precept and example, demonstrated that treating a limited company as the alter ego of its members was not, in the case of this particular lease, a breach of covenant on his part. If his case was an exception to Salomon v. Salomon & Co. Ltd. (1) then the lessee under the same lease, should be entitled to the same liberal interpretation. To hold otherwise would be both unjust and erroneous.

A comparison between the two companies is indeed invidious to the respondents. In Lam Kee Ying Sdn. Bhd., the paid-up capital was \$500,000/- of which Lam Kee Ying himself was holder of only \$3,000/- in shares. This company was originally none other than Tyma Co. Ltd. - this name being changed to Lam Kee Ying Sdn. Bhd. by special resolution on March 14, 1966. "Tyma Co. Ltd. belongs to me", said Lam Kee Ying, and therefore the letting of the mezzanine floor to the Tyma Co. was not in breach of clause (2)(d) of the lease. On the other hand, the total paid-up capital of Sharikat Lien Joo Textiles Sdn. Bhd. was \$180,000/- of which the majority of \$100,000/- in shares are held by Lam Shes Tong. When one looks at the true character of the two companies, it can hardly be denied that Lam Shes Tong in fact has a better right than Lam Kee Ying, to describe his company as his alter ego. The same three partners are shareholders in the new company; so that, if they were unobjectionable as partners occupying the demised premises, the objection to their company doing so, must in the highest degree be purely technical. The court cannot be blind to this fact in doing equity. As Lord Wilberforce said, in In re Westbourne Galleries Ltd. (3):-

"The words ("just and equitable") are a recognition of the fact that a limited company

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.10

Judgment

14th June 1972
(continued)

(1) (1897) A.C. 22
(3) (1972) 2 W.L.R. 1289, 1297.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

—————
No.10

Judgment

14th June 1972
(continued)

is more than a mere judicial entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure."

On the facts, therefore, this clearly is a case where equitable relief should be granted and the judgment of the court set aside.

10

There was also another ground why in our opinion this appeal should be allowed, namely that the trial judge erred in finding as a fact that there was an assignment or subletting by the lessee in breach of covenant.

Lam Shes Tong in his evidence had stated that there was "in fact no sale agreement", nor did he sublet or assign the demised premises to the company. Counsel for Lam Shes Tong informed the learned trial judge that he had been unable to produce the sale agreement, pursuant to notice to produce, because there was no such agreement and, in our opinion, there was no reason why the sworn testimony of Lam Shes Tong should not have been accepted as true. We did not see why, as reasonable and honest businessmen, these three partners, who became the three shareholders in the company, should have gone through the motions of drawing up a formal document of sale to which the signatories would be nobody but themselves. There was no reason whatsoever, in the circumstances, for any such exercise in futility.

20

30

Lam Shes Tong, it will be remembered, was, in his capacity as lessee, in a position - quite legally and without any breach of the relevant covenant - to give the firm of which he was managing partner, leave and licence to use the premises in which to carry on the partnership business. In the company of which he was and is the Chairman of the Board of Directors and the majority shareholder, we thought he was no less capable of giving leave and licence to his own company to continue carrying on the same business as a going concern. Our authority for so holding is the (English) Court of Appeal decision in Chaplin v. Smith (4) where it was held that a

40

lessee who has covenanted not to part with the possession of the demised premises does not commit a breach of the covenant by merely permitting another person to have the use of the premises, so long as the lessee retains the legal possession himself. The facts therein are indistinguishable from the relevant facts in the instant case. The judgments of their Lordships were unanimous and that case was approved by the Privy Council in Gian Singh v. Devraj Nahar.(5) The same principle must be held to apply here.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.10

Judgment

14th June 1972
(continued)

In answer to the arguments of counsel for the respondents, we should mention that we have not been unmindful of certain admissions made by Lam Shes Tong, in cross-examination: "When one took over business it would include the tenancy of premises I agree that the change indicates transfer or assignment of tenancy.....". These were answers made by a layman to leading questions. As such they should be read with a certain degree of caution and not accepted at face value, as distinct from admissions made by persons learned in the law. Each answer ought to be read in the context of the categorical statements given by Lam Shes Tong - that he did not sublet or assign the tenancy and that there was no sale agreement regarding the partnership assets taken over by the company. The answers, and each of them, were nothing more than inferences of law to be drawn from primary facts - provided those facts were proved or admitted. If those inferences, to which he expressed assent, were wrong in law, or based on false assumptions by counsel putting the leading questions, then in our opinion the alleged admissions counted for nought.

The trial judge stated six grounds for holding that the lessee had committed a breach of the covenant against assignment. The first was his inference from paragraph 3(a) of the Memorandum of Association, that the objects for which the company was established included the acquisition and taking over as a going concern of the business of Lian Joo Company and all or any of the assets and liabilities of the properties of that business in connection therewith. The sixth ground related to the admissions of the lessee in cross-examination above referred to.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.10

Judgment

14th June 1972
(continued)

We did not, with respect, think that the inference of an assignment was irresistible or even logical unless in no other way could the company have been at liberty to use the premises in succession to the partnership. It did not appear to have occurred to the judge to consider the likelihood, in the absence of proof to the contrary, that the company might well have carried on business in the premises on the same footing as the partnership had done.

In Gian Singh's case (5), the Privy Council 10
declared that property used for partnership
purposes is not necessarily partnership property.
In the instant case there was no evidence that the
lease was part of the partnership assets. If the
lease was thus not necessarily partnership property,
it would be erroneous to infer that the sale of the
business by the firm to the company might or must
be assumed to include an assignment of the lease.
The four other grounds given by the judge were in
our opinion of no relevance on the point. 20
The acts referred to were dictated by practical conven-
ience and had no other significance. What should
have been considered as of the highest relevance
was the question whether an assignment or sub-
letting was a sine qua non to the company entering
into occupation of the premises. In our view, it
was absolutely unnecessary for any sale agreement
to be executed, even as regards the business alone,
since the vendors and purchasers were the same three 30
individuals. We could not see how a mere descrip-
tion of the place of business could be construed
to imply an assignment, not only of the business,
but of the lessee's rights in the premises as well.
We were therefore of opinion that in fact there was
no assignment of the lease, that the company was let
into occupation on the same footing as the firm -
by leave and licence of the lessee - and that there
was no breach of covenant which rendered the lease
liable to forfeiture.

For the above reasons this appeal was allowed 40
with costs and the judgment of the court below set
aside.

Kuala Lumpur,
27th June 1972.

(Sgd.) H.T. ONG
CHIEF JUSTICE,
HIGH COURT IN MALAYA.

R.R. Chelliah Esq. (Kam Woon Wah Esq. with him) for
appellants.

J.L. Tan Esq. for respondents.

Gill & Ali F.JJ. concurred.

No. 11

ORDER

CORAM: ONG, CHIEF JUSTICE, HIGH COURT, MALAYA
GILL, JUDGE, FEDERAL COURT, MALAYA
ALI, JUDGE, FEDERAL COURT, MALAYA

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.11

Order

14th June 1972

IN OPEN COURT
THIS 14TH DAY OF JUNE, 1972

O R D E R

10 THIS APPEAL coming on for hearing this day in
the presence of Mr. R.R. Chelliah (Mr. Kam Woon Wah
with him) of Counsel for the Appellants abovenamed
and Mr. Tan Jake Lian of Counsel for the Respondents
abovenamed AND UPON READING the Record of Appeal
filed herein AND UPON HEARING the arguments of
Counsels as aforesaid IT IS ORDERED that this
Appeal be and is hereby allowed and the Order of
the Court below be and is hereby set aside AND IT
20 IS ORDERED that the Respondents do pay to the
Appellants the costs of this Appeal and in the Court
below as taxed by the proper officer of this Court
AND IT IS LASTLY ORDERED that the deposit of \$500.00
(Dollars (sic) Five Hundred only) deposited in Court as
security for the costs of this Appeal be paid to
the Appellants.

GIVEN under my hand and the seal of the Court
this 14th day of June, 1972.

Sd. Illegible.

DEPUTY REGISTRAR,
FEDERAL COURT, MALAYSIA.

30

No. 12

No.12

Order granting final leave to appeal to His
Majesty the Yang di-Pertuan Agong

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 7 OF 1972

BETWEEN

Order granting
final leave to
appeal to His
Majesty the
Yang di-
Pertuan Agong

4th December
1972

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.12

Order granting
final leave to
appeal to His
Majesty the
Yang di-Pertuan
Agong

4th December
1972
(continued)

1. Lam Shes Tong
t/a Lian Joo Co.
2. Sharikat Lian Joo
Textiles Sdn. Berhad

APPELLANTS

AND

Lam Kee Ying Sdn. Bhd.

RESPONDENTS

(In the matter of Civil Suit No.2305 of 1969
in the High Court in Malaya at Kuala Lumpur

Between

Lam Kee Ying Sdn. Bhd.

Plaintiffs

10

And

1. Lam Shes Tong t/a Lian Joo Co.
2. Sharikat Lian Joo
Textiles Sdn. Berhad

Defendants)

CORAM: AZMI, LORD PRESIDENT, FEDERAL COURT, MALAYSIA
GILL, JUDGE, FEDERAL COURT, MALAYSIA:
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 4TH DAY OF DECEMBER 1972

O R D E R

20

UPON MOTION made unto the Court this day by
Mr. Tan Jake Lian of Counsel for the Respondents
abovenamed in the presence of Mr. S.A. Raj Counsel
on behalf of Messrs. Kam Woon Wah & Co. for the
Appellants abovenamed AND UPON READING the Notice
of Motion dated the 31st day of October, 1972 and
the Affidavit of Lam Kee Ying affirmed on the 28th
day of October 1972 and filed in support of the said
Motion AND UPON HEARING Counsel as aforesaid:

IT IS ORDERED that final leave be and is
hereby granted to the Respondents abovenamed to
appeal to His Majesty the Yang Di-Pertuan Agong from
the Judgment of the Federal Court dated the 14th day
of June 1972 AND IT IS FURTHER ORDERED that the
costs of this application be costs in the cause.

30

GIVEN under my hand and the seal of the Court
this 4th day of December 1972.

Sgd.

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

EXHIBITSAB 1

Memorandum of Lease between Lam Kee Ying
and Lam Yoo Chu and Lam Shes Tong dated
19th May 1964

GOVERNMENT OF SELANGOR

MEMORANDUM OF LEASE

SCHEDULE XXII

(Under Section 117 of the Land Code Cap.138)

10

PRESENTATION NO: 91318

20

30

We, LAM KEE YING and LAM YOO CHU both of No.86,
Jalan Bandar, Kuala Lumpur, (hereinafter called "the
Lessors") being registered as the proprietors subject
to the charges or other registered interests stated
in the document of title thereto of the whole of the
land held under Grant No. 6030 for Lot No. 58
Section 50 in the Town and District of Kuala Lumpur
in total area 1724 square feet together with the
buildings thereon erected and known as No.32, Jalan
Silang, Kuala Lumpur DO HEREBY LEASE to LAM SHES TONG
trading as Lian Joo Company of No. 32, Jalan Silang,
Kuala Lumpur, (hereinafter called "the Lessee") all
the ground floor excluding the Mezzanine floor of
the said building (which ground floor is hereinafter
called "the demised premises") to be held by the
Lessee as tenant for the space of 25 years from the
1st day of May, 1964 at the yearly rental of
Dollars Six thousand only (\$6,000.00) payable
monthly in advance at the rate of Dollars Five
hundred only (\$500.00) per month on the 1st day of
each month for the month then commencing subject to
the agreements and powers under the Land Code and
subject to the stipulations modifications, terms
and conditions hereinafter contained.

1. The Lessee hereby covenants with the Lessors
(sic) as follows:-

40

(a) To pay to the Lessors the sum of Dollars One
Thousand five hundred only (\$1,500.00) on the
execution of this Lease as deposit which shall
be maintained at this figure during the

Exhibits

AB 1

Memorandum of
Lease between
Lam Kee Ying
and Lam Yoo Chu
and Lam Shes
Tong
19th May 1964

Exhibits

—
AB 1

Memorandum of
Lease between
Lam Kee Ying
and Lam Yoo Chu
and Lam Shes
Tong

19th May 1964
(continued)

- continuance of this Lease save that it shall be treated as payment of rental for the last three (3) months ending on the determination of the Lease.
- (b) To pay the reserved rent on the days and in the manner aforesaid
- (c) To pay all charges and outgoings in respect of electricity and water used in the demised premises and conservancy and maintenance of septic tank in the demised premises and collection of refuse. 10
- (d) To keep the interior of the demised premises (including the pipes, drains, sanitary water and electrical apparatus) and all fixtures and additions thereto (other than the wall roof and main structure) in good tenantable repair and condition (fair wear and tear excepted) throughout the term of this Lease and to yield up the same in such repair and condition at the determination of the Lease. 20
- (e) To permit the Lessors and their agent with or without workmen at all reasonable times to enter upon and examine the condition of the demised premises and thereupon the Lessors may serve upon the Lessee notice in writing specifying any repairs necessary which are the liability of the Lessee and require the Lessee forthwith to execute the same, and if the Lessee shall not within fourteen (14) days after the service of such notice proceed diligently with the execution of such repairs, then to permit the Lessors and their agent to enter upon the demised premises and execute such repairs, and the cost thereof shall be a debt due from the Lessee to the Lessors and be forthwith recoverable by suit or action. 30
- (f) Not to make any structural alterations or modification to any part of the demised premises without the written consent of the Lessors such consent not to be unreasonably withheld. 40
- (g) Not to assign underlet or part with the possession of the demised premises or any part thereof without the prior written consent of

the Lessors such consent not to be unreasonably withheld.

Exhibits

AB 1

Memorandum of Lease between Lam Kee Ying and Lam Yoo Chu and Lam Shes Tong

19th May 1964
(continued)

- (h) Not to use the demised premises or any part thereof for carrying on any business which cause the accumulation of dirt rubbish or debris of any sort in or outside the demised premises or which in the opinion of the Lessors is undesirable or unsuitable for the other tenants or occupiers of the said building.
- 10 (i) To use the demised premises for carrying on business as general merchants whether trading as a sole-proprietor or in partnership thereof.
- (j) Not to do or permit or suffer to be done upon the demised premises anything which in the opinion of the Lessors may be a nuisance or annoyance to or in any way interfere with the quiet and comfort of the other occupants of the said building.
- 20 (k) Not to do or permit or suffer to be done anything whereby the policy or policies of insurance on the said building against damage by fire may become void or voidable or whereby the premium thereon may be increased and to repay to the Lessors on demand all sums paid by the Lessors by way of increased premium and all expenses incurred by the Lessors in or about any renewal of such policy or policies rendered necessary by a breach or
- 30 non-observance of this covenant without prejudice to the other rights of the Lessors.
- (l) To observe and comply with all laws and bye-laws rules and regulations affecting the demised premises or the occupant thereof which are now in force or which may hereafter be enacted.
- (m) On the determination of this Lease to execute at the Lessee's own cost and expense a formal surrender of this Lease in favour of the Lessors and to deliver up to the Lessors for cancellation the counterpart of the Lease in the possession of the Lessee.
- 40 (n) To permit the occupant(s) (i.e. MR. LAM KEE

Exhibits

—
AB 1

Memorandum of
Lease between
Lam Kee Ying
and Lam Yoo Chu
and Lam Shes
Tong

19th May 1964
(continued)

YING or his nominee) of the said Mezzanine Floor to use reasonably the passage-way, lavatory, toilet and bathroom without any interference or disturbance by the Lessee or those claiming under him.

2. The Lessors covenant with the Lessee as follows:-

- (a) To pay all quit rent and assessment if any from time to time due in respect of the demised premises PROVIDED ALWAYS that in the event of the Municipal or other rates or assessments or taxes payable in respect of the said land and said building being increased above the amount payable on the commencement of this Lease then the Lessee shall pay one-third (1/3) of such increases. 10
- (b) To permit the Lessee if he punctually pays the reserved rent and other charges and observe the stipulations and covenants on their part and the conditions herein contained to enjoy the demised premises without any disturbance by the Lessors or those lawfully claiming under or in trust for him. 20
- (c) To keep the wall, roof and main structure of the demised premises in good and tenant-able repair and condition throughout the term of this Lease.
- (d) In the event of MR. LAM KEE YING or his nominee is desirous of letting out the Mezzanine Floor, the Lessee shall be given the first option to rent it at an additional monthly rental of \$100/-, failing which the Lessors are entitled to let it to others. 30

3. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED as follows:-

- (a) That if the rent hereby reserved or any increase provided or any part thereof shall be in arrears and unpaid for fourteen (14) days after the same shall have become due (whether legally demanded or not) or if the Lessee shall make default in the observance or performance of any of the covenants and 40

stipulations on his part herein contained then and in any of such cases it shall be lawful for the Lessors at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine, but without prejudice to the right of action of the Lessors in respect of any breach of the covenants on the part of the Lessee herein contained.

Exhibits

—
AB 1

Memorandum of
Lease between
Lam Kee Ying
and Lam Yoo Chu
and Lam Shes
Tong

- 10 (b) In the event of the demised premises or any part thereof at any time during the term of this Lease being damaged or destroyed by fire so as to be unfit for habitation and use then the rent hereby reserved shall be suspended until the demised premises shall again be rendered fit for habitation and use.
- 20 (c) Any notice required to be served on the Lessee shall be sufficiently served if left addressed to him on the demised premises or sent to him by registered post to his last known place of address and any notice required to be served on the Lessors shall be sufficiently served if sent to them by registered post to their (sic) last known place of address.
- 30 (d) That it shall be lawful for the Lessee or his agents to remove and take away from the demised premises all fittings and fixtures at any time during the said term erected on, attached to or placed or set up in or upon the demised premises by the Lessee he the Lessee nevertheless repairing any damage which may be occasioned to the demised premises by such removal or taking away or paying compensation for such damage.

19th May 1964
(continued)

Signatures of Lessors.

I, LAM SHES TONG of No. 32, Jalan Silang, Kuala Lumpur, do hereby accept this Lease subject to the stipulations modifications terms and conditions hereinbefore stated.

Signature of Lessee.

Exhibits

AB 1

Memorandum of
Lease between
Lam Kee Ying
and Lam Yoo Chu
and Lam Shes
Tong

19th May 1964
(continued)

I, KAM WOON WAH, an Advocate and Solicitor of the High Court in Malaya at Kuala Lumpur, hereby testify that the signatures of the Lessors written in my presence on this 19th day of May, 1964 are (sic) according to my own personal knowledge, the true signatures of the said LAM KEE YING and LAM YOO CHU who have acknowledged to me that they are of full age and that they have voluntarily executed this instrument.

As witness my hand this 19th day of May, 1964. 10

KAM WOON WAH

Advocate & Solicitor,
Kuala Lumpur.

I, THEAN LIP PING, an Advocate and Solicitor of the High Court in Malaya at Kuala Lumpur, hereby testify that the signature of the Lessee written in my presence on this 25th day of May, 1964 is according to my own personal knowledge, the true signature of the said LAM SHES TONG who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

20

As witness my hand this 25th day of May, 1964.

L. P. THEAN

Advocate & Solicitor,
Kuala Lumpur.

AB 2

Exhibits

Letter, Shook Lin & Bok (Plaintiffs' Solicitors) to Lam Shes Tong (First Defendant) 13th November 1969

AB 2

Letter, Shook Lin & Bok (Plaintiffs' Solicitors) to Lam Shes Tong (First Defendant (sic))

A.R. REGISTERED

BY DESPATCH

RH/9000/LKY

November 13, 1969.

13th November 1969

Dear Sirs,

Premises No.32, Jalan Silang,
Kuala Lumpur

10

We act for Mr. Lam Kee Ying and Lam Yoo Chu who are the proprietors and the lessors of the above-said premises.

20

2. By the terms of the lease between yourself and our clients, you expressly covenanted not to assign underlet or part with possession of the demised premises or any part thereof without the written consent of our clients. We are instructed that you have committed a breach of this covenant by assigning or underletting or parting with the possession of the premises or part thereof to Sharikat Lian Joo Textiles Sdn. Bhd., without the prior written consent of our clients.

30

3. By reason of the breach abovestated our clients hereby exercise their right under Clause 3(a) of the lease to enter the demised premises. In the circumstances, we are instructed to, and hereby do, give you notice that the lease for the said premises is hereby determined under the said clause.

4. By reason of the matters stated above, we are instructed to give you notice, which we hereby do, unless you quit and deliver up vacant possession of the said premises within seven days from the date hereof, we have instructions to commence proceedings against you without any further notice.

Yours faithfully,

Mr. Lam Shes Tong,
Messrs. Lian Joo Company,
No.32 Jalan Silang,
Kuala Lumpur.

40

cc. 1. By AR Registered Post.
2. By Ordinary Post.

Exhibits

AB 3

AB 3
Letter, Shook
Lin & Bok to
Sharikat Lian
Joo Textiles
Sdn. Bhd.
13th November
1969

Letter, Shook Lin & Bok to Sharikat
Lian Joo Textiles Sdn. Bhd.
13th November 1969

A.R. REGISTERED

BY DESPATCH

RH/9000/LKY

November 13, 1969.

Dear Sirs,

Premises No. 32 Jalan Silang,
Kuala Lumpur

10

We act for Mr. Lam Kee Ying and Lam Yoo Chu,
the proprietors and lessors of the abovesaid
premises.

2. We are instructed that you have possessed or
occupied the whole or part of the said premises
without our clients' prior consent. We are to say
that you are, therefore, unlawfully in possession
of or in occupation of our clients' premises. You
are a trespasser.

20

3. We are now instructed to give you notice,
which we hereby do, unless you quit our clients'
said premises forthwith, we have instructions to
commence proceedings against you without any
further notice.

Yours faithfully,

Sharikat Lian Joo Textiles
Sdn. Bhd.,
No. 32 Jalan Silang,
Kuala Lumpur.

30

c.c. 1. By AR Registered Post.
2. By Ordinary Post.

oam

61.

AB 4

Letter, Kam Woon Wah & Co., (Defendants'
Solicitors) to Shook Lin & Bok
13th November 1969

SHARIKAT KAM WOON WAH,
PEGUAMBELA, PEGUAMCHARA,

KAM WOON WAH J.P.

No.54, Jalan Klyne,
(1st Floor),
Kuala Lumpur.
13th November, 1969.

Exhibits

AB 4

Letter, Kam
Woon Wah & Co.
(Defendants'
Solicitors) to
Shook Lin & Bok

13th November
1969

Asst. LEONG TUCK ONN.

10

Surat Tuan: RH/9000/LKY.
Surat Kami: WK/YSK/C/9383/69.

Messrs. Shook Lin & Bok,
Advocates & Solicitors,
Kuala Lumpur.

Dear Sirs,

Re: Premises No.32, Jalan Silang,
Kuala Lumpur

20

Your two letters of 13th November, 1969
addressed to Mr. Lam Shes Tong and Sharikat Lian Joo
Textiles Sdn. Berhad have been handed to us with
instructions to reply thereto.

Our clients deny that there has been assigning,
underletting or parting with possession of the
demised premises because the lessee, Lam Shes Tong,
is a major shareholder in the Sharikat. Under
clause (i) he is allowed to trade either as a sole-
proprietor or in partnership with others.

Under the above, our clients therefore are not
able to comply with your notices.

30

Sd. KAM WOON WAH & CO.,
Yours faithfully,

c.c.

Mr. Lam Shes Tong,
M/S. Lian Joo Textiles Sdn. Bhd.,
No.32, Jalan Silang,
Kuala Lumpur.

Exhibits

AB 5
Memorandum and
Articles of
Association of
Sharikat Lian
Joo Textiles
Sdn. Bhd.

AB 5

Memorandum and Articles of Association
of Sharikat Lian Joo Textiles Sdn. Bhd.

THE COMPANIES ACT, 1965
COMPANY LIMITED BY SHARES

M E M O R A N D U M

AND

ARTICLES OF ASSOCIATION

OF

SHARIKAT LIAN JOO TEXTILES SENDIRIAN BERHAD

10

Incorporated on the 13th day of August, 1969

BORANG 9

[ACT SHARIKAT, 1965]

[Seksyen 16 (4)]

No. Sharikat
438/69

PERAKUAN PERBADANAN SHARIKAT SENDIRIAN

Ini ada-lah memperakui bahawa SHARIKAT LIAN JOO
TEXTILES SENDIRIAN BERHAD ada-lah di-perbadankan
dibawah Act Sharikat, 1965, pada dan mulai dari
13 haribulan Ogos, 1969, dan bahawa sharikat itu
ia-lah* sa-buah sharikat berhad menurut sher dan
bahawa Sharikat itu ia-lah sa-buah Sharikat
sendirian.

20

Di-buat di-bawah tandatangan dan meteri saya,
di-Kuala Lumpur, Pada 13 haribulan Ogos, 1969.

(S. Sembasivam, A.M.N.)
Timbalan Pendaftar Sharikat
Malaysia.

Exhibits

—
AB 5

Memorandum and
Articles of
Association of
Sharikat Lian
Joo Textiles
Sdn. Bhd.
(continued)

- the value of or render profitable any of the company's property or rights.
- (d) To acquire and undertake the whole or any part of the business property, and liabilities of any person or company carrying on any business which the company is authorised to carry on, or possessed of property suitable for the purposes of the company.
- (e) To construct, maintain, use, control and in any way deal with roads, culverts, bridges, railways, tramways, waterways, waterworks, wharves, telegraphs, telephones, electric traction and lighting works and other buildings or works. 10
- (f) To acquire and turn to account timber and timber rights, forests, Mahogany, rubber, farms, farming rights, grazing rights and any other rights in respect of forest land and land to carry on the business of foresters, loggers, timber merchants, farmers, graziers, (sic), run owners, cattle ranches, sheep farmers, growers of all kinds of produce and to buy, sell and deal in produce of all kinds. 20
- (g) To carry on the business of timbering, saw-milling, timber merchanting, and generally felling, cutting, stacking, logging, transporting, milling, marketing (sic) by wholesale, retail or otherwise of timber and for such purpose purchase, maintain, sell, substitute or replenish (sic) such plant and machinery as the Company may from time to time think necessary and for these purposes to apply for all licences, permits, permissions and enter into contracts or agreements as may be necessary or advisable for the carrying of such trade. 30
- (h) To apply for, purchase, or otherwise acquire any patents, patent rights, copyrights, trade marks, formulas, licences, concessions and the like, conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention which may seem capable of being used for any of the purposes (sic) of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company; 40

and to use, exercise, develop, or grant licences in respect of, or otherwise turn to account, the property, rights, or information so acquired.

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- 10 (i) To amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint adventure, reciprocal concession, or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company.
- (j) To take, or otherwise acquire, and hold, shares, debentures, or other securities of any other company.
- 20 (k) To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects (sic), or any of them; and to obtain from any such Government or authority any rights, privileges, and concessions which the company may think it desirable to obtain; and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions.
- 30 (l) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or directors or past employees or directors of the company or of its predecessors in business, or the dependants or connections of any such persons; and to grant pensions and allowances, and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object.
- 40 (m) To promote any other company or companies for the purpose of acquiring or taking over all or any of the property, rights, and liabilities of the company, or for any other purpose which may

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seem directly or indirectly calculated to benefit the company.

- (n) To purchase, take on lease or in exchange, hire, and otherwise acquire any real and personal property and any rights or privileges which the company may think necessary or convenient for the purposes of its business, and in particular any land, buildings, easements, machinery, plant, and stock in trade. 10
- (o) To construct, improve, maintain, develop, work, manage, carry out, or control any buildings, works, factories, mills, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, wharves, warehouses, electric works, shops, stores and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests; and to contribute to, subsidize, or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out, or control thereof. 20
- (p) To invest and deal with the money of the company not immediately required in such manner as may from time to time be thought fit.
- (q) To lend and advance money or give credit to any person or company; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or company; to secure or undertake in any way the repayment of moneys lent or advanced to or the liabilities incurred by any person or company; and otherwise to assist any person or company. 30
- (r) To borrow or raise or secure the payment of money in such manner as the company may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the company in any way and in particular by the issue of debentures 40

perpetual or otherwise, charged upon all or any of the company's property (both present and future), including its uncalled capital; and to purchase, redeem, or pay off any such securities.

- 10 (s) To remunerate any person or company for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital or any debentures, or other securities of the company, or in or about the organization, formation, or promotion of the company or the conduct of its business.
- (t) To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, and other negotiable or transferable instruments.
- 20 (u) To sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of the company.
- (v) To adopt such means of making known and advertising the business and products of the company as may seem expedient.
- 30 (w) To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase, or otherwise, and to exercise, carry out, and enjoy any charter licence, power, authority, franchise, concession, right, or privilege, which any Government or authority or any corporation or other public body may be empowered to grant; and to pay for, aid in, and contribute towards carrying the same into effect; and to appropriate any of the company's shares, debentures, or other securities and assets to defray the necessary costs, charges, and expenses thereof.
- 40 (x) To apply for, promote, and obtain any statute, order, regulation, or other authorization or enactment which may seem calculated directly or indirectly to benefit the company; and to

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Memorandum and Articles of Association of Sharikat Lian Joo Textiles Sdn. Bhd.
(continued)

Exhibits

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oppose any bills, proceedings, or applications which may seem calculated directly or indirectly to prejudice the company's interests.

- (y) To procure the company to be registered or recognized in any country or place outside Malaysia.
- (z) To sell, improve, manage, develop, exchange, lease, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the company. 10
- (za) To issue and allot fully or partly paid shares in the capital of the company in payment or part payment of any real or personal property purchased or otherwise acquired by the company or any services rendered to the company.
- (zb) To distribute any of the property of the company among the members in kind or otherwise but so that no distribution amounting to a reduction of capital shall be made without the sanction required by law. 20
- (zc) To take or hold mortgages, liens, and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company or any money due to the company from purchasers and others.
- (zd) To carry out all or any of the objects of the company and do all or any of the above things in any part of the world and either as principal, agent, contractor, or trustee, or otherwise, and either alone or in conjunction with others. 30
- (ze) To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

And it is hereby declared that the objects set forth in any sub-clause of this clause shall not, except when the context expressly so requires, be in any wise limited or restricted by reference to or inference from the terms of any other sub-clause, or by the name of the company and that none of such sub-clauses or the objects therein specified or the 40

10 powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause, but the company shall have full power to exercise all or any of the powers conferred by any part of this clause in any part of the world notwithstanding that the business, undertaking, property or acts proposed to be transacted, acquired, dealt with or performed do not fall within the objects of the first sub-clause of this clause.

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4. The liability of the members is limited.

5. The original share capital of the Company is \$500,000/- divided into 500,000 shares of \$1 each. The shares in the original or any increased capital may be divided into several classes, and there may be attached thereto respectively any preferential, deferred, or other special rights, privileges, conditions or restrictions as to dividend, capital, voting or otherwise.

20 We, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Number of shares taken by each Subscriber
LAM SHES TONG 32, Jalan Silang, Kuala Lumpur. Merchant.	10,000 Shares
LOW YEO FOONG, 46, Jalan Silang, Kuala Lumpur. Merchant.	10,000 Shares
LAM SIE GIN, 32, Jalan Silang, Kuala Lumpur. Merchant.	10,000 Shares
Total Shares Taken	30,000 Shares

Dated this 28th day of July, 1969.

Witness to the above signatures.

V.S. KRISHNAN, M.COM., F.S.A.A.

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(continued)

KRISHNAN & CO.,
Accountants, Auditors & Secretaries,
4, Main Road,
Tapah, Perak, Malaysia.

THE COMPANIES ACT 1965
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF

SHARIKAT LIAN JOO TEXTILES SENDIRIAN BERHAD

Private 1. The Company is registered as a private 10
Company. company and accordingly:-

- (a) The right to transfer shares is restricted in manner hereinafter provided;
- (b) The number of the members of the Company (exclusive of persons who are in the employment of the Company and of persons who having been formerly in the employment of the company were while in such employment 20 and have continued after the determination of such employment to be members of the Company) is limited to fifty Provided that for the purpose of this provision where two or more persons hold one or more shares in the Company jointly they shall for the purpose of this regulation be treated as a single member.
- (c) Any invitation to the public to sub- 30
scribe for any shares or debentures of the Company is prohibited;
- (d) Prohibits any invitation to the public to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest.

TABLE A

Table A. 2. The regulations in Table A in the Fourth Schedule to the Companies Act, 1965

shall not apply to the Company except so far as the same are repeated or contained in these presents.

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INTERPRETATION

3. In these Articles and in the Memorandum of Association of the Company unless there be something in the subject or context inconsistent therewith:-

Definitions

Memorandum and Articles of Association of Sharikat Lian Joo Textiles Sdn. Bhd.
(continued)

- (a) "The Company" means SHARIKAT LIAN JOO TEXTILES (SIC) SENDIRIAN BERHAD.
- 10 (b) The "Act" means the Companies Act, 1965 and any amendments or statutory modifications or replacements thereof for the time being in force.
- (c) "The office" means the registered office for the time being of the company.
- (d) "The register" means the register of members to be kept in pursuance of the Act.
- 20 (e) "These Presents" means the Memorandum of Association and the Articles of Association or other regulations of the Company from time to time in force.
- (f) "Seal" means the common seal of the Company.
- (g) "The Directors" means the Directors for the time being of the Company.
- 30 (h) "In writing" or "written" means and includes words printed, lithographed, represented or reproduced in any mode in a visible form.
- (i) "Dividend" includes bonus.
- (j) "Special resolution" has the meaning assigned to it in the Act.
- (k) Words having a special meaning assigned to them in the Act have the meaning in these presents.

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- (l) Words importing the singular number only, include the plural number and vice versa.
- (m) Words importing the masculine gender only, include the feminine gender.
- (n) Words denoting persons include corporations.
- (o) "Month" means calendar Month.
- (p) "Year" means calendar Year.

BUSINESS

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Adoption
of Agree-
ment

4. The directors shall forthwith adopt in the name and on behalf of the Company, an agreement dated the 30th June, 1969 and made between Lam Shes Tong, Low Yeo Foong and Lam Sie Gin carrying on the trade or business under the name and style of "Lian Joo Company" at No. 32 Jalan Silang, Kuala Lumpur in the State of Selangor with such modification, if any, as may be agreed upon.

20

Conversion
of Shares
into Stock

5. (a) The Company by ordinary resolution may convert any paid-up shares into stock, and convert any stock into paid-up shares of any denomination. When any shares have been converted into stock, the several holders of such stock may, thenceforth, transfer their respective interests therein or any part of such interests, in the same manner and subject to the same regulations as and subject to which fully paid-up shares in the Company's capital may be transferred, or as near thereto as circumstances will admit. But the Directors may from time to time, if they think fit, fix the minimum amount of stock transferable, and direct that fractions of a dollar shall not be dealt with, but with power, nevertheless, at their discretion to waive such rules in

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40

any particular case provided that the minimum so fixed shall not be greater than the nominal amount of the share from which the stock arose.

- 10 (b) The stock shall confer on the holders thereof respectively the same privileges and advantages, as regards participation in profits and voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the Company of the same class as the share from which such stock was converted, but so that none of such privileges or advantages, except the participation in profits of the company, or in the assets of the Company on a winding-up shall be conferred by any such aliquot part of
- 20 stock as would not if existing in shares, have conferred such privileges or advantages. Save as aforesaid, all the provisions herein contained shall, as far as circumstances will admit, apply to stock as well as to shares.

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SHARES

30 6. The Shares taken by the subscribers to Shares the Memorandum of Association shall be duly under issued by the Directors. Subject as afore- control said the shares shall be under the control of of the Directors who may, subject to the Directors Company's Memorandum and Articles allot and issue the same to such persons on such terms and conditions and at such time as the directors think fit and with full power to give to any person the call of any shares either at par or at a premium and for such consideration as the directors think fit.

40 No part of the funds of the company shall be employed in the purchase of shares of the company or in loans upon the security thereof.

7. If, by the conditions of allotment of Instal- any shares, the whole or part of the amount ments or issue price thereof shall be payable by

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instalments every such instalment shall, when due, be paid to the company by the person who for the time being and from time to time shall be the registered holder of the share, or his legal personal representatives.

Exercise of rights of members 8. No person shall exercise any rights of a member until his name shall have been entered in the register of members and he shall have paid all calls and other moneys for the time being due and payable on any share held by him. 10

Joint holders 9. If two or more persons are registered as joint holders of any share any one of such persons may give effectual receipts for any dividends or other moneys payable in respect of such share.

No trusts recognised 10. No person shall be recognised by the company as holding any share upon any trust, or assignment and the company shall not be bound by or required to recognise any equitable, contingent, future, or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder, except as by these articles otherwise expressly provided or as by Statutes or pursuant to any order of Court. 20

DISPOSAL OF SHARES OF SHAREHOLDER
WHOSE WHEREABOUTS UNKNOWN 30

Advertisement of intention to 11. Where by the exercise of reasonable diligence the company is unable to discover the whereabouts of the share-holder for a period of not less than ten 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 Minister charged with responsibility for finance. 40

12. If after the expiration of one month from the date of the advertisement the whereabouts of the shareholder remains unknown, the company may transfer the shares held by the shareholder in the company to the Minister charged with responsibility for finance and for the purpose may execute for and on behalf of the owner a transfer of such shares to the Minister charged with responsibility for finance.

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LOSS OR DESTRUCTION OF CERTIFICATES

13. (1) Where a certificate or other document of title to shares or debentures is lost or destroyed, the company shall on payment of a fee not exceeding two dollars issue a duplicate certificate or document in lieu thereof to the owner on his 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 five hundred dollars 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

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of fourteen 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. 10

CERTIFICATES

Issue of
 Share
 Certifi-
 cates

14. Each member shall be entitled without payment to receive within two months after allotment or registration of transfer (unless the conditions of issue provide for a longer interval) one certificate under the seal for all the shares registered in his name, specifying the number and denoting numbers of the share in respect of which it is issued and the amount paid up thereon; provided that in the case of joint holders the company shall not be bound to issue more than one certificate to all the joint holders and delivery of such certificate to any one of them shall be sufficient delivery to all. Every such certificate shall be signed by two directors and counter-signed by the secretary or by some other person nominated by the directors for that purpose. 20 30

Replace-
 ment of
 damaged
 or lost
 Certifi-
 cate

15. If any share certificate shall be damaged, worn out, destroyed or lost, it may be renewed on such evidence being produced and such indemnity (if any) being given as the directors shall require, and (in case of defacement or wearing out) on delivery of the old certificate and in any case on payment of such sum not exceeding two dollars as the directors may from time to time require. 40

CALLS AND LIEN ON SHARES

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- | | | |
|----|--|---|
| 10 | <p>16. The directors may, subject to the provisions of these presents from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit provided that seven days' notice at least is given of each call, and each member shall be liable to pay the amount of every call so made upon him to the persons in such manner and at the times and places appointed by the directors. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.</p> | Calls |
| 20 | <p>17. Subject to any special conditions on which any shares have been issued, each member shall be liable to pay any call made on him and any instalment presently payable by him at the time and place appointed by the directors.</p> | |
| | <p>18. The joint holders of a share shall be jointly and severally liable to pay all calls and instalment in respect thereof and any interest accrued thereon.</p> | Liability of joint holders |
| 30 | <p>19. If before or on the day appointed for payment thereof a call or instalment payable in respect of a share is not paid, the holder or allottee of the share shall pay interest on the amount of the call at such rate not exceeding twelve per cent. per annum as the directors shall fix from the day appointed for payment thereof to the time of actual payment but the directors may waive payment of such interest wholly or in part.</p> | Interest on unpaid calls |
| 40 | <p>20. Any sum which by the terms of allotment of a share is made payable upon allotment or at any fixed date, whether on account of the amount of the share or by way of premium, shall, for all purposes of these presents, be deemed to be a call duly made and payable on the rate fixed for payment and in case of non-payment the</p> | Sums payable on allotment deemed a call |

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- provisions of these presents as to payment of interest and expenses, forfeiture and the like, and all other relevant provisions of these Articles shall apply as if such sum were a call duly made and notified as hereby provided.
- Difference in arrangements as to calls 21. The directors may from time to time make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls of instalment to be paid and in the time of payment of such calls or instalments. 10
- Interest on payment in advance of calls 22. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys for the time being remaining uncalled on his shares, and may pay interest upon the moneys so paid in advance, or upon so much thereof as from time to time remains in advance of the calls then made upon such shares. 20
- Calls to be fully paid before receiving dividend 23. No member shall be entitled to receive any dividend or to exercise any privileges as a member until he shall have paid all calls for the time being due and payable on every share held by him whether alone or jointly with any other person together with interest and expenses (if any).
- Paramount lien. 24. The Company shall have a first and paramount lien upon all shares (whether fully paid or not) registered in the names of any member either alone or jointly with any other person for his debts, liabilities and engagements whether solely or jointly with any other person, to or with the company whether the period for the payment fulfilment or discharge thereof shall have actually arrived or not and such lien shall extend to all dividends from time to time declared in respect of such shares. But the directors may at any time declare any share to be exempted, wholly or partially from the provisions of the article. 30 40

- | | | | |
|----|--|--------------------------------------|--|
| 10 | <p>25. Subject to Article 1 hereof the directors may sell the shares subject to any such lien at such time or times and in such manner as they think fit but no sale shall be made until such time as the moneys in respect of which such lien exists or some part thereof are or is presently payable or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharged, and until a demand and notice in writing stating the amount due or specifying the engagement and demanding payment or fulfilment or discharge thereof, and giving notice of intention to sell in default shall have been served on such member or on the persons (if any) entitled by reason of his death or</p> | <p>Enforce-
ment of
lien</p> | <p><u>Exhibits</u>
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| 20 | <p>bankruptcy to the shares and default in payment, fulfilment or discharge shall have been made by him or them for fourteen days after such notice.</p> | | |
| 30 | <p>26. The purchaser of any shares so sold shall on a proper transfer being delivered to the company be registered as the holder of such shares and the directors may authorise some person to transfer such shares to the purchaser.</p> | <p>Transfer
on sale</p> | |
| 40 | <p>27. No purchaser shall be bound or concerned to inquire into the application of the purchase money or the regularity of the sale but the remedy of any one injured by a sale wrongly made in purported exercise of such power of sale shall be in damages against the company only.</p> | <p>Effect
of Sale</p> | |
| 40 | <p>28. All moneys received on any such sale shall after payment of any prior encumbrance be applied firstly in payment of all costs of such sale and of any attempted sale and secondly in payment of all moneys charged on the shares by virtue of such lien and presently payable and subject to such payment the balance shall (subject to a like lien sums not presently payable as existed</p> | <p>Application
of proceeds</p> | |

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on the shares prior to the sale) be paid to the person who was entitled to such shares immediately prior to the date of such sale.

TRANSFERS OF SHARES

- Trans-
 feree not
 deemed
 holder
 until
 regis-
 tered
29. The instrument of transfer of a share shall be executed both by the transferor and the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof. 10
- Directors
 may
 refuse so
 register
30. The directors may in their absolute discretion and without assigning any reason therefor decline to register any transfer of shares to any person and may also decline to register any transfer of shares on which the Company has a lien.
- Register
 of
 Transfers
31. The Company shall provide a book called the "Register of Transfers" which shall be kept by the secretary under the control of the directors, and in which shall be entered the particulars of every transfer or transmission of every share. 20
- Register
 may be
 closed
32. The transfer books and register of members and debenture holders may be closed during such time as the directors think fit, not exceeding in the whole thirty days in each year. The directors may decline to recognise any instrument or transfer unless (a) such fee, not exceeding two dollars as the Directors may from time to time determine is paid to the Company in respect thereof, and (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer. 30
- Trans-
 mission
 on death
 of
 member
33. The executors or administrators of a deceased share holder not being one of several joint holders shall be the only persons recognised by the company as having any title to the share. In the case 40

of a share registered in the names of two or more holders the survivors or the executors or administrators of the deceased survivor shall be the only persons recognised by the company as having any title to the share, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

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- 10 34. Any person becoming entitled to a share in consequences of the death or bankruptcy or insolvency or winding up of a member may upon such evidence being produced as may from time to time be required by the directors be registered as a member in respect of the share or instead of being registered himself to make such transfer of the share as the deceased or bankrupt or insolvent person could have made but the Directors shall in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt or insolvent person before the death or bankruptcy or insolvency.
- 20
35. A person entitled to shares by reason of the death or winding up or bankruptcy of the holder shall until he transfers or is registered as a member in respect of such shares be entitled to the same dividends and other advantages to which he be entitled if he were the registered holder of such shares except that he shall not without being registered as a member in respect of such shares be entitled in respect of them to exercise any right of membership in relation to meetings of the Company.
- 30
36. When a person has been registered as a member of the Company as a result of a transmission or where a member of the Company has been adjudicated a bankrupt or where a member of the Company being a corporation is the subject of a winding up order the Directors may call upon such person or the trustee in bankruptcy of such bankrupt member or the liquidator
- 40
- Production of evidence of title before registration
- Person entitled by transmission may receive dividend before registration but not vote
- Directors may call for transmission of Shares of deceased and bankrupt members

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in the winding up of such corporation to transfer the share or shares of the bankrupt member to such member of the Company (hereinafter called the purchasing member) as the Directors may think fit, within such time or times as shall be appointed by the Directors, and the price (hereinafter called the purchase money) to be paid for such shares shall be a fair value as certified by the auditor of the Company whose decision shall be a final and if such person or trustee in bankruptcy of such bankrupt member or the liquidator in the winding up of such corporation shall fail to do so, the Directors shall have the right or power to cause such shares to be transferred to the purchasing member and on such transfer or transfers being effected the Company shall hold the purchase money in trust for such person or the trustee in bankruptcy of such bankrupt member or the liquidator in the winding up of such corporation but without interest. The receipt by the Company of the purchase money shall be a good discharge to the purchasing member, and after his name has been entered in the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person. In so certifying the value of each share the auditor shall be considered to be acting as an expert and not as an arbitrator and accordingly the Arbitration Ordinance shall not apply.

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FORFEITURE OF SHARES

Notice to be given of intended forfeiture 37. If any member fails to pay the whole or any part of any call or instalment of a call on or before the day appointed for the payment thereof the Directors may at any time thereafter, during such time as the call or instalment or any part thereof remains unpaid, serve a notice on him or on the person entitled to the shares by transmission requiring him to pay such call or instalment or such part thereof as shall then be unpaid together with 40

interest thereon not exceeding twelve per centum per annum as the Directors shall determine and any expenses that may have accrued by reason of such non-payment.

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10 38. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which such call or instalment, or such part as aforesaid, and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made and shall state that in the event of non-payment at or before the time and at the place appointed, the share in respect of which such call was made or instalment is payable will be liable to be forfeited.

Particu-
lars to be
set out in
notice

20 39. If the requisitions of any such notice aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter before the payment required by the notice has been made be forfeited by a resolution of the Directors to that effect. A forfeiture of shares shall include all dividends in respect of the shares not actually paid before the forfeiture notwithstanding that they shall have been declared.

30

Forfeit-
ure to be
by reso-
lution of
Directors
on non-
compliance

40 40. When any share has been forfeited in accordance with these presents notice of the forfeiture shall forthwith be given to the holder of the share or to the person entitled to the share by reason of his death or bankruptcy as the case may be and an entry of such notice having been given, and of the forfeiture with the date thereof shall forthwith be made in the register of members opposite to the share; but the provisions of this Article are directory only and no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.

Notice
of for-
feiture to
be given
and
entered in
Register
of Members

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Shares
 for-
 feited
 belong
 to the
 Company

41. Every share which shall be forfeited shall thereupon become the property of the Company and may be either cancelled or sold or otherwise disposed of, either to the person who was before forfeiture the holder thereof or entitled thereto or to any person, upon such terms and in such manner as the Directors shall think fit.

Annul-
 ment of
 for-
 feiture

42. Notwithstanding any such forfeiture as aforesaid the Directors may at any time before the forfeited share has been otherwise disposed of, annul the forfeiture upon payment of all calls and interest due upon and expenses incurred in respect of the share and upon such further terms (if any) as they shall see fit.

10

Calls
 and
 expenses
 recover-
 able
 after
 for-
 feiture

43. A shareholder whose shares have been forfeited shall, notwithstanding such forfeiture be liable to pay the Company all calls made and not paid on such shares at the time of forfeiture and interest thereon to the date of payment in the same manner in all respects as if the share had not been forfeited and to satisfy all (if any) the claims and demands which the Company might have enforced in respect of the shares at the time of forfeiture without any deductions or allowances for the value of the shares at the time of forfeiture.

20

Conse-
 quence
 of for-
 feiture

44. The forfeiture of a share shall involve the extinction at the time of the forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the shareholder whose share is forfeited and the Company except only such of those rights and liabilities as are by these Articles expressly saved or as are by the Statutes given or imposed in the case of past members.

30

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10 45. A Statutory declaration in writing that the declarant is a Director of the Company and that a share in the Company has been duly forfeited on a date stated in the declaration shall, as against persons claiming to be entitled to the shares, be conclusive evidence of the facts therein stated, and such declaration, together with the receipt of the Company for the consideration (if any) given for the share on the sale or disposition thereof shall constitute a good title to such share on a proper transfer being delivered to the Company; and a certificate of proprietorship shall be delivered to a purchaser and his name shall be entered in the register of members and thereupon he shall be deemed the holder of such share discharged from all calls or instalments or other sums due prior to such purchase and he shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by an act, omission or irregularity relating to or connected with the proceedings in reference to the forfeiture, sale, or disposal of the share. The Directors may authorise any person to execute a transfer of any shares so sold to the purchaser.

20

30

Statutory
Declara-
tion in
writing
to be con-
clusive
evidence
of facts
of for-
feiture
and con-
sequences

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CAPITAL

46. The Capital of the Company shall be Capital
RM500,000/- divided into 500,000 shares of
RM1 each.

ALTERATION, REDUCTION AND INCREASE OF CAPITAL

47. Subject to the provisions to Article 76 the Company may from time to time by special resolution:-

40 (a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.

(b) Sub-divide its existing shares, or any of them, into shares of smaller

Consoli-
dation
sub-
division
and can-
cellation
of shares

will be deemed to be declined, and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered the Directors may, subject to the provisions of these presents dispose of the same in any manner which they think beneficial to the Company. The Directors may in like manner dispose of any such new or original shares as aforesaid which, by reason of the ratio borne by them to the number of persons entitled to such offer as aforesaid or by reason of any other difficulty in apportioning the same, cannot in the opinion of the Directors be conveniently offered in manner hereinbefore provided.

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51. Except so far as otherwise provided by the conditions of issue, any capital raised by the creation of new shares shall be considered as part of the original ordinary share capital of the Company and shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as if it had been part of such capital.

New
 shares
 subject
 to same
 provisions
 as
 original
 shares

MODIFICATION OF CLASS RIGHTS

52. Whenever the capital by reason of the issue of preference shares or otherwise is divided into different classes of shares all or any of the rights, privileges or conditions for the time being attached or belonging to each class of shares for the time forming part of the capital of the Company may from time to time be modified, affected, varied, extended or surrendered in any manner with the consent in writing of the holders of three-fourths in value of the issued shares of that class or with the sanction of an Extraordinary Resolution passed at a separate General Meeting of the members of that class. To any such meeting all the provisions of these presents as to General Meetings shall mutatis mutandis apply, but so that the necessary quorum shall be members of the

Modifi-
 cation
 of rights

GENERAL MEETING

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10 58. The Directors shall convene an annual Ordinary
general meeting to be held once at least General
in every calendar year at such time, not Meeting
being more than fifteen months after the
holding of the last preceding annual
general meeting, but so long as the
Company hold its first annual general
meeting within eighteen months of its
incorporation, it need not hold one in
the year of its incorporation, or in the
following year, and at such place as may
be determined by the Directors. Such
general meeting shall be called 'annual
general meetings'.

59. Every general meeting of the Extra-
Company other than the 'annual general ordinary
meeting' shall be called 'extraordinary meetings
general meeting'.

20 60. The Directors shall call an extra-
ordinary general meeting whenever they
think fit.

30 61. The Directors shall call an extra- Requisi-
ordinary General Meeting whenever a tion and
requisition in writing signed by members require-
of the Company holding in the aggregate ments of
not less than one-tenth in amount of the Requisi-
issued capital of the Company, upon which tion
all calls or other sums then due shall
have been paid and stating fully the
objects of the meeting shall be deposited
at the office of the Company. Such
Requisition may consist of several docu-
ments in like form each signed by one or
more of the requisitionists.

40 62. If the Directors do not, within Requisi-
twenty-one days from the date of the tionists
requisition being so deposited, proceed may
to convene a meeting, the requisitionists convene
or any of them representing more than one meeting
half of the voting rights of all of them
may themselves convene the meeting, but
any meeting so convened shall not be held
after three months from the date of such
deposit.

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63. Any meeting convened by the requisitionists as aforesaid shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by Directors.
- Notice of Meetings 64. Fourteen clear days' notice shall be given in the case of the annual general meeting and twenty-one clear days' where it is proposed to pass a special resolution. Fourteen days' clear notice shall (unless 10 the meeting otherwise resolves) be given of an adjourned meeting and fourteen days' clear notice of any other meeting. The notice in each case shall specify the place, day and hour of meeting and in case of special business, the general nature of such business. The notice shall in each case be given to the members by notice sent by post, or otherwise served as hereinafter provided. 20
65. A meeting shall, notwithstanding that it is called by notice shorter than is required by Article 64 be 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 30 having a right to attend and vote thereat, being a majority which together holds not less than ninety five per centum in nominal value of the shares giving a right to attend and vote.
- Resolu- 66. Where by the Companies Act special tion requiring resolution shall not be effective unless special notice of the intention to move it has 40 notice been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the

meeting or, if that is not practicable shall give them notice thereof, in any manner allowed by the articles, not less than fourteen days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given to the company within the time required by this Article shall be deemed to be properly given.

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10

67. The accidental omission to give notice of a meeting to or non-receipt of notice of a meeting by any member shall not invalidate the proceedings at any meeting.

Omission
to give
notice

PROCEEDINGS AT GENERAL MEETINGS

20

68. All business transacted at an annual general meeting, other than business which, under these articles ought to be transacted at an annual general meeting and all business transacted at an extraordinary meeting, shall be deemed special.

Special
business

30

69. The business of an annual general meeting except in the first annual general meeting, shall be to receive and consider the profit and loss account, the balance sheet and report of the Directors and auditors, to elect directors in the place of those retiring by rotation, and to appoint auditors, and to declare dividends and to transact any other business which under these presents ought to be transacted at an annual general meeting.

Business
of annual
general
meeting

40

70. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

Quorum

71. Two members personally present or by proxy or represented by attorney shall be a quorum for a general meeting.

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Proceed-
ing if
quorum
not
present

72. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall be adjourned to the same day in the next week, at the same time and place, or to such other day time and place as the Directors may by notice to the shareholders appoint. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the adjourned meeting, the members present shall be a quorum. 10

Chairman
of
General
Meeting

73. The Chairman of the Board of Directors shall preside as Chairman at every General Meeting but if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same or shall be unwilling to act as Chairman, the Vice-Chairman shall act as Chairman. If the Vice-Chairman shall also be not present within the said fifteen minutes or is unwilling to act as Chairman the members present shall choose one director or if no Director be present or if all the Directors present decline to take the chair, they shall choose some member present to be Chairman. 20

Chairman
may
adjourn
meeting
and
notice of
adjourn-
ment to
be given

74. The Chairman may, with the consent of any meeting at which a quorum is present and shall, if so directed by the meeting, adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned for twenty one days or more notice of the adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no member shall be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting. No business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. 30 40

75. Any members entitled to be present and vote at a meeting may submit any resolution to any general meeting provided that at least five clear days before the day appointed for the meeting he shall have served upon the Company a notice in writing signed by him containing the proposed resolution and stating his intention to submit the same.

Member's
notice to
submit
resolution

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- 10 76. Upon receipt of any such notice as mentioned in the last preceding Article the Secretary shall, in any case where the notice of intention is received before the notice of the meeting is issued, include it in the notice of the meeting and shall in any other case issue as quickly as possible to the members entitled to notice of the meeting that such resolution will be proposed.
- 20 77. At any General meeting a resolution put to the vote of the meeting shall be decided on a show of hands of persons present and entitled to vote unless before or upon the declaration of the result of the show of hands a poll is demanded:-
- (a) by the Chairman; or
- (b) by at least two members present in person or by proxy; or
- 30 (c) by any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) 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 one tenth of the total sum paid up on all the shares conferring that right.
- 40

Members
entitled
to notice
of reso-
lution

Resolutions
how carried

Unless a poll is so demanded a declaration by the Chairman that a resolution has

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on show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.10

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 shall for all purposes be treated as having been passed on the date on which it was in fact passed and not any earlier date.

- | | | |
|--|--|----|
| Poll | 78. If a poll be demanded in manner aforesaid it shall be taken at such time and place and in such manner as the Chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. | 20 |
| No poll on election of Chairman of Adjournment | 79. No poll shall be demanded on the election of a Chairman of a meeting or on any question of adjournment. | |
| Chairman has casting vote | 80. In the case of an equality of votes whether on a show of hands or at a poll at any general meeting of the Company the Chairman of the meeting shall be entitled to a further or casting vote. | 30 |
| Business to be continued if poll demanded | 81. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded. | |
| VOTES OF MEMBERS | | |
| Voting on show of hands | 82. On a show of hands every member personally present or by representative or proxy shall have one vote. | 40 |

- | | | |
|---|-------------------------------|---|
| 83. If any member be an infant or a lunatic, or of unsound mind, he may vote by his guardian, committee, receiver, curator bonis or other legal curator, and such last mentioned persons may give their votes either personally or by proxy. | Votes of infant Member etc. | Exhibits
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| 10 84. If a Corporation is a member it may vote by any person authorised by resolution of its Directors or other governing body to act as its representative at any meeting of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the Corporation which he represents as that Corporation could exercise if it were an individual member of the Company. | Votes of Corporation | |
| 20 85. Where there are joint registered holders of any share, any one of such persons may vote at any meeting, either personally or by proxy, in respect of such share as if solely entitled thereto; and if more than one of such joint holders be present at any meeting, personally or by proxy, that one of the said persons so present whose name stands first on the register in respect of such shares shall alone be entitled to vote in respect thereof. Where there are several executors or administrators of a deceased member in whose sole name any shares stand, any one of such executors or administrators may vote in respect of such shares unless any other of such executors or administrators is present at the meeting at which such a vote is tendered and objects to the vote. | Votes of joint holders | |
| 40 86. Save as herein expressly provided no person other than a member duly registered and who shall have paid everything for the time being due from him and payable to the Company in respect of his shares shall be entitled to be present or to vote on any question either personally or by proxy or as proxy for another member or to be reckoned in a quorum at any General Meeting. | Members only entitled to vote | |

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How
 votes
 may be
 given

Instru-
 ment
 appoint-
 ing
 proxy to
 be in
 writing

87. Votes may be given either personally or by proxy or by a representative duly authorised.

88. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if such appointor be a corporation, under its common seal or under the hand of an officer or attorney of the corporation duly authorised and shall be deposited with the power of attorney or other authority (if any) at the office not less than two (2) clear days before the day appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote and in default the proxy shall not be treated as valid. An instrument appointing a proxy to vote at a meeting shall be deemed to include the power to demand a poll on behalf of the appointor. 10 20

Who may
 be proxy

89. (1)(a) a proxy shall not be entitled to vote except on a poll;

(b) a member shall not be entitled to appoint a person who is not a member as his proxy unless that person is a qualified legal practitioner an approved company auditor or a person approved by the Registrar in a particular case; 30

(c) a member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and

(d) where a member appoints two proxies the appointments shall be invalid unless he specified the proportions of his holdings to be represented by each proxy. 40

(2) The instrument appointing a proxy to vote at a meeting of a company

shall be deemed to confer authority to demand or join in demanding a poll, and for the purposes of Article 77 a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

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10 90. Any instrument appointing a proxy shall be in the following form or as near thereto as circumstances will admit:- Form of proxy

I,

of

being a member of SHARIKAT LIAN JOO

TEXTILES SENDIRIAN (sic) BERHAD and

entitled to.....

.....

votes hereby appoint

of

or failing him

20 of

as my proxy to vote for me and on my

behalf at the (Ordinary, Extraordinary or

adjourned, as the case may be) General

Meeting of the Company to be held on the

..... day ofand

at any adjournment thereof.

As witness my hand this day

of 19 ...

30 91. A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purpose of the Companies Act.

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Members when abroad may be represented by duly appointed attorneys

92. Every power, right or privilege herein given in these presents to any member of the Company to convene, attend, vote and in anywise take part in, any meeting of the Company, may be exercised in the event of such member being out of the States of Malaya by any attorney or attorneys duly appointed by such member for the purpose, by a Power of Attorney produced at the office of the Company during business hours not less than two (2) clear days before the same is acted on. And any vote given or things done by such attorney or attorneys shall be valid notwithstanding the previous death of the member giving such Power of Attorney or revocation of such Power of Attorney by other means provided no intimation in writing of such death or revocation shall have been received at the office of the Company before such vote is given or thing done.

10
20

DIRECTORS

93. (i) The number of Directors shall not be less than two nor more than five who shall have their principal or only place of residence in Malaysia.

First directors (ii) The first Directors shall be Messrs.

30

- (1) Lam Shes Tong,
- (2) Low Yeo Foong,
- (3) Lam Sie Gin

and shall hold office until the next following ordinary general meeting of the company and shall be eligible for re-election.

Eligibility

94. No person shall be eligible to be appointed as a Director who is an undischarged bankrupt or has been convicted within or without Malaysia:

40

- (a) of any offence in connection with the promotion formation or management of

a corporation, or

- (b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more, or
- (c) of any offence under the provisions of the Companies Act.

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10 95. Until otherwise determined by general meeting the number of directors including the managing director shall not be less than two nor more than five but in the event of any casual vacancy occurring and reducing the number of the directors below the aforesaid minimum the continuing director may act for the purpose of filling up such vacancy or vacancies or of summoning a general meeting of the company. Number of Directors

20 96. The Directors shall have power at any time and from time to time to appoint any other qualified person as Director, either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed by or pursuant to Article 93 but any Director so appointed shall hold office only until the next following ordinary general meeting of the company, and shall then be eligible for re-election. Appoint-ment by Board of Directors

30 97. The qualification of a Director shall be the holding in his own right alone, and not jointly with any other person, of shares to the nominal value of \$10,000/- in the capital of the Company. Quali-fication of Directors

40 98. The Directors shall be paid by way of remuneration for their services such fixed sum (if any) as shall from time to time be determined by the company in general meeting, and such remuneration shall be divided among the Directors in such proportions and manner as the Directors may determine. Remunera-tion

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- Alternate Director 99. Any Director may, from time to time, appoint any person who is approved by the majority of the Directors, or Alternate or Substitute Directors, to be an Alternate or Substitute Director. The appointee while he holds office as an Alternate Director, shall be entitled to notice of meetings of the Directors and to attend and vote thereat as a Director but he shall not require any qualification, and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him. Any appointment so made may be revoked at any time by the appointor or by a majority of the Directors, and any appointment or revocation under this Article shall be effected by notice in writing to be delivered by the Secretary of the Company. 10
100. A corporation shall not hold office as a director. 20
- As to the duty and liability of directors 101. A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office and shall not make use of any information acquired by virtue of his position to gain directly or indirectly an improper advantage for himself or for any other person or to cause detriment to the company. 30
- General Duty to make disclosure 102. Every Director shall give notice to the Company of such events and matters relating to himself as may be necessary or expedient to enable the company and its officers to comply with the requirements of the Companies Act. In this article a "director" includes any person who is for the time being beneficially entitled to five per centum or more of the issued equity shares of the company. 40
- Dis-closure of interest in contracts, property, offices, etc. 103. Every director of the company who is in any way, whether directly or indirectly, interested in any contract or proposed contract with the company shall as soon as practicable after the relevant facts have come to his knowledge declare his interest at a meeting of the directors of the company.

104. Every director of the company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character, and extent of the conflict. The declaration shall be made at the first meeting of the directors held:

- (a) after he became a director, or
- (b) (if already a director) after he commenced to hold the office or to possess the property.

105. The Company shall keep a register showing with respect to each director of the company the number and description and, in the case of debentures, the amount, of any shares in or debentures of the company or a corporation that is deemed to be related to that company which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not) or in which he has, directly or indirectly any beneficial interest but the register need not include shares in any corporation which is the wholly-owned subsidiary of another corporation.

Register
of
Directors
Share-
holdings

106. (1) No director shall be disqualified because of his holding any other office or place of profit under the company or under any company in which this company shall be a shareholder or otherwise interested, or from contracting with the company either as vendor, purchaser, or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company in which any director shall be in anyway interested be avoided nor shall any director be liable to account to the company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such

Directors
Contract
with
other
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director holding that office or of the fiduciary relations thereby established but it is declared that the nature of his interests must be disclosed by him at the meeting of the directors at which the contract or arrangement is first taken into consideration if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interests. If a director becomes interested in a contract or arrangement after it is made or entered into the disclosure of his interest shall be made at the first meeting of the directors held after he becomes so interested. A Director or a Director nominated by a shareholding Company may not vote on any contract or proposed contract or arrangements in which he or the Company he represents is directly or indirectly interested or on any matter arising thereon and if he votes his vote shall not be counted. Provided always that a director may vote on any loan of money he may make to the Company and on any security or further security to be given by the Company to him for any such loan and on any contract or indemnify himself against any loss he may suffer by reason of becoming or being security for the company and on any contract in which he is personally interested by reason only of his being a member of any company which is a party to or interested in such contract. Provided further this prohibition may be suspended or relaxed by any extent by an ordinary resolution in a general meeting. 10 20 30

(2) A general notice that a director is a member of any specified firm or company, and is to be regarded as interested in all transactions with that firm or company, shall be a sufficient disclosure under this clause as regards such director and the said transactions, and after such general notice it shall not be necessary for such director to give a special notice relating to any particular transaction with that firm or company provided such notice is given at a meeting 40

of the directors or brought up and read at the next meeting of directors after it is given.

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107. (1) The Company shall not make a loan to a Director of the Company or of a Company which is deemed to be related to that Company by virtue of this Act or enter into any guarantee or provide any security in connection with a loan made to such a director by any person but nothing in this article shall apply:-

Loans to
Directors

- (a) to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purposes of enabling him properly to perform his duties as an officer of the company;
- (b) to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
- (c) to any loan made to such a director who is engaged in the full time employment of the company or its holding company, as the case may be, where the company has at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

(2) Paragraph (a) or (b) of sub-article (1) of this article shall not authorize the making of any loan, or the entering into any guarantee, or the provision of any security except:-

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent

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of the guarantee or security as the case may be, are disclosed; or

- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting. 10

(3) Where the approval of the company is not given as required by any such condition the directors authorizing the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) Nothing in this article shall operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to the provisions of this section. 20

MANAGING DIRECTORS

Appoint- 108. The Directors may from time to time
 ment of appoint any one of their body to be
 Managing Managing Director or Managing Directors 30
 Director for such period and upon such terms as they think fit, and may vest in such Managing Director or Managing Directors as may be appointed by them such of the powers hereby vested in the Directors generally as they may think fit.

Remunera- 109. The remuneration of a Managing
 tion of Director or Managing Directors shall from
 Managing time to time be fixed by the Directors and
 Director may be by way of salary or commission or 40
 participation in profits or otherwise or
 by any or all of these modes.

110. A managing Director shall not, while he continues to hold that office, be subject to retirement by rotation, and he shall not be reckoned as a Director for the purpose of determining the rotation or retirement of Directors or in fixing the number of Directors to retire, but he shall, subject to provisions of any contract between him and the Company, be subject to the same provisions as to resignation and removal as the other Directors of the Company and if he ceases to hold the office of Director from any cause shall ipso facto and immediately cease to be a Managing Director.

Resig-
nation and
removal of
Managing
Director

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DISQUALIFICATION OF DIRECTORS

111. Subject as otherwise provided and to the terms of any subsisting agreement, the office of a Director shall become vacant if the director:-

Office of
Directors
how
vacated

- (a) ceases to be a director by virtue of the Act;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes prohibited from being a director by reason of any order made under the Act;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental disorder;
- (e) resigns his office by notice in writing to the company;
- (f) for more than six months is absent without permission of the directors from meetings of the directors held during that period;
- (g) without the consent of the company in general meeting holds any other office of profit under the company

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except that of managing director or
 manager; or

- (h) is directly or indirectly interested
 in any contract or proposed contract
 with the company and fails to declare
 the nature of his interest in manner
 required by the Act.

POWERS OF DIRECTORS

- Business of Company to be managed by Directors 112. The management and control of the business and affairs of the company shall be vested in the Directors who in addition to the powers and authorities by these presents or otherwise expressly conferred upon them may exercise all such powers and do all such acts and things as may be exercised or done by the company and are not hereby or by statute expressly directed or required to be exercised or done by the company in general meeting but subject nevertheless to the provisions of the statutes and of these presents and to any regulations not being inconsistent with these presents from time to time made by the company in general meeting provided that no regulations so made shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made. 10 20
- Who may sign cheques etc. 113. The Directors shall have power to determine from time to time who shall be entitled to sign on the company's behalf bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts and documents. 30

RETIREMENT, ROTATION AND REMOVAL OF DIRECTORS

- Rotation and retirement of Directors 114. At every ordinary general meeting one-third of the Directors (except a Managing Director) or if their number is not a multiple of three then the number nearest to one-third shall retire from office. 40
- Which directors to retire 115. The directors to retire in every year shall subject nevertheless as hereinafter provided, be the Directors who have been

longest in office since their last election, but as between persons who became Directors on the same day, the Director to retire shall unless they otherwise agree among themselves be determined by lot

116. A retiring Director shall be eligible for re-election.

Retiring directors eligible for re-election

117. The Company at the ordinary meeting at which any Directors retire in manner aforesaid shall fill up the vacated office by electing a like number of persons.

Replacement at same meeting

118. No person, not being a Director retiring at the meeting shall unless recommended by the Directors for election, be eligible for the office of Director at any General Meeting, unless not less than five clear days before the day appointed for the meeting there shall have been given to the Secretary notice in writing by some member duly qualified to be present and vote at the meeting for which such notice is given of his intention to propose such person for election, and also notice in writing signed by the person to be proposed signifying his candidature for the office.

Notice of proposal to appoint directors

119. Subject as herein provided, if at any meeting at which an election of Directors ought to take place, the places of retiring Directors or some of them are not filled up, the retiring Directors or such of them as have not had their places filled up shall, if willing to act, be deemed to have been re-elected.

Retiring directors to remain in office until successors appointed

120. (1) The Company may from time to time in General Meeting increase or reduce the number of Directors, and determine in what rotation such increased or reduced number shall go out of office.

Number may be increased or decreased

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- Casual vacancy 121. Any casual vacancy occurring in the Board of Directors may be filled up by the Directors, but any person so chosen shall retain his office only until the next following ordinary annual general meeting of the Company, and shall then be eligible for re-election.
- Removal of Director 122. The Company may by Extraordinary Resolution remove any Director before the expiration of his period of office, and may, if thought fit, by ordinary resolution appoint another Director in his stead. The person so appointed shall hold office so long as the Director in whose place he is appointed would have held the same if he had not been removed. 10
- PROCEEDINGS OF DIRECTORS
- Directors Meeting and quorum 123. The Directors may meet together for the despatch of business adjourn and otherwise regulate their meetings and proceedings as they think fit and may from time to time determine the quorum necessary for the transaction of business. Until otherwise determined two Directors shall form a quorum. 20
- Power to convene Meeting of Directors 124. A Director may, and on the request of a Director, the Secretary shall at any time summon a meeting of the Directors. 30
- Question to be decided by majority of votes 125. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote.
- Chairman and Vice-Chairman of meetings of Directors 126. The Directors may elect a Chairman and a Vice-Chairman of their meetings and determine the period for which they are to hold office and unless otherwise determined the chairman and vice-chairman shall be elected annually. The chairman or in his absence the vice-chairman shall preside at 40

all meetings of directors. If neither a chairman or the vice-chairman is elected, or if at any meeting the chairman or the vice-chairman is not present within fifteen minutes of the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

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- 10 127. The Directors may delegate any of their powers to Committees consisting of such member or members of their body as they may think fit. Any Committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors. Directors may delegate powers to committees
- 20 128. A Committee may elect a Chairman of its meetings. If no such Chairman is elected or if at any meeting the Chairman is not present within half an hour after the time appointed for holding the same, the members present may choose one of their number to be Chairman of the meeting. Chairman of Committee
- 30 129. A Committee may meet and adjourn its meetings as its members think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the Chairman shall have a second or casting vote. Chairman of Committee has casting vote
- 40 130. All acts bone fide done at any meeting of the Directors, or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such directors or person acting as aforesaid or that they or any of them were disqualified to be a director be as valid as if every such person had been duly appointed and qualified to be a Director. Validity of acts of Directors and Committee
131. A resolution in writing signed by all the directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened, held and constituted. Resolutions writing signed by Directors effective

MINUTES

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Minutes

132. (1) The Directors shall cause minutes to be duly entered in books provided for the purpose:-

(a) Of all appointments of officers.

(b) Of all the names of the Directors present at each meeting of the Directors and of any Committee of Directors.

(c) Of all resolutions and proceedings of general meetings and of meetings of the Directors and Committee. 10

(d) Of all orders made by the Directors and Committees of Directors.

Signature
on
minutes

(2) Any such minutes of any meeting of the Directors, or of any Committee, or of the Company, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes. 20

(3) The books containing the minutes of proceedings of any general meeting shall be kept by the Company at the registered office or the principal place of business in Malaysia of the company, and shall be open to the inspection of any member without charge.

(4) Any member shall be entitled to be furnished within fourteen days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in paragraph (1) of this Article at a charge not exceeding one dollar for every hundred words thereof. 30

SECRETARY

Secretary

133. (1) The Secretary shall in accordance with the Act be appointed by the directors for such term, at such remuneration, and upon such conditions as they may think

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fit, and any Secretary so appointed may be removed by them.

(2) The first Secretary shall be Mr. Velupillay Selvadurai Krishnan of Krishnan and Company (Incorporated Accountants and Corporate Secretaries) No.346-A, Pahang Road, Kuala Lumpur.

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REGISTER OF DIRECTORS, MANAGERS AND SECRETARIES

10 134. The directors shall cause to be kept at the registered office of the company a register of directors, managers and secretaries of the company as required under the Act.

SEAL

20 135. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose. Seal of Company and its use

DIVIDENDS AND RESERVE FUND

30 136. The Directors may with the sanction of a General Meeting from time to time declare dividends, but no such dividend shall be payable except out of profits of the Company, provided that the Directors may, if they think fit, from time to time pay to the members such interim dividends as appear to them to be justified by the profits of the Company. No higher dividend shall be paid than is recommended by the Directors and the declaration of the Directors as to the amount of the net profits shall be conclusive. Dividend and interim dividends

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- Dividends in proportion to amounts paid up 137. Subject to the provisions hereinafter contained and to the rights of members whose shares have been issued on special terms every dividend shall be paid to the members in proportion to the amounts paid up on their shares. For the purposes of this Article no amount paid on a share in advance of calls shall be treated as paid up on such share.
- Creation of reserve fund and distribution of bonus 138. The Directors may, before recommending any dividend, set aside out of the profits of the Company, such sums as they think proper as a reserve fund or reserve funds, which shall, at the discretion of the Directors, be applicable for meeting contingencies, or for the gradual liquidation of any debt or liability of the Company, or for repairing or maintaining any works connected with the business of the Company, or shall, with the sanction of the Company, in General Meeting be, as to the whole or in part, applicable for equalising dividends, or for distribution by way of bonus among the members of the Company for the time being on such terms and in such manner as the Company in General Meeting shall from time to time determine, and pending such application, the Directors may employ the sums from time to time so set apart as aforesaid in the business of the Company, or invest the same in such securities (other than the shares of the Company) as they may select. The Directors may also from time to time carry forward such sums as may be deemed expedient in the interests of the Company. 10
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- Dividend paid by distribution in specie 139. Any general meeting declaring a dividend may resolve that such dividend may be paid wholly or in part by the distribution of specific assets, and in particular of paid-up shares, debenture, or debenture stock of the Company, or paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways. 40

	140. The Directors may retain any dividends on which the Company has a lien and may apply the same in or towards satisfaction of the debt, liabilities, or engagements in respect of which the lien exists.	Debts may be deducted from dividends	Exhibits AB 5 Memorandum and Articles of Association of Sharikat Lian Joo Textiles Sdn. Bhd. (continued)
10	141. Unless otherwise directed any dividend may be paid by cheque or warrants sent through the post to the last registered address of the member or person entitled, or, in the case of joint holders, to the registered address of any one of such joint holders; and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent. No unpaid dividend or unpaid interest shall bear interest as against the Company.	Dividend warrant may be sent by post and unpaid dividend to bear no interest	
20	142. The Company shall not be responsible for the loss of any cheque, draft, dividend warrant, or post office order which shall be sent by post duly addressed to the member for whom it is intended.	Company not responsible for loss in post	
	143. No dividend shall be paid otherwise than out of the profits or shall bear interest against the company.	Dividends payable from profits only	
ACCOUNTS			
30	144. The Directors shall cause true accounts to be kept:-	Directors to keep proper accounts	
	(a) Of the assets and liabilities of the Company;		
	(b) Of all sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place;		
	(c) All sales and purchases of goods by the Company.		

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Books,
where
to be
kept

145. The books of account shall be kept at the office of the Company or at such other place within the States of Malaysia as the Directors shall think fit, and shall at all times be open to inspection by the Directors, but except with the sanction of the Directors, no other person shall be entitled to inspect any book or document or account of the Company unless he is authorised so to do by law or by these presents or by a resolution of the Company in general meeting. 10

Profit
and loss
account
and
balance
sheet

146. The Directors shall from time to time in accordance with Section 169 of the Companies Act, cause to be prepared and laid before the Company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in the Section. 20

LANGUAGE

147. Where any accounts, minute books or other records required to be kept by the Act is not kept in the Malay or English language, the directors shall cause a true translation of such accounts, minute books and other records to be made from time to time at intervals of not more than seven days and shall cause such translations to be kept with the original accounts, minute books and other records for so long as the original accounts, minute books and other records are required by this Act to be kept. 30

AUDIT

Accounts
to be
audited
annually

148. Once at least in every year the accounts of the Company shall be examined, and the correctness of the profit and loss account and balance sheet ascertained by one or more auditor or auditors. 40

Appoint-
ment of
Auditors

149. The Company at each annual general meeting shall appoint an auditor or auditors to hold office until the next annual general meeting, and their

appointment, remuneration, rights and duties shall be regulated by Section 172 to 175 of the Companies Act.

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150. Every account of the Directors when audited and approved by a general meeting shall be conclusive, except as regards any error discovered therein, within three months next after the approval thereof. Whenever any such error is discovered within that period, the account shall forthwith be corrected by the Directors and an entry made in their Minute Book and thenceforth shall be conclusive.

Audited
Accounts
Conclusive

10

NOTICES

151. A notice or any other document may be served by the Company upon any member, either personally or by sending it through the post in a prepaid letter, envelope or wrapper, addressed to such member at his registered address as appearing in the register of members.

Mode of
Service
of notice
to members

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152. Each holder of registered shares, whose registered place of address is not in the States of Malaysia, may from time to time notify in writing to the Company an address in the States of Malaysia, which shall be deemed to be his registered place of address within the meaning of the last preceding clause.

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153. All notices shall, with respect to any share to which persons are jointly entitled be given to whichever of such persons are named first in the register of members and any notice so given shall be sufficient notice to all the holders of such share.

Service
of notice
to joint (sic)
holders

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154. A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy or winding up of a member by sending it through the post in a prepaid letter addressed to him by name or by the title of the representatives of the deceased or trustees of the bankruptcy or by any like

Notice by
post to
persons
entitled
in conse-
quence of
death or
bankruptcy

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description at the address (if any) in the States of Malaysia supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which the same might have been if the death or bankruptcy has not occurred.

- | | | |
|---|---|----|
| Service
by post
deemed
good
service | 155. Where any notice or other document is sent by post, service of such notice or document shall be deemed to have been effected by properly addressing, pre-paying and posting a letter containing the notice or other document and to have been effected at the time at which the letter would be delivered in the ordinary course of post. | 10 |
| Evidence
of
posting | 156. A certificate in writing signed by any manager, secretary or other officer, of the Company, that a letter, envelope or wrapper containing a notice was properly addressed and put into the Post Office shall be conclusive evidence thereof. | 20 |
| Who bound
by notice | 157. Any person who, by operation of law, transfer, or other means whatsoever, shall become entitled to any share shall be bound by every notice in respect of such share which, previously to his name and address being entered in the Register, shall be duly given to the person from whom he derives his title to such share. | 30 |
| Notice
valid
though
member
deceased | 158. Any notice or document sent by post to, or let at the registered address of any member in pursuance of these presents, shall, notwithstanding such member be then deceased, and whether or not the Company have notice of his decease, be deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other persons by such member until some other person be registered in his stead as the holder or joint holder thereof, and such service shall for all purposes of these presents be deemed a sufficient service of such notice or | 40 |

document on his personal representatives and all persons, if any, jointly interested with him in any such share.

159. The signature to any notice to be given by the Company may be written or printed.

Signature
written
or printed

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WINDING UP

10 160. If the Company shall be wound up,
and the assets available for distribution
among the members as such shall be in-
sufficient to repay the whole of the paid-
up capital, such assets shall be
distributed so that as nearly as may be
the losses shall be borne by the members
in proportion to the capital paid up or
which ought to have been paid up at the
commencement of the winding up, on the
shares held by them respectively. But
20 this clause is to be without prejudice to
the rights of the holders of shares
issued upon special terms and conditions.

Distri-
bution on
winding
up

30 161. If the Company shall be wound up,
whether voluntarily or otherwise, the
liquidators may, with the sanction of a
special resolution, divide among the
contributories, in specie or kind, any
part of the assets of the Company, and
may, with the like sanction, vest any part
of the assets of the Company in trustees
upon such trusts for the benefit of the
contributories, or any of them, as the
liquidators with the like sanction,
shall think fit.

INDEMNITY

162. Every Director, Manager, Secretary,
Auditor or Officer for the time being of
the Company, and any trustees for the
time being acting in relation to any of
the affairs of the Company and their heirs,
executors and administrators respectively,
shall be indemnified out of the assets of
the Company from and against all actions,
proceedings, costs, charges, losses,
damages and expenses which they or any of

Company
to
indemnify

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them shall or may incur or sustain by reason of any act done, or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own wilful neglect or default respectively, and no such officer or trustee shall be answerable for the acts, receipts, neglects, or defaults of any other officer, or trustee, or for joining in any receipt for the sake of conformity, or the solvency or honesty of any bankers or other person with whom any moneys or effects belonging to the Company may be lodged or deposited for safe custody or for any insufficiency or deficiency of any security upon which any moneys of the Company shall be invested or for any other loss or damage due to any such cause as aforesaid, or which may happen in or about the execution of his office or trust unless the same shall happen through the wilful neglect or default of such officer or trustee. 10 20

RECONSTRUCTION

163. On any sale of the undertaking of the Company, the Directors or the liquidators on a winding up may, if authorised by a special resolution, accept fully paid or partly paid-up shares, debentures or securities of any other company, either then existing or to be formed for the purchase in whole or in part of the property of the company, and the Directors (if the profits of the Company permit), or the liquidators (on a winding up), may distribute such shares or securities, or any property of Company amongst the members without realisation, or vest the same in trust for them, and any special resolution may provide for the distribution or appropriation of the cash, shares or other securities, benefits or property, otherwise than in accordance with the strict legal rights of the members or contributories of the Company, and for valuation or any such securities or property at such price and 30 40

in such manner as the meeting may approve, and all holders of shares shall be bound to accept and shall be bound by any valuation or distribution so authorised, and waive all rights in relation thereto, save only in the case of the Company which is proposed to be or is in the course of being wound up, such statutory rights (if any) under section 270 of the Act as are incapable of being varied or excluded by these presents.

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10

164. In the event of a winding up of the Company, every member of the Company shall be bound, within fourteen days, after the passing of an effective resolution to wind up the Company voluntarily, or after the making of an order for the winding up of the Company to serve notice in writing on the Company appointing some householder in the States of Malaysia upon whom all summonses, notices, process orders and judgements in relation to or under the winding up of the Company may be served, and in default of such nomination the liquidator of the Company shall be at liberty on behalf of such member to appoint some such person, and serve upon any such appointee, whether appointed by the member or the liquidator shall be deemed to be good personal service on such member for all purposes, and, where the liquidator makes any such appointment, he shall with all convenient speed give notice thereof to such member by advertisement in a newspaper circulating in the States of Malaysia or by a registered letter sent through the post and addressed to such member at his address as mentioned in the register of members of the Company, and such notice shall be deemed to be served on the day following that on which the advertisement appears or the letter is posted.

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GENERAL

165. Every Director, manager, auditor, trustee, member of a committee, officer, servant, agent, accountant or other person employed in the business of the Company, shall, if required, before entering upon his duties sign a declaration pledging himself to observe a

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strict secrecy respecting all trans-
 actions of the Company with the customers
 and the state of accounts with individuals
 in matters relating thereto, and shall, by
 such declaration, pledge himself not to
 reveal any of the matters which may come
 to his knowledge in the discharge of his
 duties except when required so to do by
 the Directors, or by any meeting, or by
 a Court of Law, or by the person to whom
 such matter relate and except so far as
 may be necessary in order to comply with
 any of the provisions in these presents
 contained. 10

Names, Addresses and Descriptions of
 Subscribers

LAM SHES TONG, 32, Jalan Silang, Kuala Lumpur.	Merchant.	
LOW YEO FOONG, 46, Jalan Silang, Kuala Lumpur.	Merchant.	20
LAM SIE GIN, 32, Jalan Silang, Kuala Lumpur.	Merchant.	

Dated this 28th day of July, 1969.

Witness to the above signatures.

V.S. KRISHNAN, M.COM. F.S.A.A.,
 KRISHNAN & CO.,
 Accountants, Auditors & Secretaries, 30
 4, Main Road,
 Tapah, Perak, Malaysia.

AB 6

Agreement between Lam Shes Tong, Low
Yeo Foong and Lam Sie Gin, 30th June 1969

AGREEMENT

Exhibits

AB6
Agreement
between Lam
Shes Tong, Low
Yeo Foong and
Lam Sie Gin
30th June 1969

10 THIS AGREEMENT is made the 30th day of June, 1969
BETWEEN Inche Lam Shes Tong No. 32 Jalan Silang,
Kuala Lumpur of the first part, Inche Low Yeo Foong
of No.46, Jalan Silang, Kuala Lumpur of the second
part and Inche Lam Sie Gin of No.161 Upper Paya
Lebar Road, Singapore of the third part.

WHEREAS the parties hereto have agreed to form a
company for the purpose of acquiring as a going
concern the business (hereinafter called the
business) of textiles now carried on by them in
partnership under the name of LIAN JOO COMPANY at
No.32, Jalan Silang, Kuala Lumpur.

NOW IT IS HEREBY AGREED as follows:-

- 20 1. The parties hereto shall forthwith procure the
incorporation of a company (hereinafter called the
company) having an authorised share capital of
\$500,000/- divided into 500,000 ordinary shares of
\$1 each.
2. The company shall be called "SHARIKAT LIAN JOO
TEXTILES SENDIRIAN BERHAD" if such name is available
for registration or by such other available name as
may be agreed between the parties.
- 30 3. (1) The memorandum and articles of association
of the company shall be in the form of the proof
attached hereto and marked (A) with such modifica-
tions as the parties hereto may agree.
- (2) The memorandum and articles of association
shall be subscribed by the parties hereto or their
respective nominees each of whom shall agree in the
memorandum to take up 10,000 ordinary shares in the
capital of the company.
4. Immediately upon incorporation of the company
each of the parties hereto will take such steps as
for the time being lie within his power to procure
that

Exhibits

AB6
Agreement
between Lam
Shes Tong, Low
Yeo Foong and
Lam Sie Gin
30th June 1969
(continued)

- (1) the parties hereto and the company will enter into an agreement (hereinafter referred to as "the sales agreement") for the sale of the said business to the company;
- (2) the company will make simultaneous allotments of the shares to be allotted to them respectively in accordance with the provisions of the sales agreement;
- (3) the company will bear the reasonable costs fees and expenses of Messrs. Krishnan & Co., accountants, of No.346-A, Pahang Road, Kuala Lumpur relating to the preparation of this agreement the formation of the company and the sales agreement. 10

5. Nothing herein contained shall in any way affect the free exercise by any person of his powers as a director of the company.

IN WITNESS whereof we the several persons stated herein have set our hands the day and year above written. 20

In the presence of

.....

.....
Lam Shes Tong

.....
Low Yeo Foong

.....
Lam Sie Gin

AB 7

Official Search Certificate
17th December, 1969

Exhibits

AB7
Official Search
Certificate
17th December
1969

Bil. surat kami: LOCAL NO; 8814/15
" " tuan: RH/MMC/9000/LKY

Pejabat Pendaftar Sharikat2,
Bukit Mahkamah,
Kuala Lumpur.

Disember 17, 1969.

10 M/s Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

Per: Sharikat Lian Joo Textiles Sdn. Bhd.

Merujuk kepada surat tuan bertarikh November 14,
1969 (With reference to your letter dated " " "
1969, saya sertakan di-hawah ini kenyataan sharikat

I furnish below the particulars of the
yang tersebut di-atas sabagaimana yang di-petek
abovementioned company extracted from my
20 daripada fail saya:
file)

(a) Tarikh Penubohan: 13th August, 1969.
(Date of Incorporation)

(b) Alamat Pejabat Yang Berdaftar: Tan Kim Leong & Chan,
(Address of Registered Office) 9th Floor, Kwong Yik
Bank Bldg.,
75, Jalan Bandar,
Kuala Lumpur.

30 (c) Modal Yang Tetap: \$500,000/- di-
(Authorised Share Capital): bahagikan kepada
divided into
500,000
saham2 sabanyak \$ tiap2 satu.
shares of \$1 each.)

(d) Modal Yang di-Keluarkan: saham2 sabanyak \$
(Issued Capital: tiap2 satu
180,000 shares of \$1 each.)

(e) Modal Yang telah di-Jelaskan: \$
(Paid Up Capital: \$180,000/-

Exhibits

AB7
Official Search
Certificate
17th December
1969
(continued)

(f) Nama dan Alamat Pengarah² Pengurus² &
Setiausaha²:
(Name and Address of Directors, Managers
& Secretaries)

Directors - Lam Shes Tong, 32, Jalan
Silang, Kuala Lumpur.
Low Yeo Foong, 46, Jalan
Silang, Kuala Lumpur.
Lam Sie Gin, 32, Jalan Silang,
Kuala Lumpur. 10

Secretaries - Velupillay Selvadurai Krishnan,
Krishnan & Co.,
346-A, Pahang Road,
Kuala Lumpur.

(g) Gadaian (Charge): No charges appear to
have been registered in this Registry.

Sgd.

(Teoh Siang Eng)
b/p Pendaftar Sharikat²,
Malaysia. 20

ltk.

AB8

AB8
Letter, Shook
Lin & Bok to
Sharikat Lian
Joo Textiles
Sdn. Bhd.
19th November
1969

Letter, Shook Lin & Bok to Sharikat Lian
Joo Textiles Sdn. Bhd. 19th November 1969

NMC/9000/LKY
November 19, 1969

Dear Sirs,

Premises No.32 Jalan Silang,
Kuala Lumpur

We refer to our letter of the 13th instant.

2. Our clients have handed to us your cheque for
\$500/- being purported payment of rent in respect
of the said premises. In view of the contents of
our aforesaid letter we return herewith the said
cheque. 30

3. We reiterate paragraphs 2 and 3 of our said
letter.

Yours faithfully,

Sharikat Lian Joo Textiles
Sdn. Bhd.,
No. 32 Jalan Silang,
Kuala Lumpur.

c.c. Mr. Lam Kee Ying,
No. 2A Pesiaran Hampshire,
Kuala Lumpur.

oam

Exhibits

AB8
Letter, Shook
Lin & Bok to
Sharikat Lian
Joo Textiles
Sdn. Bhd.
19th November
1969
(continued)

AB 9

AB9

10

Cheque for \$500 drawn by Sharikat Lian
Joo Textiles Sdn. Bhd. 1st November 1969

No.HA A 231231 A/C No. 1509 1969
STAMP
DUTY
PAID
DEVELOPMENT & COMMERCIAL BANK
(LIMITED) BERHAD
(Incorporated in the States of Malaya)
HEAD OFFICE: KUALA LUMPUR

BAYAR ATAU PEMBAWA
PAY TO _____ OR BEARER

20 WANG MALAYSIA
MALAYSIAN DOLLARS _____
\$500/-

SHARIKAT LIAN JOO TEXTILES SDN.BHD.

Director

Managing Director.

Exhibits

AB 10

AB10
Letter, Shook
Lin & Bok to
Lam Shes Tong
10th December
1969

Letter, Shook Lin & Bok to
Lam Shes Tong, 10th December 1969

NMG/9000/LKY

A.R. REGISTERED

December 10, 1969

Dear Sirs,

Premises No.32 Jalan Silang,
Kuala Lumpur

We act for Lam Kee Ying Sdn. Bhd. the present
owner and lessor of the abovesaid premises.

10

2. We refer to the lease dated May 19, 1964
between yourself and Messrs. Lam Kee Ying and Lam
Yoo Chu. The said premises were subsequently
transferred to our client company.

3. By the terms of the lease you expressly
covenanted not to assign underlet or part with
possession of the said premises or any part thereof
without the written consent of our client. We are
instructed that you have committed a breach of this
covenant by assigning or underletting or parting
with the possession of the premises or part thereof
to Sharikat Lian Joo Textiles Sdn. Bhd. without the
prior written consent of our client.

20

4. Therefore Take Notice that unless steps are
taken by you to rectify the position within five (5)
days from the date hereof and compensation is paid
to our client for rental you have collected to-date
from the sub-letting our client will take such
proceedings against you as he may be advised.

Yours faithfully,

30

Mr. Lam Shes Tong,
Messrs. Lian Joo Co.,
No. 32, Jalan Silang,
Kuala Lumpur.

SHOOK LIN & BOK

2. December 10, 1969

Exhibits

- c.c. (1) By A.R. Registered Post.
- (2) By Ordinary Post
- (3) Sharikat Kam Woon Wah,
Advocates & Solicitors,
54 Jalan Klyne,
Kuala Lumpur.
- (4) Mr. Lam Kee Ying

AB10
 Letter, Shook
 Lin & Bok to
 Lam Shes Tong
 10th December
 1969
 (continued)

10

AB 11
 Letter, Shook Lin & Bok to
 Sharikat Lian Joo Textiles Sdn. Bhd.
 10th December 1969

NMG/9000/LKY

A.R. REGISTERED

December 10, 1969

AB11
 Letter, Shook
 Lin & Bok to
 Sharikat Lian
 Joo Textiles
 Sdn. Bhd.
 10th December
 1969

Dear Sirs,

Premises No.32, Jalan Silang,
 Kuala Lumpur

20

We act for Lam Kee Ying Sdn. Bhd. the present owner and lessor of the abovesaid premises.

2. We are interested that you have possessed or occupied the whole or part of the said premises without our client's prior consent. We are to say that you are, therefore, unlawfully in possession of or in occupation of our client's premises. You are a trespasser.

30

3. We are instructed to give you NOTICE, which we hereby do, unless you quit our client's said premises forthwith, we have instructions to commence proceedings against you without further notice.

Yours faithfully,

Exhibits

AB11
Letter, Shook
Lin & Bok to
Sharikat Lian
Joo Textiles
Sdn. Bhd.
10th December
1969
(continued)

Sharikat Lian Joo Textiles
Sdn. Bhd.
No. 32 Jalan Silang,
Kuala Lumpur.

- c.c. (1) By A.R. Registered Post.
(2) By Ordinary Post.
(3) Sharikat Kam Woon Wah,
Advocates & Solicitors,
54 Jalan Klyne,
Kuala Lumpur.
(4) Mr. Lam Kee Ying.
SYC

10

AB12
Certificate
of title
No.26929 of
Lot No. 68
Section 50
in town and
district of
Kuala Lumpur
4th November
1965

AB 12

Certificate of title No. 26929 of
Lot No.68 Section 50 in town and district
of Kuala Lumpur - 4th November 1965

CERTIFICATE OF TITLE
Section 61 of the Land Code
GOVERNMENT OF THE STATE OF SELANGOR
No. 26929
Presentation No. 2432

20

Register of certificates of title volume
CLXXIX folio 29. Annual rent \$10/00 (Dollars Ten
only) until revision takes place under section 31
of the Land Code, Cap:138 or other provision of
law in that behalf.

Lam Kee Ying of No.32 Jalan Silang, Kuala
Lumpur* is proprietor subject to the conditions and
agreements expressed or implied in Grant ~~for~~ Land
No. 6030 and to such restrictions in interest
expressed therein and shown by memorial hereon,
and to such registered interests as are shown by

-
- * Here insert "is" or "are as the case may be
/ Here refer to the grant or lease for State land
in continuation of which the certificate of title
is being given
/ Here insert "for the term expiring on" if
the certificate of title is given in continuation
of a lease for State land

No. 10602 Charge Volume CLXXVII Folio 157
From: Lam Kee Ying Limited
To: United Malayan Banking Corporation Limited
Presented & Received at Kuala Lumpur 28th July 1967
At 2.37 o'clock in the afternoon

Exhibits
AB12
Certificate of title No. 26929 of Lot No. 68 Section 50 in the town and district of Kuala Lumpur 4th November 1965
(continued)

10

No. 7187 xxxxxxxx Volume CVII folio 29
xxxxxxx 10602x CLXXVIIx157
United Malayan Banking Corporation Berhad xxxxxxxx
Presented and received xxxxx 23rd July, 1969
2.27 afterxxx
xx

20

7188 Charge xxx CVII xx159
xxxx Lam Kee Ying Sdn. Bhd.
xxxx Overseas Union Bank Limited
xx
xxxxxxxxxxx 28th July, 1969
2.29 afterxxx
xx

AB 13

Certificate of change of name -
14th March 1966

STATES OF MALAYA

AB13
Certificate of change of name
14th March 1966

CERTIFICATE OF CHANGE OF NAME

30

I hereby certify that TYMA COMPANY LIMITED having, with the sanction of a Special Resolution of the said Company and with the approval of the Registrar of Companies, changed its name, is now called LAM KEE YING LIMITED and I have entered such new name on the Register accordingly.

Given under my hand this 14th day of March, 1966.

SEAL
REGISTRAR
OF COMPANIES
States of
Malaya

Sd.
(Mohamed Hashim bin Amin)
Ag. Registrar of Companies
States of Malaya.

Exhibits

AB 14

AB14
Certificate of
Registration of
business name
of Lian Joo
Textile Co.
2nd July 1963

Certificate of Registration of business
name of Lian Joo Textile Co. - 2nd July 1963

FORM A
(Rule 3)

THE REGISTRATION OF BUSINESSES ORDINANCE 1956

No. of Certificate
250829

REGISTRAR OF BUSINESSES,
Federation of Malaya.

10

We, the undersigned submit for registration the
following particulars regarding the undersaid
business:

The business name	LIAN JOO TEXTILE CO.,	
(If such name is Chinese give name in Chinese and English characters)		
(a) Constitution of business	Partnership	
(b) The General nature of the business	Dealers in Textiles and General Merchants	20
(c) The principal place of the business	No. 32 Jalan Silang (Cross Street) Kuala Lumpur.	
The principal place of the business in the Federation, to which any official communication or legal process may be addressed or delivered	No. 32 Jalan Silang (Cross Street), Kuala Lumpur.	
The date of commencement	1.7.1963	30
Branches of the business	NIL.	

(a) Here state "Partnership", "Sole-proprietorship",
etc.
(b) Here state the nature of the business carried on,
e.g. "Money-lending", "Rubber Estate", etc.
(c) Give full address wherever situated whether in
the Federation or elsewhere

(d) The name of the partnership business and of the associates thereof are contained in a written agreement dated _____ and made between (parties) a copy of which is annexed to this form verified by my/our signature(s) or .. There is no written agreement as to the terms of the partnership

NIL.

We hereby certify that the particulars entered on this form have been duly registered this 4th day of July 1963

Sd.
Registrar of
Businesses
Federation of Malaya.

Exhibits

AB14
Certificate of
Registration of
business name
of Lian Joo
Textile Co.
2nd July 1963
(continued)

Dated this 2nd day of July 1963

(Signed)

(d) To be filled in if the business is a partnership.
Strike out whichever sentence is inapplicable.

Exhibits

Full name or names of Associate or associates (1)	Here give all Chinese names in Chinese characters	Here state any previous names and any aliases, opposite each name in the first column	Here give Chinese in Chinese characters	Sex Male or Female	Nationality and race	Date of entry into business	Particular office held in or nature of association with the business (3)	Usual residence
1. Lam Shes Tong		nil	nil	Male	Chinese (Kheh)	1.7.1963	Managing Partner	No.32 Jalan Silang, Kuala Lumpur.
2. Lam Yoo Chu		nil	nil	-do-	-do-	-do-	Partner	-do-
3. Lam Kee Ying		nil	nil	-do-	-do-	-do-	-do-	-do-
4. Chin Chit		nil	nil	-do-	-do-	-do-	-do-	-do-
5. Wong Fan Chong		nil	nil	-do-	-do-	-do-	-do-	-do-
6. Lam Chong Ling		nil	nil	-do-	-do-	-do-	-do-	-do-
7. Liew Mooi Him		nil	nil	-do-	-do-	-do-	-do-	-do-
8. Chan Tok		nil	nil	-do-	-do-	-do-	-do-	-do-
9. Ng Ah Cho		nil	nil	-do-	-do-	-do-	-do-	-do-

AB14
Certificate of Registration of business name of Lian Joo Textile Co.
2nd July 1963
(continued)

NOTE: If any associate is an associate of any other business, particulars of which also require registration, the name of the business or businesses must be shown either on the foot of the above page or on a schedule which should be attached to this form.

- (1) The name given must be the name by which the associate is commonly known. In the case of a xxx-Asian give all first or Christian names and surname; in the case of a Chinese give seh and other names; in the case of a Malay or Indian or other Asian give name of the associate and name of his father and include any personal xxxxxxxx
- (2) When any associate is known in business or in ordinary life by more than one name or by a "milk" xxx all these must be shown as aliases.
- (3) e.g. "Partner, "Member of Joint Family", "Manager", "Sleeping Partner", etc.

Exhibits

VERIFICATION BY ASSOCIATES

ABL4
Certificate of
Registration of
business name
of Lian Joo
Textile Co.
2nd July 1963
(continued)

I/We the undersigned confirm the accuracy of
all the statements made in this form and that I/We
am/are an associate/s of the business the name of
which is

Date 19 (Signature/s)

I certify that the Signature/s
right thumb print/s of
was/were affixed to the above declaration in my
presence after I had satisfied myself that 10
affixing such Signature/s
right thumb print/s was/were in fact
the person/s named in such declaration understood the
purport of such declaration.

Dated at this day of

We the undersigned confirm the accuracy of all
the statements in this form and declare that we are
associates of the business the name of which is
LIAN JOO TEXTILE CO.

..... (i.e. Lam Shes Tong) (i.e. Lam Yoo Chu) 20

..... (i.e. Lam Kee Ying) (i.e. Chin Chit)

..... (i.e. Wong Fan Chong) (i.e. Lam Chong Ling)

..... (i.e. Liew Mooi Him) (i.e. Chan Tok)

.....
(i.e. Ng Ah Choo)

I certify that the signatures of the above-
named were affixed to the above declaration in my 30
presence after I had satisfied myself that the
persons so affixing such signatures were in fact the
persons named in such declaration and understood the

purport of such declaration.

Dated at Kuala Lumpur this 2nd day of July, 1963.

Sd.

Advocate and xxx
Kuala Lumpur.

Identified by:

NOTE: The above verification must be attested -

- 10 (a) within the Federation, by a Judge, President of a Sessions Court, Magistrate, Notary Public, Justice of Peace, xx Solicitor, a Member of the Houses of Parliament or of a State Legislative Assembly or of a State Legislatives Assembly or of a State Executive Commissioner for Oaths, Commissioner for Labour, a Chinese Affairs Officer, any Officer authorised by the xxxxx for Labour, a District Officer, an Administrative Officer in the State of Johore, an Assistant District Officer or a xxxxxx or Penggawa authorised by the District Officer;
- 20 (b) within any territory in the Commonwealth, by a Judge, President of a Sessions Court, Magistrate, Notary Public, Justice of the Peace, an Advocate or Solicitor who is entitled to practise in the Courts of such territory or a Consular officer of a territory in the Commonwealth;
- 30 (c) within any territory outside the Commonwealth, by a Notary Public, a Consular Officer or Diplomatic Officer performing consular functions of any territory of the Commonwealth.

AB 15

Agreement in Chinese dated 1st March 1964

Not reproduced - see translation
Exhibit AB 16

Exhibits

AB14
Certificate of
Registration of
business name
of Lian Joo
Textile Co.
2nd July 1963
(continued)

AB15
Agreement in
Chinese dated
1st March 1964

ExhibitsAB 16

AB16
Translation of
Agreement
1st March 1964

Translation of Agreement - 1st March 1964

Lam Kee Ying, being the Lessor executing this Memorandum of Lease, do lease to Mr. Lam Shes Tong, the representative of Lian Joo Company, the ground floor of the premises No.32 Jalan Silang, Kuala Lumpur. It is agreed that the monthly rental is \$500/- for the space of 25 years from the 1st day of April 1964 to the 31st day of March 1988. During the continuance of this lease, the Lessee cannot underlet or assign the premises for other business. The deposit shall be 3 months' rental. Rental for every month shall be paid within the first ten days of the month. The Lessee shall pay the charges in respect of electricity, water, sanitation, repairs etc.

10

In the event of the quit rent and assessment being increased or any other rates or taxes being imposed by the Government in future the Lessee shall pay 50% of such increases.

During the term of this lease, the Lessee shall keep the air-conditioned room in its original condition. No alteration or modification is to be made. If there is any alteration in connection with or removal of the front glass showcase, strong supporting posts shall be fixed. If Lam Kee Ying and successors do not make use of the air-conditioned room, the Lessee shall be given first option to rent it at an additional monthly rental of \$100/-.

30

Should there be any other proposals, the consent of the owner has to be obtained, otherwise the official copy hereof shall be translated into the English version and to be retained as proof. For fear that verbal agreement produces no testimony, two copies of this instrument are therefore executed, one copy to be kept by each party for retention as proof.

Note: If the person given the first option does not want to rent, the owner shall let out as he wishes.

Dated this 1st day of March 1964.

Exhibits

Sgd. Lam Kee Ying
Signature of Lessor

AB16
Translation of
Agreement
1st March 1964
(continued)

Sgd. Lam Shes Tong
Signature of Lessee

Sgd. Sgd.
Signatures of Witnesses

This is the True Translation of the
Original Document produced in Serial
No. 550 of 1971

10 Sgd. Interpreter
19.1.71 High Court
Kuala Lumpur

AB 17
Agreement in Chinese dated 1st March 1964
Not reproduced - see translation -
Exhibit AB18.

AB17
Agreement in
Chinese dated
1st March 1964

AB 18
Translation of Agreement - 1st March 1964

AB18
Translation of
Agreement
1st March 1964

20 AGREEMENT ON DISSOLUTION OF THE BUSINESS
CONCERNS of
Ban Joo & Co., 31 Carpenter Street,
Singapore
Ban Joo & Co., 86, Jalan Bandar,
Kuala Lumpur
Lian Joo & Co., 32, Jalan Silang,
Kuala Lumpur
Premises at 32, Jalan Silang, Kuala
Lumpur

Exhibits

AB18
Translation of
Agreement
1st March 1964
(continued)

Subject Matter: It has been over ten (10) years since the inauguration of the business known as Ban Joo & Co. of Kuala Lumpur, thereafter, a branch was set up at 31, Carpenter Street, Singapore, premises at 32, Jalan Silang, Kuala Lumpur was purchased and Lian Joo & Co. at 32, Jalan Silang, Kuala Lumpur was set up as well (all of which are hereinafter referred to as the BUSINESS CONCERNS). Recently shareholders of the BUSINESS CONCERNS were of the opinion that when trees becoming too big, they had to be replanted separately. It was thus agreed upon that the BUSINESS CONCERNS be dissolved, each attending to his own business. We requested Messrs. Liao Voon Hsiung and Wong Chok Chiew as Witnesses to this matter of Dissolution and an Extraordinary General Meeting of Shareholders was convened on 1st March, 1964 at Ban Joo & Co., 31, Carpenter Street (upstairs), Singapore in which all the nine (9) Shareholders were present. The subject of Dissolution of the BUSINESS CONCERNS was brought out for discussion and it was resolved that dissolution be carried out in accordance with the provisions of the seventeen (17) Clauses set forth hereinafter. 10

Assets: The four (4) items of Assets are listed as follows:- 30
All assets pertaining to Ban Joo & Co., 86, Jalan Bandar, Kuala Lumpur; all assets pertaining to Ban Joo & Co., 31, Carpenter Street, Singapore; the Premises of a 4-storey building at 32, Jalan Silang, Kuala Lumpur and all assets pertaining to Lian Joo & Co., 32, Jalan Silang, Kuala Lumpur.

Liquidators: It was resolved that Messrs. Lam Kee Ying, Lam Yoo Chu and Lam Shes Tong be appointed as Liquidators of the Dissolution. 40

Dissolution of the BUSINESS CONCERNS The following seventeen (17) Clauses under which Dissolution was to be carried out were resolved as follows:-
1. The Premises at 32, Jalan Silang, Kuala

Lumpur inclusive of the air-conditioned room, furniture and fittings be appraised at Dollars Two hundred and twenty-five thousand only (\$225,000/-) and be purchased by Mr. Lam Kee Ying. With the exception of the air-conditioned room, the whole of the ground floor shall be leased to Mr. Lam Shes Tong, the undertaker of Lian Joo & Co. upon the execution of an Agreement of Lease, the term of tenancy for which shall be twenty-five (25) years at a monthly rental of \$500/- (Dollars Five hundred only.)

Exhibits

AB18

Translation of
Agreement
1st March 1964
(continued)

10

2. The stock-in-trade, furniture and fittings of Lian Joo & Co. at 32, Jalan Silang, Kuala Lumpur be appraised at Dollars Forty-five thousand only (\$45,000/-), the sum of which will be distributed among the original shareholders in accordance with the number of shares held by each of them, while Mr. Lam Shes Tong will undertake and trade under the name of Lian Joo & Co., and shall be responsible for settling the creditors and Debtors accounts of the said Company.

20

3. The stock-in-trade, furniture and fittings of Ban Joo & Co. at 86, Jalan Bandar, Kuala Lumpur be appraised at \$40,000/- (Dollars Forty thousand only), the sum of which will be distributed among the original shareholders in accordance with the number of shares held by each of them, while Mr. Lam Yoo Chu will undertake and trade under the name of Ban Joo & Co., Kuala Lumpur, and shall be responsible for settling the creditors and debtors accounts of the said Company.

30

40

4. The stock-in-trade, furniture and fittings of Ban Joo & Co. at 31, Carpenter Street, Singapore be appraised at Dollars Fifty thousand only (\$50,000/-) the sum of which will be distributed among the original shareholders in accordance with the number of shares

Exhibits

AB18
Translation of
Agreement
1st March 1964
(continued)

- held by each of them, while Mr. Chin Chit will undertake and trade under the name of Ban Joo & Co., Singapore, and shall be responsible for settling the creditors and debtors accounts of the said Company.
5. Stock checking of the said three (3) Companies shall be done before 31st March, 1964; the three (3) undertakers agreed that the stock-in-trade brought down last year be based on the prices listed in the Stock-Checking Books; prices of any stock acquired during 1964 shall be based at Costs, no discount whatsoever shall be allowed. It was also agreed upon that the total value of assets of the said three (3) Companies be based on the appraisals made before 31st March, 1964. 10
 6. Credit accounts shall be based on the statements of Accounts as at 31st March, 1964. All shareholders agreed to retain 10% of the total value of Assets as Bad Debts Reserves. After six (6) months, i.e. up to 30th September, the balance of the said Reserves, after writing off bad debts, shall be distributed among shareholders in accordance with the number of shares held by each of them. 20
 7. The return of Share Capital has been agreed upon by shareholders as follows: the undertakers shall pay up in full by three (3) monthly instalments - the first instalment of 40% shall be paid on 31st March, the second instalment of 30% shall be paid on 30th April and the third instalment of 30% on 31st May. 30
 8. Commencing 2nd March, 1964, all money received shall in the first instance pay up the overdraft/s from bank/s and the TR loan/s. After redeeming the Grant for the Premises at No.32, and if there be any balance of cash, it shall be distributed among shareholders who are entitled to such distribution in accordance with the number of shares held by each of them. 40
 9. The Grant for the Premises at No.32 should

be redeemed by 31st March and be transferred to Mr. Lam Kee Ying, the undertaker, all countersigned documents held by Lam Yoo Chu and the other shareholders shall be rescinded. Expenses thus incurred shall be borne by the company. Deposits paid pertaining to the Premises shall be handed over to the undertaker, Mr. Lam Kee Ying. After the transfer, quit rents and assessments shall be paid by Mr. Lam Kee Ying. The original shareholders shall be entitled to distribution of rents received up to 31st March after deducting assessments and quit rents.

Exhibits

AB18
Translation of
Agreement
1st March 1964
(continued)

10

10. All Agreements made prior to the Dissolution of the BUSINESS CONCERNS inclusive of the transfer made by Mr. Lam Yoo Chu on Ban Joo & Co., Kuala Lumpur and deposits for lights for Ban Joo & Co. (upstairs) shall be rescinded. The vehicle under registration number JB 5172 shall be transferred to the undertaker of Ban Joo & Co., Kuala Lumpur by Mr. Lam Kee Ying. The Agreement of Lease shall be signed at the Advocates & Solicitors Office by Mr. Lam Kee Ying, the owner of the Premises at No. 32 and Mr. Lam Shes Tong, the undertaker of Lian Joo & Co. on 31st March when the transfer of the Grant is executed.

20

30

11. All shareholders shall sign in readiness documents for rescinding the current accounts with the bank/s, notice of retiring from shareholdings, retiring from Business Registration and recovering guarantee/s issued, all of which shall be handed over to the Board of Liquidators for action.

40

12. The three (3) undertakers shall keep all books of accounts and documents for previous years in safe custody and shall be opened to the original shareholders for references when necessary with a written request, after which they shall be returned.

Exhibits

AB18
Translation of
Agreement
1st March 1964
(continued)

13. As from 1st April, 1964, the businesses of the three (3) companies shall be administered by the three (3) undertakers. Profits made or losses sustained thereafter by the respective companies shall be of no concern to the retiring shareholders.
14. All import quotas applied and approved by Government and any other interests acquired before 31st March, 1964 shall belong to the nine (9) original shareholders and shall be distributed among them accordingly. 10
15. For the setting up of the Board of Liquidators, Messrs. Lam Kee Ying, Lam Yoo Chu and Lam Shee Tong shall be appointed as Liquidators, and Mr. Chin Shin Tok be appointed to take care of correspondence and clerical work.
16. It is permissible that the three businesses of the companies be wound up on 23rd March, after the date, they shall first file in new Business Registration Forms for Registration of Businesses, and open new banking accounts. The previous Business Registrations of the three (3) companies shall be rescinded on 1st April, and a Notice of Retirement from Shareholdings be advertised in Sin Chew Jit Poh and Nanyang Siang Pau on the same day. 20 30
17. In this Agreement there are 17 Clauses which were resolved on the wishes of and agreed upon by all shareholders and signed by each of them personally in the presence of witnesses. Hereafter no argument shall be entertained. After the signing of this Agreement it shall come into force. Nine (9) copies of this Agreement were made, each shareholder retaining one copy as evidence. 40

Signatures of (Signed) LAM SIONG YONG: LAM SHEE TONG:
all share- NG AH CHOO: CHIN CHIT: CHIN TOK:
holders: LIAO MEI KIM (Yoo signed on behalf);
LAM KEE YING: LAM YOO CHU: WONG FON
CHONG.

In the presence of (Signed) LIAO VOON HSIUNG: WONG
 Witnesses: CHOK CHEW.
 Recorder's (Signed) CHIN SHIN TOK.
 Signature:
 This Copy is for Mr. Lam Shes Tong for retention
 Dated this First day of March, 1964

This is the True Translation of the Original
 Document produced in Serial No.537 of 1971

Sgd.

Registrar
 High Court
 Kuala Lumpur

Exhibits

AB18
 Translation of
 Agreement
 1st March 1964
 (continued)

10

AB 19

Certified copy Business Registration Form A of
 Lian Joo Co - 1st June 1964

UNDANG PENDAFTERAN PERNIAGAAN, 1956
 THE REGISTRATION OF BUSINESSES ORDINANCE, 1956

SALINAN
SALINAN YANG SAH

BAGI BUTIR2 KENYATAAN BERKAITAN
 DENGAN PERNIAGAAN YANG TERSEBUT
 DI-BAWAH, DI-KELUARKAN MENURUT
 SHARAT UNDANG2 PERATORAN 14(b)

20

COPY
CERTIFIED COPY

OF THE ENTRIES IN RESPECT OF THE
 UNDER-MENTIONED BUSINESS ISSUED UNDER
 THE PROVISION OF RULE 14(b)

AB19
 Certified copy
 Business
 Registration
 Form A of
 Lian Joo Co.
 1st June 1964

30

Nama Perniagaan The business name	Lian Joo Co.
No. Surat Akuan No. of Certificate	252428
Bentuk Perniagaan Constitution of business	Partnership
Ienis2 Perniagaan The general nature of the business	Dealers in textiles and general merchants
Pangkalan Perniagaan The Principal place of the business	No.32, Jalan Silang, Kuala Lumpur.
Tarikh Permulaan The date of commencement	1st June, 1964
Chawangan Perniagaan Branches of the business	Nil

Exhibits

AB19
Certified copy
Business
Registration
Form A of
Lian Joo Co.
1st June 1964
(continued)

Sebutkan jika ada membuat surat perjanjian berkenaan dengan syarat2 perkongsian itu. Jika ada, nyatakan tarikh nya dan kembalikan sa-keping salinan-nya yang telah di-sahkan dengan tandatangan2
State whether there is a written agreement as to the term of the partnership. If so, give dates and attach a copy of the agreement verified by signatures.

A&B 14 10
April 71
Sgd.
(N.J.DANKEA)
14.4.71

AB 22

Exhibits

Four Receipts and translations thereof dated respectively 30th May 1964, 1st August 1969, 1st September 1969 and 1st October 1969

AB22
Four Receipts and translations thereof dated respectively 30th May 1964 1st August 1969 1st Sept. 1969 1st October 1969

No.51

RECEIPT

The house is not to be sublet or assigned without the previous written permission of the Landlord
The rent deposit does not bear interest
The Landlord is not responsible for Repairs.

Date, 30-5-1964

Received from: (In Chinese)

the sum of Dollars (In Chinese)

being rent on House No. 32 Cross Street, K-L

for the month of 1964 (In Chinese)

¥550/-

Sgd.

No.51

RECEIPT

30. 5. 1964

20

Received from Lian Joo Co. (Cloth Shop)

the sum of Dollars Five hundred & fifty only

being rent on House No. 32, Cross Street, K. Lumpur

for the month of May, 1964

¥550/-

Sgd. Lam Kee Ying

Exhibits

AB22
Four Receipts
and translations
thereof dated
respectively
30th May 1964
1st August 1969
1st Septr. 1969
1st October 1969
(continued)

Lam Kee Ying Ltd.
No.32 Jalan Silang (Cross Street), Mezzanine
Floor, Kuala Lumpur. Telephones: 24331 & 64283
MALAYSIA

No. 0379

OFFICIAL RECEIPT

Kuala Lumpur, 1 - 8 - 69

RECEIVED from (Chinese)

32, CROSS ST. K-L

the sum of Dollars(Chinese)

10

being payment of 1969 (Chinese)

for LAM KEE YING LTD.

500/-

Cash/Cheque No.

Lam Kee Ying Ltd.
No.32 Jalan Silang (Cross Street), Mezzanine
Floor, Kuala Lumpur. Telephones: 24331 & 64283
MALAYSIA

No. 0391

OFFICIAL RECEIPT

Kuala Lumpur, 1 - 9 - 69.

RECEIVED from (Chinese)

32, CROSS STREET, K-L

the sum of Dollars (Chinese)

20

being payment of 1969 (Chinese)

for LAM KEE YING LTD.

500/-

Cash/Cheque No. 476341

O - C - B

Lam Kee Ying Ltd.
No.32 Jalan Silang (Cross Street), Mezzanine
Floor, Kuala Lumpur. Telephones: 24331 & 64283

No. 0410

OFFICIAL RECEIPT

Kuala Lumpur, 1-10-69

RECEIVED from (Chinese)

32 CROSS STREET, K-L

the sum of Dollars (Chinese)

10 being payment of 1969 (Chinese)

for LAM KEE YING LTD.

\$500/-

Cash/Cheque No.488141
O.O.B.C.

Exhibits

AB22

Four Receipts
and translations
thereof dated
respectively
30th May 1964
1st August 1969
1st Septr. 1969
1st October 1969
(continued)

Lam Kee Ying Ltd.
32 Jalan Silang (Cross Street) Mezzanine Floor,
K.Lumpur

OFFICIAL RECEIPT

No. 0379

1. 8. 69

20 Received from Lian Joo Co
32 Cross Street, K. Lumpur

the sum of Dollars Five hundred only
house

being payment of Shop/rent for month of August, 1969

500/-

Sd. ?
f. Lam Kee Ying Ltd.

Lam Kee Ying Ltd.
32 Jalan Silang (Cross Street) Mezzanine Floor,
K.Lumpur

OFFICIAL RECEIPT

No. 0391

1. 9. 69

30 Received from Lian Joo Co.
32 Cross Street, K. Lumpur

the sum of Dollars Five hundred only
being payment of Shop house rent for the month of
September, 1969

\$500/-

Cheque 476341 O.c.B

Sd. Lam Kee Ying Ltd.

Exhibits
 AB22
 Four Receipts
 and translations
 thereof dated
 respectively
 30th May 1964
 1st August 1969
 1st Septr. 1969
 1st October 1969
 (continued)

Lam Kee Ying
 32 Jalan Silang (Cross Street) Mezzanine Floor,
 K. Lumpur

OFFICIAL RECEIPT

No. 0410
 1. 10. 69

Received from Lian Joo Co.
 32 Cross Street, K. Lumpur

the sum of Dollars Five hundred only

being payment of Shop house rent for month October,
 1969

\$500/-
 Cheque No. 488141
 O.c.b.c.

Sd. ?
 Lam Kee Ying Ltd.

10

Translated by

D 1
 Resolution
 passed by the
 partners of
 Ban Joo Co. and
 translation
 thereof

D 1

Resolution passed by the partners
 of Ban Joo Co. and translation thereof

(Chinese)

BAN JOO & CO.

Head Office: 86 High Street. Tel.87476
 P.O. Box 972 KUALA LUMPUR, MALAYA.
 Branch: 31, South Bridge Road, Tel.92257
 P.O. Box 1292, SINGAPORE 1.

20

(Chinese)

Date 31-3-1964

PARTICULARS	Debit	¢	cts.	Credit	¢	cts.	Balance	¢	cts
(In Chinese)	40,000		00						
" "	6,233		27	46,233		27			
" "	50,000		00						
" "	90,566		40	140,566		40			
" "	45,000		00						
" "	88,193		03	133,193		03			30
" "	195,000		00	195,000		00			
	514,992		70	514,992		70			

(Chinese)

E. & O.E.

(Chinese)

BAN JOO & CO.
HEAD OFFICE 86, HIGH STREET - KUALA LUMPUR

Exhibits

Messrs: The value of property is listed in the
undermentioned clauses. 31.3.1964.

D 1
Resolution
passed by the
partners of
Ban Joo Co. and
translation
thereof
31st March 1964
(continued)

Resolution passed in the middle month of May

<u>Particulars</u>		<u>Dr. \$</u>	<u>¢</u>	<u>Cr. \$</u>	<u>¢</u>
	K.L.Fatt Joo & Co. (Shop- premises, Furniture and sign-board)	40,000.00			
10	" Actual Capital	6,233.37		46,233.27	
	S'pore " (Shop-premises, Furniture and sign-board)	50,000.00			
	" Actual Capital	90,566.40		140,566.40	
	KL.Lian Joo & Co. (Shop-premises, Furniture and sign-board)	45,000.00			
	" Actual Capital	88,193.03		133,193.03	
20	K.L.No.32 Cross Street - (One Shop-house)	195,000.00		195,000.00	
		<u>514,992.70</u>		<u>514,992.70</u>	

Translated by

.....
Chinese Interpreter
Magistrate's Court,
Kuala Lumpur.

HIGH COURT Civil Suit No. 2305/69

Exhibit No. D-1

30 Description
of Exhibit: Translation of D-1

Put in by: Defendant

Date: 8/11/71 Sgd.

Exhibits

D 2

D 2
Statement of
dissolution of
Ban Joo & Co.
and translation
thereof
15th May 1964

Statement of dissolution of Ban Joo & Co.
and translation thereof - 15th May 1964

(Chinese)
BAN JOO & CO.,
Head Office: 86 Jalan Bandar (High Street)
Tel. 87476. P.O. Box 972 KUALA LUMPUR, MALAYA.
Branch: 31, South Bridge Road, Tel. 92257.
P.O. Box 1292, SINGAPORE 1.

(Chinese) Date 15-5- 1964 10

(Chinese)

PARTICULARS	Debit	¢	cts	Credit	¢	cts.	Balance	¢	cts.
1-3-64 (Chinese)	225,000-00								
30-4-1964(")				195,000-00					
(Chinese ")				9,300-00					
(" ")				7,800-00					
(" ")				3,000-00					
(" ")				3,000-00			(Chinese)		
(" ")				3,000-00					
(" ")				1,500-00					20
(" ")				1,500-00					
(" ")				600-00					
(" ")				300-00					
	225,000-00			225,000-00					

2305/69

This is the Original
Document produced for
Translation in Serial
No. 875 of 1971

D-2

Statement of Account

Deft.

30

Sd.

Sd.

High Court
Kuala Lumpur.

8/11/71

(Chinese) E. & O.E.

(Chinese)

BAN JOO & CO. KUALA LUMPUR.

Exhibits

MESSRS: Shop No. 32, Cross Street. Date: 15.5.1964.
Purchasing Price (Chinese)

D 2
Statement of
dissolution of
Ban Joo & Co.
and translation
thereof
15th May 1964
(continued)

STATEMENT OF DISSOLUTION (Chinese)

Particulars	Debit	Credit
1.3.1964: At an open meeting in Singapore purchasing price agreed at	¥225,000.00	
10 30.4.1964: At a meeting held in Kuala Lumpur the value is		¥195,000.00
The original share after deduction is:		
Lam Yew Chor (Chinese)		9,300.00)
Lam Khee Yin (")		7,800.00)
Lam Say Thoong (")		3,000.00)
Chin Chik (")		3,000.00)
Wong Fen Chong (")		3,000.00)
Lam Seong Yoong (")		1,500.00)
Liau Moy Him (")		1,500.00)
20 Chin Chak (")		600.00)
Ng Ah Choo (")		300.00)
	¥225,000.00	225,000.00

No. 2305/69

D - 2

Translation of D-2

Deft.

This is the True
Translation of the
Original Document
produced in Serial No.
875 of 1971

Sd.
Date: 8/11/71

Sd.

Interpreter
High Court,
Kuala Lumpur

Exhibits

D 3

D 3
Resolution of
Directors of
Lian Joo
Textiles
Sdn. Bhd.
7th January
1970

Resolution of Directors of Lian Joo
Textiles Sdn. Bhd. - 7th January 1970

Sharikat Lian Joo Textiles Sdn. Bhd.

Resolution of Directors made pursuant to
Article 131

We, the undersigned Lam Shes Tong, Low Yeo
Foong and Lam Sie Gin being all the directors of
Sharikat Lian Joo Sdn. Bhd. at this date do pursuant
to article 131 of the company's articles of 10
association, resolve

"That the managing director Mr. Lam Shes Tong
is hereby authorised to attend court and act on the
company's behalf in all matters relating to Kuala
Lumpur High Court Civil Suit No. 2305 of 1969."

Sgd. (In Chinese) Sgd. (In Chinese)
Lam Shes Tong - Director Low Yeo Foong - Director

Sgd. (In Chinese)
Lam Sie Gin - Director

Dated this 7th day of January, 1970.

O N A P P E A L
FROM THE FEDERAL COURT IN MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

LAM KEE YING Sdn. Bhd.

Appellants
(Plaintiffs)

- and -

1. LAM SHES TONG t/a
LIAN JOO CO

2. SHARIKAT LIAN JOO
TEXTILES Sdn. Bhd.

Respondents
(Defendants)

RECORD OF PROCEEDINGS

Coward Chance,
Royex House,
Aldermanbury Square,
London, EC2V 7LD.

Solicitors for the Appellants

Sole, Sawbridge & Co.,
9, Gray's Inn Square,
Gray's Inn,
London, WC1R 5JD.

Solicitors for the Respondents