



*Don. K. Kammamandala
(A.C.A.)*

GOVERNMENT OF CEYLON
LEGISLATIVE ENACTMENTS

Companies Ordinance

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CHAPTER 145

COMPANIES

AN ORDINANCE TO AMEND TO AND CONSOLIDATE THE LAW
RELATING TO COMPANIES.

Ordinances
Nos. 51 of 1938,
6 of 1939,
19 of 1942,
54 of 1946,

Acts
Nos. 58 of 1949,
35 of 1951.

[1st April, 1939.]

1. This Ordinance may be cited as the Companies
Ordinance.

Short title.

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL
THERE TO

MEMORANDUM OF ASSOCIATION

2. (1) Any seven or more persons, or where the
company to be formed will be a private company, any
two or more persons, associated for any lawful purpose
may, by subscribing their names to a memorandum of
association (which must be printed) and otherwise
complying with the requirements of this Ordinance in
respect of registration, form an incorporated company,
with or without limited liability.

Mode of
forming
incorporated
company.

[§ 2, 6 of 1939.]

(2) Such a company may be either—

(a) a company having the liability of its members
limited by the memorandum to the amount, if
any, unpaid on the shares respectively held by
them (in this Ordinance termed “a company
limited by shares”); or

(b) a company having the liability of its members
limited by the memorandum to such amount
as the members may respectively thereby
undertake to contribute to the assets of the

company in the event of its being wound up (in this Ordinance termed "a company limited by guarantee"); or

- (c) a company not having any limit on the liability of its members (in this Ordinance termed "an unlimited company").

Requirements with respect to memorandum.

3. (1) The memorandum of every company must state—

- (a) the name of the company, with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee ;
- (b) the district in which the registered office of the company is to be situate ;
- (c) the objects of the company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;
- (b) no subscriber of the memorandum may take less than one share ;
- (c) each subscriber must write opposite to his name the number of shares he takes.

50/ 4. The memorandum must bear a stamp of the Value of fifty rupees and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

Stamp and signature of memorandum.

5. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provisions is made in this Ordinance.

Restriction on alteration of memorandum.

6. (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

Mode in which and extent to which objects of company may be altered.

- (a) to carry on its business more economically or more efficiently ; or
- (b) to attain its main purpose by new or improved means ; or
- (c) to enlarge or change the local area of its operations ; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) to restrict or abandon any of the objects specified in the memorandum ; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company ; or
- (g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and

(b) that, with respect to every creditor who, in the opinion of the court, is entitled to object and who signifies his objection in manner directed by the the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court :

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) A copy certified by the secretary of the court of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the Registrar of Companies, and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the court may think proper.

(1) copy - certified by the court
 (2) altered memorandum
 15 days

(7) If a company makes default in delivering to the Registrar of Companies any document required by this section to be delivered to him the company shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

100/- fine

ARTICLES OF ASSOCIATION

7. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered, with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Articles prescribing regulations for companies.

8. (1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

Regulations required in case of unlimited company or company limited by guarantee.

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar of Companies notice of the increase, and the Registrar shall record the increase.

If default is made in complying with this subsection the company and every officer of the company who is in default shall be liable to a default fine.

9. (1) Articles of association may adopt all or any of the regulations contained in Table A.

Adoption and application of Table A.

(2) In the case of a company limited by shares and registered after the appointed date, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as

applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamp, and signature of articles.

10. Articles must—

- (1) be printed ;
- (2) be divided into paragraphs numbered consecutively ;
- (3) bear a stamp of the value of ten rupees ;
- (4) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution.

11. (1) Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

FORM OF MEMORANDUM AND ARTICLES

Statutory forms of memorandum and articles.

12. The form of—

- B (1) the memorandum of association of a company limited by shares,
- C (2) the memorandum and articles of association of a company limited by guarantee and not having a share capital,
- D (3) the memorandum and articles of association of a company limited by guarantee and having a share capital,
- E (4) the memorandum and articles of association of an unlimited company having a share capital,

shall be respectively in accordance with the forms set out in Tables B, C, D, and E in the First Schedule, or as near thereto as circumstances admit.

REGISTRATION

13. The memorandum and the articles, if any, shall be delivered to the Registrar of Companies and he shall retain and register them.

Registration of memorandum and articles.

14. (1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

Effect of registration.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

15. (1) A company incorporated under this Ordinance shall have power to hold lands :

Power of company to hold lands.

Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Director of Commerce², hold more than two acres of land, but the Director of Commerce² may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as he thinks fit.

(2) A licence given by the Director of Commerce² under this section shall be in accordance with the form set out in the Second Schedule, or as near thereto as circumstances admit.

16. (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters prece-

Conclusiveness of certificate of incorporation.

dent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance.

(2) A statutory declaration by a proctor of the Supreme Court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

17. (1) Subject to the provisions of this section, a company registered as unlimited may register under this Ordinance as limited, or a Company already registered as a limited company may re-register under this Ordinance, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration and those rights or liabilities may be enforced in manner provided by Part IX of this Ordinance in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Ordinance.

PROVISIONS WITH RESPECT TO NAMES OF COMPANIES

Restriction on registration of companies by certain names.

18. (1) No company shall be registered by a name which—

(a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to

deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires ; or

- (b) contains the words " Chamber of Commerce ", unless the company is a company which is to be registered under a licence granted in pursuance of section 19 of this Ordinance without the addition of the word " Limited " to its name ; or
- (c) contains the words " Building Society ".

(2) Except with the consent of the Governor-General³ no company shall be registered by a name which—

- (a) contains the words " Royal " or " Imperial " or in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family or connexion with the Government or any department thereof ; or
- (b) contains the words " Municipal " or " Chartered " or in the opinion of the Registrar suggests, or is calculated to suggest, connexion with any Municipality or other local authority or with any society or body incorporated by Royal Charter ; or
- (d) contains the word " Co-operative ".

(3) Except with the consent of the Minister no banking company shall be registered by a name which contains the words " National ", " State " or " Ceylon " or which, in the opinion of the Registrar, suggests or is calculated to suggest any connexion with the Government or any department thereof.

[§ 2, 19 of 1942.]

19. (1) Where it is proved to the satisfaction of the Director of Commerce² that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to

Power to dispense with " Limited " in name of charitable and other companies.

prohibit the payment of any dividend to its members, the Director of Commerce² may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Director of Commerce² under this section may be granted on such conditions and subject to such regulations as the Director of Commerce² thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Director of Commerce² so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the Registrar of Companies. *(with annual returns)*

(4) A licence under this section may at any time be revoked by the Director of Commerce² and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a licence is so revoked, the Director of Commerce² shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "Chamber of Commerce", the notice to be given as aforesaid shall include a statement of the effect of the provisions of subsection (3) of section 20.

Change of name.

20. (1) A company may, by special resolution and with the approval of the Director of Commerce² signified in writing, change its name.

(2) If a company, through inadvertence or otherwise, is, without such consent as is mentioned in paragraph (a) of subsection (1) of section 18, registered by a name which is identical with that by which a company in existence is previously registered, or which so nearly resembles that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the Registrar.

(3) Where a licence granted in pursuance of section 19 to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Director of Commerce² may think fit to allow, change its name to a name which does not contain those words.

501- If a company makes default in complying with the requirements of this subsection, it shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(4) Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

21. (1) Subject to the provisions of this Ordinance, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

Effect of memorandum and articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Provision as to memorandum and articles of companies limited by guarantee.

22. (1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the appointed date, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the appointed date, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.

23. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Copies of memorandum and articles to be given to members.

24. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment of one rupee or such less sum as the company may prescribe.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding twenty-five rupees.

25. (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

Issued copies of memorandum to embody alterations.

(2) If where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be guilty of an offence and shall be liable to a fine not exceeding twenty-five rupees for each copy so issued, and every officer of the company who is in default shall be guilty of an offence and shall be liable to the like penalty.

MEMBERSHIP OF COMPANY

26. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

Definition of member.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

PRIVATE COMPANIES

27. (1) For the purposes of this Ordinance, the expression "private company" means a company which by its articles—

Meaning of "private company".

- (a) restricts the right to transfer its shares ; and
- (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company,

were while in that employment, and have continued after the determination of that employment to be, members of the company ; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

Circumstances in which company ceases to be, or to enjoy privileges of, a private company.

28. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 27, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the Registrar of Companies for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule.

(2) If default is made in complying with the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of five hundred rupees.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in section 29, subsection (3) of section 108, subsection (1) of section 128 and paragraph (4) of section 162 and thereupon the said provisions shall apply to the company as if it were not a private company :

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company

or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

REDUCTION OF NUMBER OF MEMBERS BELOW LEGAL
MINIMUM

29. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Prohibition of carrying on business with fewer than seven or, in the case of a private company two members.

CONTRACTS, &C.

30. (1) Contracts on behalf of a company may be made as follows :—

Form of contracts.

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

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

Bills of exchange and promissory notes.

31. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad.

32. (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in Ceylon.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

33. (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any territory, district, or place not situate in Ceylon, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.

AUTHENTICATION OF DOCUMENTS AND TRANSLATION

34. (1) A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal.

Authentica-
tion of
documents
and transla-
tion.

(2) Where any document required by this Part of this Ordinance to be delivered to the Registrar is in a language other than English there shall also be annexed to it a printed translation thereof in English certified in the prescribed manner to be a correct translation.

[§ 3, 6 of 1939.]

PART II

SHARE CAPITAL AND DEBENTURES PROSPECTUS

35. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Dating and
registration of
prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein, as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the Registrar of

Companies for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration, as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company, and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

Specific
requirements
as to
particulars
in prospectus.

36. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Fourth Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section :

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

- (b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognizant thereof ; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of the Fourth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but save as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under any written or other law or this Ordinance apart from this section.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

37. (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

Liability for statements in prospectus.

38. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(a) every person who is a director of the company at the time of the issue of the prospectus ; and

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time ; and

(c) every person being a promoter of the company ; and

(d) every person who has authorized the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent ; or

- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor; or
- (iv) that—
- (a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
- (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
- (c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

④ authority of an expert

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv) (b) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed

to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ;

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Document containing offer of shares or debentures for sale to be deemed prospectus.

39. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be

deemend to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses, and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Ordinance, it shall unless the contrary is proved, be evidence that an allotment of or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot ; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 35 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 36 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates ; and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

ALLOTMENT

Prohibition of allotment unless minimum subscription received.

40. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I of the Fourth Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than five *per centum* of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be

40 days
5% interest after
48 days of the issue of prospectus.

jointly and severally liable to repay that money with interest at the rate of five *per centum* per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

41. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar of Companies for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in the Fifth Schedule.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.

(2) This section shall not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorizes or permits the contravention shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

42. (1) An allotment made by a company to an applicant in contravention of the provisions of sections 40 and 41 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold

Effect of irregular allotment.

voidable 1 month after statutory meeting

a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby :

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

Return as to
allotments.

43. (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar of Companies for registration—

(a) a return of the allotments stating—

- (i) the number and nominal amount of the shares comprised in the allotment,
- (ii) the name of each allottee,
- (iii) the place at which each allottee ordinarily resides,
- (iv) the place to which any communication intended for each allottee may be sent,
- (v) a description of each allottee, and
- (vi) the amount, if any, paid or due and payable on each share ; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of

shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar of Companies for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Ordinance and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be determined in accordance with the provisions of Chapter III of that Ordinance.

(3) If default is made in complying with this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

Provided that, in case of default in delivering to the Registrar of Companies within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

COMMISSIONS AND DISCOUNTS

44. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

(a) the payment of the commission is authorized by the articles ; and

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.

- not exceed 10%
- (b) the commission paid or agreed to be paid does not exceed ten *per centum* of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less ; and
- (c) the amount or rate *per centum* of the commission paid or agreed to be paid is—
- (i) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or
- (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar of Companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice ; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees.

45. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Statement in balance sheet as to commissions and discounts.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

46. (1) Subject to the provisions of this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase made or to be made by any person of any shares in the company :

Prohibition of provision of financial assistance by company for purchase of its own shares.

Provided that nothing in this section shall be taken to prohibit—

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business ;

- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company ;
- (c) the making by a company of loans to persons other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to subsection (1) shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

ISSUE OF REDEEMABLE PREFERENCE SHARES AND SHARES AT DISCOUNT

Power to issue redeemable preference shares.

47. (1) Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed :

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption ;
- (b) no such shares shall be redeemed unless they are fully-paid ;
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there

shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;

- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not,

so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares.

Power to
issue shares
at a discount.

48. (1) Subject to the provisions of this section, it shall be lawful for the company to issue at a discount shares in the company of a class already issued :

Provided that—

- (a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the court ;
- (b) the resolution must specify the maximum rate of discount at which the shares are to be issued ;
- (c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business ;
- (d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospect relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

49. A company, if so authorized by its articles, may do any one or more of the following things:—

Power of company to arrange for different amounts being paid on shares.

- (1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares ;
- (2) Accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up ;
- (3) Pay dividend in proportion to the amount paid, up on each share where a larger amount is paid up on some shares than on others.

50. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Reserve liability of limited company.

51. (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—

Power of company limited by shares to alter its share capital.

- (a) increase its share capital by new shares of such amount as it thinks expedient ;

- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination ;
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

Notice to Registrar of consolidation of share capital, conversion of shares into stock, &c.

52. (1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares ; or
- (b) converted any shares into stock ; or
- (c) reconverted stock into shares ; or
- (d) subdivided its shares or any of them ; or
- (e) redeemed any redeemable preference shares ; or
- (f) cancelled any shares, otherwise than in connexion with a reduction of share capital under section 56,

it shall within one month after so doing give notice thereof to the Registrar of Companies specifying, as

the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorizing the increase, give to the Registrar of Companies notice of the increase, and the Registrar shall record the increase.

Notice of increase of share capital.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar of Companies together with the notice a printed copy of the resolution authorizing the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

54. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Ordinance, do either or both of the following things, namely :—

Power of unlimited company to provide for reserve share capital on re-registration.

- (1) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up ;

- (2) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Power of company to pay interest out of capital in certain cases.

55. (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant :

Provided that—

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution ;
- (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the court ;
- (c) before sanctioning any such payment the court may, at the expense of the company, appoint a person to inquire and report to the court as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry ;
- (d) the payment shall be made only for such period as may be determined by the court, and that period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided ;
- (e) the rate of interest shall in no case exceed six *per centum* per annum or such other rate as may for the time being be prescribed by regulation ;

6%

- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid ;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

REDUCTION OF SHARE CAPITAL

56. (1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

Special resolution for reduction of share capital.

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets ; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company.

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

(2) A special resolution under this section is in this Ordinance referred to as 'a resolution for reducing share capital'.

Application to court for confirming order, objections by creditors, and settlement of list of objecting creditors.

57. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection :—

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction ;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction ;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount :—
 - (i) if the company admits the full amount of the debt or claim, or though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

58. (1) The court, if satisfied, with respect to every creditor of the company who under section 57 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Order confirming reduction and powers of court on making such order.

(2) Where the court makes any such order, it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words “and reduced”; and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration
of order and
minute of
reduction.

59. (1) The Registrar of Companies, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 25.

60. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be :

Liability of members in respect of reduced shares.

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the court, to pay the amount of his debt or claim, then—

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date ; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

61. If any director, manager, secretary or other officer of the company—

Penalty on concealment of name of creditor.

(1) wilfully conceals the name of any creditor entitled to object to the reduction ; or

- (2) wilfully misrepresents the nature or amount of the debt or claim of any creditor ; or
- (3) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

VARIATION OF SHAREHOLDERS' RIGHTS

Rights of holders of special classes of shares.

62. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied,

having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a copy of the order to the Registrar of Companies and, if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

15 days

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF
TITLE, &C.

63. (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company, and shall not be of the nature of immovable property.

Nature of shares.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

64. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company :

Transfer not to be registered except on production of instrument of transfer.

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by legal representative.

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

Registration of transfer at request of transferor.

66. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

67. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Duties of company with respect to issue of certificates.

68. (1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the date on which a transfer of any such shares, debentures, or debenture stock, is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

The expression "transfer" for the purpose of this subsection means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company, and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

69. A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares.

Certificate to be evidence of title.

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

Evidence of grant of probate, &c.

71. (1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

Issue and effect of share warrants to bearer.

(2) Such a warrant as aforesaid is in this Ordinance termed a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

Offences in
connexion
with share
warrants.

72. (1) If any person—

- (a) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Ordinance ; or
- (b) by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Ordinance or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon or document to be forged or altered ; or
- (c) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Ordinance, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not less than three years and not exceeding twenty years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him—

- (a) engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be—
 - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Ordinance ; or

- (ii) a blank share warrant or coupon so issued or made ; or
- (iii) a part of such share warrant or coupon ; or
- (b) uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively ; or
- (c) knowingly has in his custody or possession any such plate, wood, stone, or other material ;

he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not less than three years and not exceeding fourteen years.

SPECIAL PROVISIONS AS TO DEBENTURES

73. (1) Every register of holders of debentures of a company shall, except' when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection.

Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed.

For the purposes of this subsection, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of twenty-five cents for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of fifty cents or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of twenty-five cents for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and further shall be liable to a default fine of twenty rupees.

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

**Perpetual
debentures.**

74. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the appointed date, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

**Power to
reissue
redeemed
debentures in
certain cases.**

75. (1) Where either before or after the appointed date a company has redeemed any debentures previously issued, then—

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

the company shall have, and shall be deemed always to have had, power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place.

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

(3) Where a company has power to reissue debentures which have been redeemed, particulars with respect to the debentures which can be so reissued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the appointed date deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the reissue or issue was made before or after the appointed date shall be treated as the issue of a new debenture for the purposes of stamp duty ; but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) The reissue after the appointed date of debentures redeemed before that date shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date if instead of this section there

(8 Edw. vii,
c. 69.)

were enacted in this Ordinance the provisions of section 104 of the Companies Consolidation Act, 1908, of the Parliament of the United Kingdom.

Specific performance of contracts to subscribe for debentures.

76. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

77. (1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V of this Ordinance relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V of this Ordinance shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

PART III

REGISTRATION OF CHARGES

REGISTRATION OF CHARGES WITH REGISTRAR OF COMPANIES

Registration of charges created by companies registered in Ceylon.

78. (1) Subject to the provisions of this Part of this Ordinance, every charge created after the appointed date by a company registered in Ceylon and being a charge to which this section applies shall, so far as any

security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the Registrar of Companies for registration in manner required by this Ordinance within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.

21 days

(2) This section applies to the following charges :—

- (a) a charge for the purpose of securing any issue of debentures ;
- (b) a charge on uncalled share capital of the company ;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ;
- (d) a charge on land, wherever situate, or any interest therein ;
- (e) a charge on book debts of the company ;
- (f) a floating charge on the undertaking or property of the company ;
- (g) a charge on calls made but not paid ;
- (h) a charge on a ship or any share in a ship ;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trade-mark or on a copyright or a licence under a copyright.

(3) In the case of a charge created out of Ceylon comprising solely property situate outside Ceylon, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section, as the delivery and receipt of the instrument itself, and

twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Ceylon, shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar.

(4) Where a charge is created in Ceylon, but comprises property outside Ceylon, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate outside Ceylon and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the Registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the country where the property is situate on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land shall not for the purposes of this section be deemed to be an interest in land.

(8) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of **this section** be

sufficient if they are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

- (a) the total amount secured by the whole series ;
and
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and
- (c) a general description of the property charged ;
and
- (d) the names of the trustees, if any, for the debenture holders ;

together with the deed containing the charge or a copy thereof verified in the prescribed manner or, if there is no such deed, one of the debentures of the series :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars, as to the amount or rate *per centum* of the commission, discount, or allowance so paid or made but omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(10) The provisions of this section shall be in addition to and not in substitution of any other written law relating to the registration of any document or instrument creating or purporting to create a charge on any property whether movable or immovable.

(11) In this Part of this Ordinance the expression "charge" includes mortgage.

Duty of company to register charges created by company.

79. (1) It shall be the duty of a company to send to the Registrar of Companies for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 78, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person, who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Duty of company to register charges existing on property acquired.

80. (1) Where after the appointed date a company registered in Ceylon acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Ordinance, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any,

by which the charge was created or is evidenced, to be delivered to the Registrar of Companies for registration in manner required by this Ordinance within twenty-one days after the date on which the acquisition is completed :

Provided that, if the property is situate and the charge was created outside Ceylon, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Ceylon shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of five hundred rupees.

81. (1) The Registrar of Companies shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Ordinance, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars :—

Register of charges to be kept by Registrar of Companies.

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section 78 ;

(b) in the case of any other charge—

(i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property ; and

(ii) the amount secured by the charge ; and

(iii) short particulars of the property charged ;
and

(iv) the persons entitled to the charge :

Provided, however, that the fee prescribed for the registration of any charge under this section shall be

[§ 3, 19 of 1942.]

in substitution for, and not in addition to, any fee which would otherwise be payable in respect of such registration under the Ninth Schedule.

(2) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Ordinance, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Ordinance as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

(4) The Registrar shall keep a chronological index in the prescribed form and with the prescribed particulars, of the charges entered in the register.

Endorsement
of certificate
of registra-
tion on
debentures.

82. (1) The company shall cause a copy of every certificate of registration given under section 81 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be guilty of an offence and be liable to a fine not exceeding one thousand rupees.

83. The Registrar of Companies may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Entry of satisfaction.

84. The court, on being satisfied that the omission to register a charge within time required by this Ordinance, or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

Rectification of register of charges.

85. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar of Companies and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

Registration of enforcement of security.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar of Companies notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

PROVISIONS AS TO COMPANY'S REGISTER OF CHARGES AND
AS TO COPIES OF INSTRUMENTS CREATING CHARGES

Copies of instruments creating charges to be kept by company.

86. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Ordinance to be kept at the registered office of the company :

Provided that, in the case of a series of uniform debentures a copy of one debenture of the series shall be sufficient.

Company's register of charges.

87. (1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any director, manager, or other officer of the company, knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Right to inspect copies of instruments creating mortgages and charges and company's register of charges.

88. (1) The copies of instruments creating any charge requiring registration under this Part of this Ordinance with the Registrar of Companies, and the register of charges kept in pursuance of section 87, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding fifty cents for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company

authorizing or knowingly and wilfully permitting the refusal, shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and a further fine not exceeding twenty rupees for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Ceylon, the court may by order compel an immediate inspection of the copies or register.

APPLICATION OF PART III TO COMPANIES INCORPORATED
OUTSIDE CEYLON

89. The provisions of this Part of this Ordinance shall extend to charges on property in Ceylon which are created, and to charges on property in Ceylon which is acquired, after the appointed date by a company (whether a company within the meaning of this Ordinance or not) incorporated outside Ceylon which has an established place of business in Ceylon.

Application of Part III to charges created, and property subject to charge acquired by company incorporated outside Ceylon.

TRANSITIONAL PROVISION

90. (1) It shall be the duty of a company within six months after the appointed date to send to the Registrar of Companies for registration the prescribed particulars of—

Provision as to charges created, and charges on property acquired, by company before appointed date.

(a) any charge created by the company before the appointed date and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (g), (h) and (i) of subsection (2) of section 78 or under the provisions of section 89 if the charge had been created after the appointed date; and

(b) any charge to which any property acquired by the company before the appointed date is subject and which would have been required to be registered under the provisions of section 80 or section 89 if the property had been acquired after the appointed date.

(2) It shall also be the duty of a company within six months from a date* to be appointed by

[§ 4, 19 of 1942.]

* 1st June, 1942.—Gazette No. 8,937 of 29th May, 1942.

the Director of Commerce² by notification in the Gazette, to send to the Registrar of Companies for registration the prescribed particulars of any charge created by the company before the 1st day of April, 1939, and remaining unsatisfied at the date so appointed, which would have been required to be registered under any provision of paragraphs (a), (b), (c), (d), (e) and (f) of subsection (2) of section 78 if the charge had been created after the 1st day of April, 1939.

(3) The Registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Ordinance.

(4) If a company fails to comply with this section, the company and every director, manager, secretary or other officer of the company, or other person who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues :

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(5) For the purposes of this section, the expression "company" includes a company (whether a company within the meaning of this Ordinance or not) incorporated outside Ceylon which has an established place of business in Ceylon.

PART IV

MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE AND NAME

Registered
office of
company.

91. (1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given within twenty eight days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar of Companies who shall record the same.

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

92. (1) Every company—

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible ;
- (b) shall have its name engraven in legible characters on its seal ;
- (c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Publication
of name by
company.

(2) If the company does not paint or affix its name in manner directed by this Ordinance, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(3) If a company fails to comply with paragraph (b) or paragraph (c) of subsection (1), the company shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(4) If a director, manager, or officer of a company, or any person on its behalf—

(a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid ; or

(b) issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid ; or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

RESTRICTIONS ON COMMENCEMENT OF BUSINESS

Restrictions
on commence-
ment of
business.

93. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

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

- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription ; and
- (c) there has been delivered to the Registrar of Companies for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

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

- (a) there has been delivered to the Registrar of Companies for registration a statement in lieu of prospectus ; and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash ; and
- (c) there has been delivered to the Registrar of Companies for registration a statutory declaration by the secretary or one of the directors in the prescribed form that paragraph (b) of this subsection has been complied with.

(3) The Registrar of Companies shall, on the delivery to him of the said statutory declaration, and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

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

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing power in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

- (a) a private company ; or
- (b) a company registered before the appointed date.

REGISTER OF MEMBERS

Register of members.

94. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

- (a) the names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;
- (b) the date at which each person was entered in the register as a member ;
- (c) the date at which any person ceased to be a member :

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) If default is made in complying with this section, the company and every officer of the company who is

in default shall be guilty of an offence and shall be liable to a default fine.

95. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

Index of
members of
company

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

96. (1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

Provisions
as to entries
in register in
relation to
share
warrants.

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant, distinguishing each share by its number; and
- (c) the date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

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

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Ordinance to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Ordinance, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent or for any purposes defined in the articles.

**Inspection of
register of
members.**

97. (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, except when the register is closed under the provisions of this Ordinance, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of fifty cents, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of twenty-five cents, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and further to a default fine of twenty-five rupees.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

98. A company may, on giving notice by advertisement in the Gazette and in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power to close register.

99. (1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company ; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member ;

Power of court to rectify register.

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Ordinance to send a list of its members to the Registrar of Companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

Trusts not to be entered on register.

100. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in Ceylon.

Register to be evidence.

101. The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorized to be inserted therein.

BRANCH REGISTER

Power of company to keep branch register.
[§ 5, 19 of 1942.]

102. (1) A company having a share capital may, if so authorized by its articles, cause to be kept in the United Kingdom or in any part of Her Majesty's Realms and Territories outside Ceylon a branch register of members resident in the United Kingdom or in that part of Her Majesty's Realms and Territories (in this Ordinance called a "branch register").

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a default fine.

(4) For the purposes of this section the expression "Her Majesty's Realms and Territories" includes any territory which is under Her Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by Her Majesty.

Regulations as to branch register.

103. (1) A branch register shall be deemed to be part of the company's register of members (in this section and in section 104 called "the principal register").

(2) It shall be kept in the same manner in which the principal register is by this Ordinance required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept.

(3) The company shall transmit to its registered office in Ceylon a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register.

Every such duplicate shall, for all the purposes of this Ordinance, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a branch register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Ordinance, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(7) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a default fine.

104. An instrument of transfer of a share registered in a branch register, shall be deemed to be a transfer of property situate out of Ceylon, and, unless executed in Ceylon, shall be exempt from stamp duty chargeable in Ceylon.

Stamp duties in case of shares registered in branch registers.

105. (1) If by virtue of the law in force in the United Kingdom or in any part of Her Majesty's Realms and Territories outside Ceylon companies incorporated under that law have power to keep in Ceylon branch registers of their members resident in Ceylon, the Minister¹ may by Order published in the Gazette direct that sections 97 and 99 of this Ordinance shall, subject to any modifications and adaptations specified

Provisions as to branch registers kept in any part of Her Majesty's Realms and Territories.

in the Order, apply to and in relation to any such branch registers kept in Ceylon as they apply to and in relation to the registers of companies within the meaning of this Ordinance.

(2) For the purposes of this section, the expression "Her Majesty's Realms and Territories" includes any territory which is under Her Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by Her Majesty.

ANNUAL RETURN

Annual
return to be
made by
company
having a
share capital.

106. (1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares herein before required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up

otherwise than in cash, and specifying the following particulars :—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided ;
- (b) the number of shares taken from the commencement of the company up to the date of the return ;
- (c) the amount called up on each share ;
- (d) the total amount of calls received ;
- (e) the total amount of calls unpaid ;
- (f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures ;
- (g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made ;
- (h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return ;
- (i) the total number of shares forfeited ;
- (j) the total amount of shares for which share warrants are outstanding at the date of the return ;
- (k) the total amount of share warrants issued and surrendered respectively since the date of the last return ;
- (l) the number of shares comprised in each share warrant ;
- (m) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company ;
- (n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Ordinance ;

[§ 2, 54 of 1946.]

(o) the name and address of the auditor, or the names and addresses of the auditors, of the company at the date of the return ;

(4) The return shall be in accordance with the form set out in the Sixth Schedule, or as near thereto as circumstances admit.

Annual return to be made by company not having share capital.

107. (1) Every company not having a share capital shall once at least in every calender year make a return stating—

(a) the address of the registered office of the company ;

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Ordinance.

General provisions as to annual returns.

108. (1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the Registrar of Companies a copy signed by a director or by the manager or by the secretary of the Company.

(2) Section 97 shall apply to the annual return as it applies to the register of members.

(3) Except where the company is a private company the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a language other than

English there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation :

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or either of sections 106 and 107, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(5) For the purposes of subsection (4) the expression " officer ", and for the purposes of sections 106 and 107 the expression " directors ", shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

109. A private company shall send with the annual return required by section 106 a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section 27 are not to be included in reckoning the number of fifty.

Certificates to be sent by private company with annual return.

MEETINGS AND PROCEEDINGS

110. (1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

Annual general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(3) If default is made as aforesaid, the court may on the application of any member, of the company, call, or direct the calling of, a general meeting of the company.

Statutory meeting and statutory report.

111. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Ordinance referred to as "the statutory report") to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
- (c) an abstract of the receipts of the company and of the payment made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments

made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company ;

- (d) the names, addresses, and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company ; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar of Companies for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorizes or permits the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(10) This section shall not apply to a private company.

Convening of
extraordinary
general
meeting on
requisition.

112. (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings, of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid

shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 115.

113. (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf:—

Provisions as to meetings and votes.

- (a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by seven days' notice in writing;
- (b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force;
- (c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five *per centum* in number of the members of the company may call a meeting;
- (d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum;
- (e) any member elected by the members present at a meeting may be chairman thereof;
- (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each one hundred rupees of stock held by him, and in any other case every member shall have one vote.

1/10 issued sh. cap
5% no share capital

Private Co - 2 }
Public Co - 3 }

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Ordinance, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Representa-
tion of
companies
at meetings
of other
companies
and of
creditors.

114. (1) A corporation, whether a company within the meaning of this Ordinance or not, may—

- (a) if it is a member of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company ;
- (b) if it is a creditor (including a holder of debentures) of another corporation being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Ordinance or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorized as aforesaid 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 shareholder, creditor, or holder of debentures, of that other company.

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

Provisions as to extraordinary and special resolutions.

3/1A

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution has been duly given :

21 days

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand ; or

15 | (b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per centum of the paid-up share capital of the company.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Ordinance or of the articles of the company.

(6) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Ordinance or the articles.

Registration
and copies of
certain
resolutions
and
agreements.

116. (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be forwarded to the Registrar of Companies and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of fifty cents or such less sum as the company may direct.

(4) This section shall apply to—

(a) special resolutions ;

(b) extraordinary resolutions ;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions ;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members ;

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 216.

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of twenty rupees.

(6) If a company fails to comply with subsection (2) or subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing subsections, a liquidator of the company shall be deemed to be an officer of the company.

117. Where after the appointed date a resolution is passed at an adjourned meeting of—

- (a) a company ;
- (b) the holders of any class of shares in a company ;
- (c) the directors of a company ;

Resolutions
passed at
adjourned
meetings.

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

Minutes of
proceedings
of meetings
and directors.

118. (1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minutes if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

Inspection of
minute books.

119. (1) The books containing the minutes of proceedings of any general meeting of a company held after the appointed date shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding twenty-five cents for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable in respect of each offence to a fine not exceeding twenty rupees and further to a default fine of twenty rupees.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

ACCOUNTS AND AUDIT

120. (1) Every company shall cause to be kept proper books of account with respect to—

Keeping of books of account.

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;
- (b) all sales and purchases of goods by the company ;
- (c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors or any of them.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment :

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

121. (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the

Profit and loss account and balance sheet.

case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months :

Provided that the Director of Commerce,² if for any special reason he thinks fit so to do, may, in the case of any company, extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding two thousand rupees, or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment :

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed wilfully.

122. (1) Every balance sheet of a company shall contain a summary of the authorized share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

Contents of
balance sheet.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off—

- (a) the preliminary expenses of the company; and
- (b) any expenses incurred in connexion with any issue of share capital or debentures; and
- (c) If it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade marks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The Provisions of this section are in addition to other provisions of this Ordinance requiring other matters to be stated in balance sheets.

123. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned

Assets
consisting of
shares in
subsidiary
companies to
be set out
separately in
balance sheet.

company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

Balance sheet to include particulars as to subsidiary companies.

124. (1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 127 the balance sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent—

- (a) Provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and
- (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations

given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

125. (1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Ordinance or not, and—

Meaning of subsidiary company.

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty *per centum* of the issued share capital of that other company or such as to entitle the company to more than fifty *per centum* of the voting power in that other company ; or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Ordinance and

the expression "subsidiary company" in this Ordinance means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

Accounts to contain particulars as to loans to and remuneration of directors, &c.

126. (1) The accounts which in pursuance of this Ordinance are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period ; and
- (b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ; and
- (c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) with respect to loans shall not apply—

- (a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business ; or

(b) to a loan made by the company to any employee of the company if the loan does not exceed twenty thousand rupees and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

127. (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

Signing of
balance sheet.

(2) In the case of a banking company, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without having a copy of the auditors' report attached thereto, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

Right to receive copies of balance sheets and auditors' report.

128. (1) In the case of a company not being a private company—

(a) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company ;

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

If default is made in complying with paragraph (a) of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding two hundred rupees and, if, where any person makes a demand for a document with which he is by virtue of paragraph (b) of this subsection entitled to be furnished default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the

default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding twenty-five cents for every hundred words.

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

129. (1) Every company, being a limited banking company or an insurance company or a deposit, provident, or benefit society, shall, before it commences business, and also on the first Monday in March and the first Monday in September in every year during which it carries on business, make a statement in the form set out in the Seventh Schedule, or as near thereto as circumstances admit.

Banking and certain other companies to publish periodical statement.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding twenty-five cents.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(5) For the purposes of this Ordinance a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Appointment
and
remuneration
of auditors.

130. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If any appointment of auditors is not made at an annual general meeting, the Director of Commerce² may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting :

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and, the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting :

Provided that—

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who

have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting ; and

- (b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Director of Commerce² may be fixed by the Director of Commerce.²

(7) No person other than a registered auditor shall be eligible for appointment as an auditor under this section. Regulations may be made providing for—

[§ 4, 6 of 1939.]

- (a) the procedure for the registration of auditors ;
 (b) the qualifications necessary in order to secure such registration ; and
 (c) the fees payable for such registration.

131. None of the following persons shall be qualified for appointment as auditor of a company :—

Disqualifica-
tion for
appointment
as auditor.

- (a) a director or officer of the company ;
 (b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company ;
 (c) a body corporate.

Auditors' report and auditors' right of access to books and right to attend general meetings.

132. (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office and the report shall state—

- (a) whether or not they have obtained all the information and explanation they have required; and
- (b) whether in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors :

Provided that, in the case of a banking company which has branch banks outside Ceylon, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Ceylon.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

[§ 3, 54 of 1946.]

(4) If any person other than a registered auditor makes the report referred to in the preceding provisions of this section, or exercises any power conferred on an auditor by those provisions, he shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such time, and imprisonment.

INSPECTION

133. (1) The Director of Commerce² may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct—

Investigation of affairs of company by inspectors.

- (a) in the case of a banking company having a share capital on the application of members holding not less than one-third of the shares issued ;
- (b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;
- (c) in the case of a company not having a share capital on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Director of Commerce² may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Director of Commerce² may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one thousand rupees for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company, past and present, to produce to the inspectors all books and documents in their custody or power.

[§ 4, 54 of 1946.]

(4) An inspector may examine on oath the officers and agents of the company, past and present, in relation to its business and may administer an oath accordingly.

[§ 4, 54 of 1946.]

(5) If any officer or agent of the company, past or present refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon enquire into the case, and after hearing any witnesses who may be produced against or on

[§ 4, 54 of 1946.]

behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

[§ 4, 54 of 1946.]

An appeal from any order made by the court under the preceding provisions of this subsection shall lie to the Supreme Court, and such appeal shall be regarded as an appeal from an order made by a District Court in the exercise of its ordinary criminal jurisdiction.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Director of Commerce² and a copy of the report shall be forwarded by the Director of Commerce² to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Director of Commerce² may direct.

Proceedings
on report by
inspectors.

134. (1) If from any report made under section 133 it appears to the Director of Commerce² that any person has been guilty of any offence in relation to the company for which he is criminally liable the Director of Commerce² shall refer the matter to the Attorney-General who, if he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connexion with the prosecution which they are reasonably able to give.

For the purposes of this subsection, the expression "agents" in relation to a company shall be deemed to include the bankers, proctors and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(2) The expenses of and incidental to an investigation under section 133 of this Ordinance (in this subsection referred to as "the expenses") shall be defrayed as follows :—

- (a) where as a result of the investigation a prosecution is instituted by the Attorney-General, the expenses shall be defrayed out of the Consolidated Fund ;¹
- (b) in any other case the expenses shall be defrayed by the company unless the Director of Commerce² thinks proper to direct, as he is hereby authorized to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants :

Provided that—

- (i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under section 133 exceeds the amount, if any, which they have under this subsection been directed by the Director of Commerce² to pay ; and
- (ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed out of the Consolidated Fund. ¹

135. (1) A company may by special resolution appoint inspectors to investigate its affairs.

Power of company to appoint inspectors.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Director of Commerce,² except that, instead of reporting to the Director of Commerce,² they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company, past or present, refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs

[§ 5, 54 of 1946.]

of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Director of Commerce.²

Report of inspectors to be evidence.

136. A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

DIRECTORS AND MANAGERS

Number of directors.

137. (1) Every company registered after the appointed date shall have at least two directors.

(2) This section shall not apply to a private company.

Restrictions on appointment or advertisement of directors.

138. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

(a) signed and delivered to the Registrar of Companies for registration a consent in writing to act as such director ; and

(b) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any ; or

- (ii) taken from the company and paid for or agreed to pay for his qualification shares, if any ; or
- (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any ; or
- (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(4) This section shall not apply to—

- (a) a company not having a share capital ; or
- (b) a private company ; or
- (c) a company which was a private company before becoming a public company ; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

139. (1) Without prejudice to the restrictions imposed by section 138, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to

Qualification
of director
or manager.

obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period of shorter time any unqualified person acts as a director of the company, he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Provisions
as to
uncertificated
insolvents
and
undischarged
bankrupts
acting as
directors.

140. (1) If any person being an uncertificated insolvent or an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged insolvent or bankrupt, he shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment :

Provided that a person shall not be guilty of an offence under this section by reason that he, being an uncertificated insolvent or an undischarged bankrupt,

has acted as director of, or taken part or been concerned in the management of, a company, if he was on the appointed date, acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the insolvency or bankruptcy was prior to that date.

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside Ceylon which has an established place of business within Ceylon.

141. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Validity of acts of directors.

142. (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say—

Register of directors.

(a) in the case of an individual, his present name and surname, any former name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar of Companies a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of fifty cents, or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

Particulars
with respect
to directors
in trade
catalogues,
circulars, &c.

143. (1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of Her Majesty's Realms and Territories, state in legible characters with respect to every director being a

[§ 6, 19 of 1942.]

corporation, the corporate name, and with respect to every director being an individual, the following particulars:—

- (a) his present name, or the initials thereof, and present surname;
- (b) any former names and surnames;
- (c) his nationality, if not British;
- (d) his nationality of origin, if his nationality is not the nationality of origin:

• Provided that, the Registrar may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

(2) If a company makes default in complying with this section, every director of the company shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees, and, in the case of a director being a corporation, every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty:

Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Director of Commerce.²

(3) Subject as hereinafter provided, the provisions of subsections (1) and (2) shall apply to—

[§ 6, 19 of 1942.]

- (a) every company registered under this Ordinance or under any written law repealed by this Ordinance, until the expiration of a period of ten years from the date on which such company was so registered; and
- (b) every company incorporated outside Ceylon which has an established place of business within Ceylon, until the expiration of a period of ten years from the date on which such place of business was so established:

Provided, however, that the provisions of subsections (1) and (2) shall not apply to any company which is incorporated in any part of Her Majesty's Realms and Territories outside

Ceylon and which has, under the law of the country of incorporation, been duly exempted from compliance with any requirement of such law corresponding to the provisions of subsection (1).

- (4) For the purposes of this section—
- (a) the expression “director” includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
 - (b) the expression “initials” includes a recognized abbreviation of a christian name or forename;
 - (c) in the case of a peer or person usually known by a title different from his surname, the expression “surname” means that title;
 - (d) references to a former name or surname do not include—
 - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title; or
 - (ii) in the case of natural born British subjects, a former name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or
 - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage;
 - (e) the expression “showcards” means cards containing or exhibiting articles dealt with, or samples or representations thereof;
 - (f) the expression “Her Majesty’s Realms and Territories” includes any territory which is under Her Majesty’s protection or in respect of which a mandate under the League of Nations has been accepted by Her Majesty.

144. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

Limited company may have directors with unlimited liability.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary, if any, of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

145. (1) A limited company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

Special resolution of limited company making liability of directors unlimited.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

146. (1) Subject as hereinafter provided, the directors of a company, shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement,

Statement as to remuneration of directors to be furnished to shareholders.

certified as correct, or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connexion with the management of the affairs of the company, and there shall, in respect of any such director who is—

- (a) a director of any other company which is in relation to the first-mentioned company a subsidiary company ; or
- (b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connexion with the management of the affairs of, that other company :

Provided that—

- (i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished ; and
- (ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) If any director fails to comply with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees.

(4) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

147. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

Disclosure by directors of interest in contracts.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

Provision as to payments received by directors for loss of office or on retirement.

148. (1) It is hereby declared that it is not lawful in connexion with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connexion with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connexion with the transfer to any persons as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty rupees, and if the requirements of the last foregoing subsection are not complied with in relation to any such payment as is mentioned in the said subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connexion with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or

any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connexion with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect of any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

149. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Provisions as to assignment of office by directors.

AVOIDANCE OF PROVISIONS IN ARTICLES OR CONTRACTS
RELIEVING OFFICERS FROM LIABILITY

150. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provisions as to liability of officers and auditors.

Provided that—

- (a) in relation to any such provision which is in force at the appointed date, this section shall have effect only on the expiration of a period of six months from the date ; and

- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force ; and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under section 360 in which relief is granted to him by the court.

ARRANGEMENTS AND RECONSTRUCTIONS

Power to
compromise
with creditors
and members.

151. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course or being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a certified copy of the order has been

delivered to the Registrar of Companies for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) In this section the expression "company" means any company liable to be wound up under this Ordinance, and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

152. (1) Where an application is made to the court under section 151 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:—

Provisions for facilitating reconstruction and amalgamation of companies.

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;
- (d) the dissolution, without winding up, of any transferor company ;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement ;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section every company in relation to which the order is made, shall cause a certified copy thereof to be delivered to the Registrar of Companies for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding the provisions of subsection (5) of section 151, the expression "company" in this section does not include any company other than a company within the meaning of this Ordinance.

153. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Ordinance or not (in this section referred to as "the transferee company") has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company :

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

Provided that, where any such scheme or contract has been so approved at any time before the appointed date, the court may by order, on an application made to it by the transferee company within two months after that date, authorize notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting holder are to be acquired shall be such terms as the court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall,

on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares. •

(3) Any sums received by the transfer company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART V

WINDING UP

(i) PRELIMINARY

Modes of Winding Up

Modes of winding up.

154. (1) The winding up of a company may be either—

- (a) by the court; or
- (b) voluntary; or
- (c) subject to the supervision of the court.

(2) The provisions of this Ordinance with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories

155. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications:—

Liability as contributories of present and past members.

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance ;
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member ;
- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (f) nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;
- (g) a sum due to any member of a company, in his character of a member, by way of dividends,

profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under the provisions of this Ordinance, unlimited, shall in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;
- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

156. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Definition of contributory.

157. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Nature of liability of contributory.

158. (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

Contributories in case of death of member.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereof of the money due.

159. If a contributory becomes insolvent or bankrupt, either before or after he has been placed on the list of contributories—

Contributories in case of insolvency or bankruptcy of member.

(1) his assignee in insolvency or his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the insolvent or bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent or bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the insolvent or bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women.

160. (1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Ordinance, to whom the provisions of the Matrimonial Rights and Inheritance Ordinance applies, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Ordinance shall affect the provisions of the Married Women's Property Ordinance.

(ii) WINDING UP BY THE COURT

Jurisdiction

Jurisdiction to wind up companies registered in Ceylon.

161. (1) The District Court of the district in which the registered office of a company is situate shall have jurisdiction to wind up that company.

(2) For the purposes of this section, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Cases in which Company may be wound up by Court

Circumstances in which company may be wound up by court.

162. A company may be wound up by the court if—

- (1) the company has by special resolution resolved that the company be wound up by the court ;
- (2) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting ;
- (3) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;
- (4) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ;
- (5) the company is unable to pay its debts ;

- (6) the court is of opinion that it is just and equitable that the company should be wound up.

163. A company shall be deemed to be unable to pay its debts—

Definition of inability to pay debts.

- (1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or
- (2) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or
- (3) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding Up and Effects thereof

164. (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately :

Provisions as to applications for winding up.

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—
 - (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or

- (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ; and
- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ; and
- (c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Ordinance any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (a) (ii) to subsection (1) been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the

husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

165. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

Powers of court on hearing petition.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar or in holding the statutory meeting, the court may—

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and
- (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

166. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

Power to stay or restrain proceedings against company.

- (a) where any action or proceeding against the company is pending in any court in Ceylon, apply to the court in which the action or proceeding is pending for a stay of proceedings therein ; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings, accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, &c., after commencement of winding up.

167. In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of attachments, &c.

168. Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Commencement of Winding Up

Commencement of winding up by the court.

169. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Consequences of Winding-up Order

Copy of Order to be forwarded to Registrar.

170. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar of Companies, who shall make a minute thereof in his books relating to the company.

Actions stayed on winding-up order.

171. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

172. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory

Effect of winding-up order.

Official Receiver in Winding Up

173. For the purposes of this Ordinance so far as it relates to the winding up of companies by the court, the term "official receiver" means the official receiver, if any, attached to the court for insolvency purposes, or, if there is no such official receiver so attached, then such person as the Minister may appoint as official receiver to that court.

Official receiver.

174. If in the case of the winding up of any company by the court it appears to the court desirable, with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of section 173 be the official receiver, should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all purposes of this Ordinance.

Appointment of official receiver by court in certain cases.

175. (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

Statement of company's affairs to be submitted to official receiver.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that

date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been directors or officers of the company ;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date ;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required ;
- (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expression "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding-up order.

176. (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 175, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

Report by
official
receiver.

(a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by

any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in sections 207 and 208.

Liquidators

Power of court to appoint liquidators.

177. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment and powers of provisional liquidators.

178. (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

Appointment, style, &c., of liquidators.

179. The following provisions with respect to liquidators shall have effect on a winding-up order being made :—

- (1) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such ;
- (2) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver ;

- (3) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit ;
- (4) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company ;
- (5) the official receiver shall by virtue of his office be the liquidator during any vacancy ;
- (6) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator", and, where the official receiver is liquidator, by the style of "the official receiver and liquidator" of the particular company in respect of which he is appointed, and not by his individual name.

180. Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person—

- (1) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Companies and given security in the prescribed manner to the satisfaction of the Registrar ;
- (2) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance.

Provisions where person other than official receiver is appointed liquidator.

181. (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

General provisions as to liquidators.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Ordinance required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to the provisions of section 266, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of
company's
property.

182. Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Vesting of
property of
company in
liquidator.

183. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

184. (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

Powers of liquidator.

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company ;
- (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof ;
- (c) to appoint a proctor to assist him in the performance of his duties ;

Provided that where the liquidator is a proctor he shall not appoint his partner unless the latter agrees to act without remuneration ;

- (d) to pay any classes of creditors in full ;
- (e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable ;
- (f) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the court shall have power—

- (a) to sell the movable and immovable property and things in action of the company by public

auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;
- (c) to prove, rank, and claim in, the bankruptcy insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors ;
- (d) to draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been, drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business ;
- (e) to raise on the security of the assets of the company any money requisite ;
- (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself ;

Provided that nothing herein empowered shall be deemed to affect the rights, duties, and privileges of the Public Trustee appointed under the Public Trustee Ordinance ;

- (g) to appoint an agent to do any business which the liquidator is unable to do himself ;
- (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

185. (1) Subject to the provisions of this Ordinance, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

Exercise and control of liquidator's powers.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributors as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the

act or decision complained of, and make such order in the premises as it thinks just.

Books to be kept by liquidator.

186. Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Payments of liquidator into bank.

187. (1) Every liquidator of a company, which is being wound up by the court shall, in such manner and at such times as the court directs, pay the money received by him to the Companies Liquidation Account at the bank at which that account is kept :

Provided that, if the committee of inspection satisfy the court that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the court shall, on the application of the committee of inspection, authorize the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty *per centum* per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

188. (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar of Companies an account of his receipts and payments as liquidator.

Audit of liquidator's accounts.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Registrar, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Registrar shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

189. (1) The Registrar of Companies shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter, and take such action thereon as he may think expedient.

Control of Registrar of Companies over liquidators.

(2) The Registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the

Registrar thinks, fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Registrar may also direct a local investigation to be made of the books and vouchers of the liquidator.

Release of liquidators.

190. (1) When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the court, shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Committees of Inspection

191. (1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

Meetings of creditors and contributories to determine whether committee of inspection shall be appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.

192. (1) A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

Constitution and proceedings of committee of inspection.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes insolvent or bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who

together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution reappoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of court where no committee of inspection.

193. Where in the case of a winding up there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Ordinance authorized or required to be done or given by the committee.

*General Powers of Court in case of Winding Up
By Court*

Power to stay winding up.

194. (1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

195. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities :

Settlement of list of contributories and application of assets.

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

196. The court may, at any time after making a winding-up order require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is prima facie entitled.

Delivery of property to liquidator.

197. (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance.

Payment of debts due by contributory to company and extent to which set-off allowed.

(2) The court in making such an order may —

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit ; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

198. (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Payment into bank of moneys due to company.

199. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a specified bank or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a specified bank or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

200. (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

201. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

Appointment of special manager.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

202. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Power to exclude creditors not proving in time.

203. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Adjustment of rights of contributories.

204. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Inspection of books by creditors and contributories.

205. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to order costs of winding up to be paid out of assets.

Power to
summon
persons
suspected of
having
property of
company.

206. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

Power to
order public
examination
of promoters,
directors, &c.

207. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business

of the company or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may employ a proctor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by proctor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a proctor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him :

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witness called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

Power to
restrain
fraudulent
persons from
managing
companies.

208. (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as may be specified in the order.

10 days
(2) The official receiver shall, where he intends to make an application under the last foregoing subsection, give not less than ten days' notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and shall be liable, on conviction after summary trial by a Magistrate to a fine not exceeding five thousand rupees, or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to
arrest
absconding
contributory.

209. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit

Ceylon, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the court may order.

210. Any powers by this Ordinance conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Powers of court cumulative.

211. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Ordinance in respect of the following matters :—

Delegation to liquidator of certain powers of court.

- (1) the holding and conducting of meetings to ascertain the wishes of creditors and contributories ;
- (2) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets ;
- (3) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator ;
- (4) the making of calls ;
- (5) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court :

Provided that the liquidator shall not, without the special leave of the court, rectify the register of

members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Dissolution of company.

212. (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the Registrar of Companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Enforcement of and Appeal from Orders

Manner of enforcing orders of court.

213. All orders made by a court under this Ordinance may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

Enforcement of winding-up order in another court.

214. Where any order made by one court is required to be enforced by another court, a certified copy of the order shall be produced to the court required to enforce the same, and the production of a certified copy shall be sufficient evidence of the order, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order in the same manner as if it had been made by that court.

Appeals.

215. An appeal from any order or decision made or given in the winding up of a company by the court under this Ordinance shall lie to the Supreme Court in the same manner and subject to the same conditions as an appeal from any order or decision of the court made or given in the exercise of its ordinary civil jurisdiction.

(iii) VOLUNTARY WINDING UP

Resolutions for, and commencement of Voluntary Winding Up

216. (1) A company may be wound up voluntarily—

Circumstances in which company may be wound up voluntarily.

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Ordinance the expression “a resolution for voluntary winding up” means a resolution passed under any of the provisions of subsection (1).

217. (1) When a company has passed a resolution for voluntary winding up, it shall, within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

Notice of resolution to wind up voluntarily.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

218. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Commencement of voluntary winding up.

Consequences of Voluntary Winding Up

219. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Effect of voluntary winding up on business and status of company.

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, &c., after commencement of voluntary winding up.

220. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made to or with the sanction of the liquidator, and any up, shall be void.

Declaration of Solvency

Statutory declaration of solvency in case of proposal to wind up voluntarily.

221. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months from the commencement of the winding up.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Ordinance unless it is delivered to the Registrar of Companies for registration before the date mentioned in subsection (1).

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Ordinance referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Ordinance referred to as "a creditors' voluntary winding up".

Provisions applicable to a Members' Voluntary Winding Up

Provisions applicable to a members' winding up.

222. The provisions contained in the five sections of this Ordinance next following shall apply in relation to a members' voluntary winding up.

223. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

Power of company to appoint and fix remuneration of liquidators.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

224. (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Power to fill vacancy in office of liquidator.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Ordinance or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

225. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Ordinance or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests,

Power of liquidator to accept shares, &c., as consideration for sale of property of company.

or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by the special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act, 1845, of the Parliament of the United Kingdom with respect to the settlement of disputes by arbitration, shall be incorporated with this Ordinance, and in the construction of those provisions this Ordinance shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or if there is more than one liquidator, then of any two or more of the liquidators, and all powers conferred by the first-mentioned Act on the Board of Trade may be exercised by the Director of Commerce.²

(8 & 9 Vict.
c. 16.)

226. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Duty of liquidator to call general meeting at end of each year.

(2) If the liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees.

227. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

Final meeting and dissolution.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the Registrar of Companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return herein before mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns herein before mentioned shall forthwith

register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

*Provisions applicable to a Creditors' Voluntary
Winding Up*

Provisions applicable to a creditors' winding up.

228. The provisions contained in the eight sections of this Ordinance next following shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors.

229. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated

amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with subsections (1) and (2);

(b) by the directors of the company in complying with subsection (3);

(c) by any director of the company in complying with subsection (4),

the company, directors or director, as the case may be, shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees, and, in the case of default by the company, every officer of the company who is in default shall be guilty of an offence and shall be liable to the like penalty.

230. The creditors and the company at their respective meetings mentioned in section 229 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Appointment
of liquidator.

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment
of committee
of inspection.

231. (1) The creditors at the meeting to be held in pursuance of section 229 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules, the provisions of section 192 except subsection (1) of that section, shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

Fixing of
liquidators'
remuneration
and cesser of
directors'
powers.

232. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

233. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

Power to fill vacancy in office of liquidator.

234. The provisions of section 225 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Application of section 225 to a creditors' voluntary winding up.

235. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Duty of liquidator to call meetings of company and of creditors at end of each year.

(2) If the liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees.

236. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.

Final meeting and dissolution.

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar of Companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent, or the return is not made in accordance with this subsection the liquidator shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return herein before mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account and in respect of each such meeting either of the returns herein before mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Provisions applicable to every Voluntary Winding Up

237. The provisions contained in the eight sections of this Ordinance next following shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Provisions applicable to every voluntary winding up.

238. Subject to the provisions of this Ordinance as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Distribution of property of company.

239. (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 184 to a liquidator in a winding up by the court ;
- (b) without sanction, exercise any of the other powers by this Ordinance given to the liquidator in a winding up by the court ;
- (c) exercise the power of the court under this Ordinance of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;
- (d) exercise the power of the court of making calls ;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

Powers and duties of liquidator in voluntary winding up.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Ordinance may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination by any number not less than two.

Power of court to appoint and remove liquidator in voluntary winding up.

240. (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

241. (1) The liquidator shall, within twenty-one days after his appointment, deliver to the Registrar of Companies for registration a notice of his appointment in the prescribed form.

(2) If the liquidator fails to comply with the requirements of this section he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Arrangement when binding on creditors.

242. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power to apply to court to have questions determined or powers exercised.

243. (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

244. All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Costs of voluntary winding up.

245. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Saving for rights of creditors and contributories.

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

246. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

Powers to order winding up subject to supervision.

247. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Effect of petition for winding up subject to supervision.

248. A winding up subject to the supervision of the court shall, for the purposes of sections 167 and 168, be deemed to be a winding up by the court.

Application of sections 167 and 168 to winding up subject to supervision.

249. (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator.

Power of court to appoint or remove liquidators.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Ordinance with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the

supervision order and fill any vacancy occasioned by the removal; or by death or resignation.

Effect of supervision order.

250. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily :

Provided that the powers specified in paragraphs (d), (e), and (f) of subsection (1) of section 184 shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Ordinance which are set out in the Eighth Schedule but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court :

Provided that where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section 192 except subsection (1) of that section, except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

(V) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

Debts of all descriptions to be proved.

251. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future,

certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

252. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency or bankruptcy with respect to the estates of persons adjudged insolvent or bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Application of insolvency rules in winding up of insolvent companies.

253. (1) In a winding up there shall be paid in priority to all other debts—

Preferential payments.

- (a) income tax charged or chargeable for one complete year prior to the relevant date, such year to be selected by the Commissioner of Income Tax in accordance with the provisions of section 83 (2) of the Income Tax Ordinance;
- (b) all rates, or taxes (other than income tax), due from the company at the relevant date, and having become due and payable within twelve months next before that date;
- (c) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, not exceeding five hundred rupees;
- (d) all wages of any workman or labourer not exceeding two hundred and fifty rupees, whether payable for time or for piece work, in respect of services rendered to the company during two months next before the relevant date:

Income Tax 1 yr

*maxim
2000 or 2500/-*

Provided that, where any labourer has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

- (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section 24 of the Workmen's Compensation Ordinance rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Ordinance accrued before the relevant date.

(2) Where any compensation under the Workmen's Compensation Ordinance is a half-monthly payment, the amount due in respect thereof shall, for the purposes of paragraph (d) of subsection (1) be taken to be the amount of the lump sum for which the half-monthly payment may be commuted under that Ordinance.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet

them, in which case they shall abate in equal proportions ; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

[§ 7, 19 of 1942.]

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(7) In this section—

“relevant date” means—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order ; and

(b) in any other case, the date of the commencement of the winding up ; and

“rates” or “taxes” means any rate, charge, tax, or assessment imposed or made by the Government or by any Municipality or by any Urban Council established under the Urban Councils Ordinance, or by any Town Council, Village Committee or other local authority.

*Effect of Winding Up on antecedent and other
Transactions*

Fraudulent
preference.

254. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Effect of
floating
charge.

255. Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five *per centum* per annum.

Disclaimer of
onerous
property.

256. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him,

at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court disclaim the property :

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on

such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Ordinance in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as sub-lessee or as mortgagee, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any sub-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the

estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

257. (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up :

Restriction of rights of creditor as to execution or attachment in case of company.

Provided that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up ; and
- (b) a person who purchases in good faith under a sale by order of the court any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression "goods" includes all movable property.

Duties of Fiscal as to goods taken in execution.

258. (1) Where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Fiscal that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the Fiscal shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding two hundred rupees the goods of a company are sold or money is paid in order to avoid sale, the Fiscal shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Fiscal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section the expression "goods" includes all movable property and the expression "Fiscal" includes any officer charged with the execution of a writ or other process.

Offences antecedent to or in course of Winding Up

Offences by officers of companies in liquidation.

259. (1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision

of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up —

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company ; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or
- (f) makes any material omission in any statement relating to the affairs of the company ; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or

- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company ; or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company ; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses ; or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or

- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company ; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up.

he shall be guilty of an offence and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable to imprisonment of either description for a term not exceeding five years, and in the case of any other offence shall be liable to imprisonment of either description for a term not exceeding two years :

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of an offence, and shall be liable to imprisonment of either description for a term not exceeding seven years.

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

Penalty for falsification of books.

260. If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding two years.

Frauds by officers of companies which have gone into liquidation.

261. If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up —

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company ;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company ;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding two years.

Liability where proper accounts not kept.

262. (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that

he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock-takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

263. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.

Respon-
sibility of
directors
for fraudulent
trading.

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest

in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be guilty of an offence and shall be liable to imprisonment of either description for a term not exceeding one year.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection (1) or who has been convicted of an offence under subsection (3) order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.

In this subsection the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before

which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.

(5) For the purpose of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and the declaration shall, for the purposes of the Insolvency Ordinance be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under subsection (4), and on the hearing of an application under that subsection or under subsection (1), the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

264. (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

Power of court to assess damages against delinquent directors, &c.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) When an order for payment of money is made under this section, the order shall, for the purposes of the Insolvency Ordinance be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

Prosecution of delinquent officers and members of company.

265. (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under the last foregoing subsection to the Attorney-General, he may, if he thinks fit, refer the matter to the Director of Commerce² for enquiry, and the Director of Commerce² shall thereupon investigate the matter and may, if he thinks it expedient, apply to the court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company

as are provided by this Ordinance in the case of a winding up by the court.

(4) If on any report to the Attorney-General under subsection (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager, or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of subsection (2).

(6) If where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the accused in the proceedings) to give him all assistance in connexion with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by subsection (6) the court may, on the application of the Attorney-General direct that

person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions as to Winding Up

Disqualifi-
cation for
appointment
as liquidator.

266. (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the appointed date, but subject as aforesaid any body corporate which acts as liquidator of a company shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Enforcement
of duty of
liquidator to
make returns,
&c.

267. (1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar of Companies, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default as aforesaid.

268. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

Notification that a company is in liquidation.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence and shall be liable to a fine of two hundred rupees.

269. In the case of a winding up by the court or of a creditors' voluntary winding up of a company—

Exemption of certain documents from stamp duty on winding up of companies.

(a) every deed relating solely to movable or immovable property, or creating any mortgage, charge or other encumbrance on, or any estate, right or interest in, any such property, which forms part of the assets of the company and which, after the execution of the deed, is or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding up,

shall be exempt from stamp duty.

270. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Books of company to be evidence.

Disposal of books and papers of company.

271. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say :—

- (a) in the case of a winding up by, or subject to the supervision of, the court in such way as the court directs ;
- (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Director of Commerce² to prevent, for such period (not exceeding five years from the dissolution of the company) as he thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to the Director of Commerce² and to appeal to the court from any direction which may be given by the Director of Commerce² in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Director of Commerce² thereunder, he shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Information as to pending liquidations.

272. (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals

as may be prescribed, until the winding up is concluded, send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

273. (1) If, where a company is being wound up, it appears either from any statement sent to the Registrar under section 272 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the said money to the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

Unclaimed
assets to be
paid to
Companies
Liquidation
Account.

(2) For the purpose of ascertaining and getting in any money payable into the Companies Liquidation Account in pursuance of this section, the Director of Commerce² may order any liquidator or other person to submit to him an account verified by affidavit of any such money and may direct and enforce an audit of that account in such manner as may be prescribed. The Director of Commerce² may from time to time appoint a person to collect and get in any such money and for the purposes of this section any court having

jurisdiction in insolvency shall have and, at the instance of the person so appointed or of the Director of Commerce², may exercise all the powers conferred by the Insolvency Ordinance with respect to the discovery and realization of the property of an insolvent, and the provisions of that Ordinance with respect thereto shall apply accordingly to proceedings under this section, with such modifications as may be necessary.

(3) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the Director of Commerce² for payment thereof, and the Director of Commerce² may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Director of Commerce² in respect of a claim made in pursuance of this section may appeal to the court in such manner as may be prescribed. The decision of the court shall be final and shall not be subject to any further appeal.

Resolutions passed at adjourned meetings of creditors and contributories.

274. Where after the appointed date a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court

Meetings to ascertain wishes of creditors or contributories.

275. (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Ordinance or the articles.

Provisions as to Dissolution

276. (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

Power of court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the Registrar of Companies for registration a certified copy of the order, and if that person fails so to do he shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

277. (1) Where the Registrar of Companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Registrar may strike defunct company off register.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may published in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved :

Provided that—

(a) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved ; and

(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off

carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the Registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

278. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under sections 276 and 277, vest in and be at the disposal of the Crown.

Property of dissolved company to vest in the Crown.

Central Accounts

279. (1) An account, to be called the Companies Liquidation Account, shall be kept by the Director of Commerce² with such bank as may from time to time be approved by the Minister of Finance.¹

Companies Liquidation Account.

(2) All payments out of money standing to the credit of the Director of Commerce² in the Companies Liquidation Account shall be made in the prescribed manner.

Investment of surplus funds on general account.

280. (1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Director of Commerce² is required for the time being to answer demands in respect of companies' estates, the Director of Commerce² shall notify the excess to the Deputy Secretary to the Treasury¹ and shall pay over to him, to such account as he may direct, the whole or any part of that excess which he may require; and the Deputy Secretary to the Treasury¹ may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Director of Commerce,² required to answer any demands in respect of companies' estates, the Director of Commerce² shall notify to the Deputy Secretary to the Treasury¹ the amount so required, and the Deputy Secretary to the Treasury¹ shall thereupon repay to the Director of Commerce² such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid into Companies Liquidation Account.

Separate accounts of particular estates.

281. (1) An account shall be kept by the Director of Commerce² of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Director of Commerce² shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Director of Commerce² shall, on the

request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Director of Commerce² exceeds twenty thousand rupees, and the liquidator gives notice to the Director of Commerce² that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two *per centum* per annum.

Rules and Fees

282. (1) General rules made under section 49 of the Courts Ordinance may provide for the carrying into effect of the objects of this Ordinance, so far as relates to the winding up of companies.

General rules and fees for winding up.

(2) There shall be paid in respect of proceedings under this Ordinance in relation to the winding up of companies such fees as the Minister¹ may, by regulation, prescribe.

PART VI

RECEIVERS AND MANAGERS

283. (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

Disqualification for appointment as receiver.

(2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the appointed date, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees.

Power to appoint official receiver as receiver for debenture holders or creditors.

284. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

Notification that receiver or manager appointed.

285. (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence and shall be liable to a fine of two hundred rupees.

Power of court to fix remuneration on application of liquidator.

286. The Court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

Delivery to Registrar of accounts of receivers and managers.

287. (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar of Companies may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Registrar of Companies or

registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

288. (1) If—

(a) any receiver of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so ; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him,

Enforcement
of duty of
receiver to
make returns,
&c.

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of the last preceding subsection an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar of Companies, and the order may

provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (a) of subsection (1) of this section.

PART VII

GENERAL PROVISIONS AS TO REGISTRATION

Authenti-
cation of
documents by
seal.

289. The Director of Commerce² may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies

Registration
of documents,
copies of
documents,
notices, &c.
[§ 8, 19 of 1942.]

290. It shall be the duty of the Registrar to register—

(a) every document which is by any provision of this Ordinance required or authorized to be registered or recorded by, or filed with, the Registrar ; and

(b) every document or copy of a document, and every return or notice, which is by any such provision required or authorized to be sent, forwarded, given, delivered or produced to the Registrar, or notified in any way to the Registrar ;

and where no special provision is made in this Ordinance for the payment of a fee in respect of any registration so effected, the fees mentioned in the Table set out in the Ninth Schedule shall be paid to the Registrar in respect of such registration.

Translations
of documents.
[§ 8, 19 of 1942.]

291. Where any document or any copy of any document which is required by section 290 to be registered by the Registrar is in a language other than English,

there shall be annexed to such document or copy a translation thereof in English certified in the prescribed manner to be a correct translation :

Provided, however, that this section shall not apply to documents required by Part I of this Ordinance to be delivered to the Registrar.

292. (1) There shall be paid to the Registrar in respect of the several matters mentioned in the Table set out in the Ninth Schedule the several fees therein specified. Fees.

(2) All fees paid to the Registrar in pursuance of this Ordinance shall be paid into the consolidated Fund.¹

293. (1) Any person may inspect the documents kept by the Registrar of Companies on payment of the prescribed fees, not exceeding fifty cents for each inspection, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment of the prescribed fee, not exceeding two rupees for a certificate of incorporation and not exceeding twenty-five cents for each folio of a certified copy or extract : Inspection,
production
and evidence
of documents
kept by
Registrar.

Provided that, where a company has been dissolved under this Ordinance, the Registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any documents in his custody relating to that company may be disposed of in such manner as may be prescribed.

(2) A copy of or extract from any document kept and registered at the office for the registration of companies shall, if certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), be admissible in evidence in all legal proceedings as of equal validity with the original document.

(3) In the application of this section, a folio shall be deemed to consist of seventy-two words.

Enforcement of duty of company to make returns to Registrar.

294. (1) If a company, having made default in complying with any provision of this Ordinance which requires it to file with, deliver or send to the Registrar of Companies any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to court by any member or creditor of the company or by the Registrar of Companies, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART VIII

APPLICATION OF ORDINANCE TO COMPANIES FORMED OR REGISTERED UNDER FORMER WRITTEN LAW

Application of Ordinance to companies formed under former written law.

295. In the application of this Ordinance to existing companies, it shall apply in the same manner—

- (1) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by shares ;
- (2) in the case of a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by guarantee ; and
- (3) in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance as an unlimited company :

Provided that—

- (a) nothing in Table A in the First Schedule shall apply to a company formed and registered under any written law repealed by Ordinance No. 51 of 1938, unless adopted by special resolution of the company ; and
- (b) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under any written law repealed by Ordinance No. 51 of 1938.

296. This Ordinance shall apply to every company registered but not formed under any written law repealed by Ordinance No. 51 of 1938 in the same manner as it is in Part IX of this Ordinance declared to apply to companies registered but not formed under this Ordinance :

Application of Ordinance to companies registered under former written law.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under any written law repealed by Ordinance No. 51 of 1938.

PART IX

COMPANIES NOT FORMED UNDER THIS ORDINANCE AUTHORIZED TO REGISTER UNDER THIS ORDINANCE

297. (1) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the appointed date, in pursuance of any Act of Parliament of the United Kingdom or of Letters Patent, or being otherwise duly constituted according to law, and consisting of seven or more members may at any time register under this Ordinance as an unlimited company, or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

Companies capable of being registered.

Provided that—

- (i) a company registered in Ceylon under any written law repealed by Ordinance No. 51 of 1938 shall not register in pursuance of this section ;
- (ii) a company having the liability of its members limited by Act of Parliament of the United Kingdom or Letters Patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section ;
- (iii) a company having the liability of its members limited by Act of Parliament of the United Kingdom or Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;
- (iv) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;
- (v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose ;
- (vi) where a company not having the liability of its members limited by Act of Parliament of the United Kingdom or Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;
- (vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted

before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

298. For the purposes of this Part of this Ordinance, as far as relates to registration of companies as Companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principal of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Ordinance shall be deemed to be a company limited by shares.

Definition of joint stock company.

299. Before the registration in pursuance of this Part of this Ordinance of a joint stock company, there shall be delivered to the Registrar the following documents :—

Requirements for registration by joint stock companies.

- (1) a list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;
- (2) a copy of any Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company ; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—

- (a) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
- (b) the number of shares taken and the amount paid on each share;
- (c) the name of the company, with the addition of the word "limited" as the last word thereof; and
- (d) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

300. Before the registration in pursuance of this Part of this Ordinance of any company not being a joint stock company, there shall be delivered to the Registrar—

- (1) a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and
- (2) a copy of any Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, contract of copartnership, cost book regulations, or other instrument constituting or regulating the company; and
- (3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statements of existing companies.

301. The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

302. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as herein before defined.

Registrar may require evidence as to nature of company.

303. No fees shall be charged in respect of the registration in pursuance of this Part of this Ordinance of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament of the United Kingdom or by Letters Patent.

Exemption of certain companies from payment of fees.

304. When a company registers in pursuance of this Part of this Ordinance with limited liability, the word "limited" shall form, and be registered as, part of its name.

Addition of "limited" to name.

305. On compliance with the requirements of this Part of this Ordinance with respect to registration, and on payment of such fees, if any, as are payable under the Ninth Schedule, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Ordinance, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated.

Certificate of registration of existing companies.

306. All property, movable and immovable, including all interests and rights in, and arising out of, property, movable and immovable, and including obligations and actionable claims, belonging to or vested in a company at the date of its registration in pursuance of this Part of this Ordinance, shall on registration pass to and vest in the company as incorporated under this Ordinance for all the estate and interest of the company therein.

Vesting of property on registration.

307. Registration of a company in pursuance of this Part of this Ordinance shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Saving for existing liabilities.

Continuation
of existing
actions.

308. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Ordinance are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place :

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Effect of
registration
under
Ordinance.

309. (1) When a company is registered in pursuance of this Part of this Ordinance, the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament of the United Kingdom or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Ordinance, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Ordinance shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Ordinance, subject as follows :—

- (a) Table A shall not apply unless adopted by special resolution ;
- (b) the provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered ;

- (c) subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament of the United Kingdom relating to the company ;
- (d) subject to the provisions of this section the company shall not have power to alter any provision contained in any Letters Patent relating to the company ;
- (e) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company ;
- (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;
- (g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Ordinance with respect to the legal representatives and heirs of deceased contributories, to the trustees of bankrupt or the assignees of insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

(4) The provisions of this Ordinance with respect to—

- (a) the registration of an unlimited company as limited ;
- (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

shall apply notwithstanding any provisions contained in any Act of Parliament of the United Kingdom, Royal Charter, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorize the company to alter any such provisions contained in any instrument constituting or regulating the company as would if the company had originally been formed under this Ordinance, have been required to be contained in the memorandum and are not authorized to be altered by this Ordinance.

(6) Nothing in this Ordinance shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament of the United Kingdom or other instrument constituting or regulating the company, be vested in the company.

(7) In this section the expression "instrument" includes deed of settlement, contract of copartnery, cost book regulations and Letters Patent.

310. (1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Ordinance may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Ordinance with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as

Power to substitute memorandum and articles for deed of settlement.

applicable apply to an alteration under this section with the following modifications :—

- (a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar of Companies a printed copy of the substituted memorandum and articles ; and
- (b) on the registration of the alteration being certified by the Registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Ordinance with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Ordinance.

(4) In this section the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company, not being an Act of Parliament of the United Kingdom, a Royal Charter, or Letters Patent.

311. The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Ordinance, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Power of court to stay or restrain proceedings.

312. Where an order has been made for winding up a company registered in pursuance of this Part of this Ordinance, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Actions stayed on winding-up order.

PART X

WINDING UP OF UNREGISTERED COMPANIES

Meaning of
unregistered
company.

313. For the purposes of this Part of this Ordinance, the expression "unregistered company" shall include any partnership, whether limited or not, any association and any company with the following exceptions:—

- (1) a company registered under this Ordinance or under any written law repealed by this Ordinance ;
- (2) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

Winding-up
of unregis-
tered
companies.

314. (1) Subject to the provisions of this Part of this Ordinance, any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

[§ 5, 6 of 1939.]

- (a) the principal place of business in Ceylon of an unregistered company shall, for all the purposes of the winding up, be deemed to be the registered office of the company ;
- (b) no unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision ;
- (c) the circumstances in which an unregistered company may be wound up are as follows:—
 - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;
 - (ii) if the company is unable to pay its debts ;
 - (iii) if the court is of opinion that it is just and equitable that the company should be wound up ;

(d) an unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts—

- (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;
- (ii) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same ;

- (iii) if execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied ;
- (iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

(2) Where a company incorporated outside Ceylon which has been carrying on business in Ceylon ceases to carry on business in Ceylon, it may be wound up as an unregistered company under this Part of this Ordinance, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(3) Nothing in this Part of this Ordinance shall affect the operation of any written law which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any written law repealed by this Ordinance, except that references in any such first-mentioned written law to any such repealed written law shall be read as references to the corresponding provision (if any) of this Ordinance.

315. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Ordinance with respect to the legal representatives and the heirs of

Contribu-
tories in
winding up
of
unregistered
company.

deceased contributories, to the trustees of bankrupt or the assignees of insolvent contributories and to the liabilities of husbands and wives respectively, shall apply.

316. The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Power of court to stay or restrain proceedings.

317. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Actions stayed on winding-up order.

318. The provisions of this Part of this Ordinance with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein before in this Ordinance contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance :

Provisions of Part X cumulative.

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part of this Ordinance.

PART XI

COMPANIES INCORPORATED OUTSIDE CEYLON CARRYING ON BUSINESS WITHIN CEYLON

319. This Part of this Ordinance shall apply to all companies incorporated outside Ceylon which, after the appointed date, establish a place of business within

Companies to which Part XI applies.

Ceylon, and to all companies incorporated outside Ceylon which have before the appointed date, established a place of business within Ceylon and continue to have an established place of business within Ceylon at the appointed date.

Documents, &c., to be delivered to Registrar by companies carrying on business in Ceylon.

320. (1) Every company incorporated outside Ceylon which, after the appointed date, establishes a place of business within Ceylon, shall within one month from the establishment of the place of business, deliver to the Registrar of Companies for registration—

- (a) a certified copy of the character, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof ;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company ;
- (c) the names and addresses of some one or more persons resident in Ceylon authorized to accept on behalf of the company service of process and any notices required to be served on the company ;
- (d) a statement containing the full address of—
 - (i) the registered or principal office of the company ; and
 - (ii) the principal place of business of the company within Ceylon :

[§ 6, 6 of 1939.]

Provided that if in any particular case it is shown to the satisfaction of the Registrar that the documents and particulars specified in subsection (1) cannot be delivered within the said period of one month, it shall be lawful for him to extend the said period having regard to the circumstances of that case.

(2) Every company incorporated outside Ceylon which on or before the appointed date establishes or

has established a place of business within Ceylon and which, on date* to be appointed by the Director of Commerce² by notification in the Gazette, has an established place of business in Ceylon, shall, subject as hereinafter provided, at some time within a period of one month from that date, deliver to the Registrar of Companies for registration the documents and particulars specified in subsection (1) :

[§ 9, 19 of 1942.]

Provided that where any such company has filed with the Registrar appointed under the Joint Stock Companies Ordinance, No. 4 of 1861, the particulars required to be filed under section 111 of that Ordinance, it shall be sufficient for such company to deliver to the Registrar for registration, within the period aforesaid, only the particulars specified in paragraph (d) of subsection (1) ; and where any such company so delivers such last-mentioned particulars, it shall be deemed for all the purposes of this Ordinance to have delivered to the Registrar all the documents and particulars specified in subsection (1), in accordance with the provisions of this subsection ;

[§ 9, 19 of 1942.]

Provided, also, that where the documents and particulars specified in subsection (1) have, at any time between the 31st day of March, 1939, and the date appointed as aforesaid, been delivered by any such company to the Registrar of Companies and accepted by the Registrar for registration, the company shall be deemed for all the purposes of this Ordinance to have delivered to the Registrar the documents and particulars specified in subsection (1), in accordance with the provisions of this subsection ;

[§ 9, 19 of 1942.]

Provided, further, that the Registrar may extend the aforesaid period of one month if it appears to him expedient so to do having regard to the circumstances of any particular case.

[§ 9, 19 of 1942.]

321. A company incorporated outside Ceylon which has delivered to the Registrar of Companies the documents and particulars specified in subsection (1) of section 320 shall have the same power to hold lands in Ceylon as if it were a company incorporated under this Ordinance.

Power of companies incorporated outside Ceylon to hold lands.

* 1st June, 1942—Gazette No. 8,937 of 29th May, 1942.

Return to be delivered to Registrar where documents, &c., altered.

322. If in the case of any company to which this Part of this Ordinance applies any alteration is made in—

- (1) the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid ; or
- (2) the directors of the company or the particulars contained in the list of the directors ; or
- (3) the names or addresses of the persons authorized to accept service on behalf of the company ; or
- (4) the address of—
 - (a) the registered or principal office of the company ; or
 - (b) the principal place of business of the company within Ceylon,

[§ 7, 6 of 1939.]

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

Balance sheet of company carrying on business in Ceylon.

[§ 10, 19 of 1942.]

323. (1) Every company to which this Part of this Ordinance applies shall—

- (a) if it is required, by the law of the country of incorporation, to prepare a balance sheet and lay such balance sheet before the company in general meeting in every calendar year, deliver to the Registrar for registration a certified copy of such balance sheet within a period of four months from the date of the meeting before which such balance sheet was laid ;
- (b) if it is not required by the law of the country of incorporation so to lay a balance sheet before such meeting, make out a balance sheet in every calendar year in such form and containing such particulars and including such documents as under the provisions of this Ordinance it would, if it had been a company within the meaning of this Ordinance, have been required to make out and lay before the

[§ 6, 54 of 1946.]

company in general meeting and deliver a certified copy of that balance sheet to the Registrar for registration.

[§ 6, 54 of 1946.]

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(3) Where a copy of any balance sheet is delivered to the Registrar—

[§ 10, 19 of 1942.]

(a) under paragraph (a) of subsection (1), by any company which is not required by the law of the country of incorporation to file or register such balance sheet with the authority charged with the administration of the law relating to companies in that country, or

(b) under paragraph (b) of subsection (1),

such balance sheet shall not be published, and no copy of any such balance sheet shall be issued except for the use of a Minister.

324. Every company to which this Part of this Ordinance applies shall—

Obligation to state name of company, whether limited, and country where incorporated.

(1) in every prospectus inviting subscriptions for its shares or debentures in Ceylon state the country in which the company is incorporated; and

(2) conspicuously exhibit on every place where it carries on business in Ceylon the name of the company and the country in which the company is incorporated; and

(3) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company; and

- (4) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Ceylon, and to be affixed on every place where it carries on its business.

Service on company to which Part XI applies.

325. Any process or notice required to be served on a company to which this Part of this Ordinance applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part of this Ordinance and left at or sent by post to the address which has been so delivered :

Provided that—

- (1) where any such company makes default in delivering to the Registrar the name and address of a person resident in Ceylon who is authorized to accept on behalf of the company service of process or notices ; or
- (2) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served, a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Ceylon.

[§ 11, 19 of 1942.]

Registrar to be notified when company ceases to have place of business in Ceylon.

326. If any company to which this Part of this Ordinance applies ceases to have a place of business in Ceylon, it shall forthwith give notice of the fact to the Registrar of Companies, and as from the date on which notice is so given the obligation of the company to deliver any document to the Registrar shall cease.

Penalties.

327. If any company to which this Part of this Ordinance applies fails to comply with any of the foregoing provisions of this Part of this Ordinance the

company, and every officer or agent of the company, shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees, or, in the case of a continuing offence fifty rupees for every day during which the default continues.

328. (1) If any company to which the provisions of this Part of this Ordinance apply, having made default in complying with any such provision, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by the Registrar of Companies or by any creditor of the company or by any other person who may appear to the court to be interested, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

Enforcement of duty to comply with provisions of this Part.

[§ 12, 19 of 1942.]

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

329. For the purposes of this Part of this Ordinance—

Inter-pretation of Part XI.

the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation ;

the expression “director” in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act ;

the expression “place of business” includes a share transfer or share registration office ;

the expression “prospectus” has the same meaning as when used in relation to a company incorporated under this Ordinance.

PART XII

RESTRICTIONS ON SALE OF SHARES AND OFFERS
OF SHARES FOR SALE

Provisions
with respect
to prospec-
tuses of
foreign
companies
inviting
subscriptions
for shares or
offering
shares for
sale.

330. (1) It shall not be lawful for any person—

(a) to issue, circulate or distribute in Ceylon any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Ceylon, whether the company has or has not established, or when formed will or will not establish, a place of business in Ceylon, unless—

(i) before the issue, circulation or distribution of the prospectus in Ceylon a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar of Companies ;

(ii) the prospectus states on the face of it that the copy has been so delivered ;

(iii) the prospectus is dated ;

(iv) the prospectus otherwise complies with this Part of this Ordinance ; or

(b) to issue to any person in Ceylon a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part of this Ordinance :

Provided that this provision shall not apply if it is shown that the form of application was issued in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right

to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Ceylon are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 39 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 38 shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees.

(7) In this section and in section 331 the expressions "prospectus", "shares", and "debentures" have the same meanings as when used in relation to a company incorporated under this Ordinance.

331. (1) In order to comply with this Part of this Ordinance a prospectus in addition to complying with the provisions of sub-paragraphs (ii) and (iii) of paragraph (a) of subsection (1) of section 330 must—

Require-
ments as to
prospectus.

(a) contain particulars with respect to the following matters :—

(i) the objects of the company ;

- (ii) the instrument constituting or defining the constitution of the company ;
- (iii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;
- (iv) an address in Ceylon where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected ;
- (v) the date on which and the country in which the company was incorporated ;
- (vi) whether the company has established a place of business in Ceylon, and, if so, the address of its principal office in Ceylon :

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ;

- (b) subject to the provisions of this section, state the matters specified in Part I of the Fourth Schedule (other than those specified in paragraph 1 of the said Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of the said Schedule :

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed ;
and

(ii) in paragraph 3 of Part I of the said Fourth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles ; and

(iii) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof ; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of the Fourth Schedule, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under any written or other law, apart from this section.

Restrictions
on offering of
shares for
subscription
or sale.

332. (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection the expression "house" shall not include an office used for business purposes.

(2) Subject as herein after provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Ceylon, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Ordinance :

Provided that the provisions of this subsection shall not apply—

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in Ceylon and the offer so states and specifies the stock exchange ; or
- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public ; or
- (c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters :—

- (a) Whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Ceylon where that principal can be served with process ;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Ceylon ;
- (c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting ;
- (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect ;
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon ;
- (f) the names and addresses of the directors of the company ;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up ;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Ceylon or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted, or that no such permission has been granted ;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Ceylon where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Ordinance or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this Ordinance or not, and includes debentures and units, and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

Any person who shall be dissatisfied with an order made under this subsection (whether with or without consequential directions) may appeal to the Supreme Court in like manner as if the order was a final order pronounced in a criminal cause or matter, and sections 338 to 352 (inclusive) of the Criminal Procedure Code shall apply to such appeal.

PART XIII

PROVISIONS RELATING TO BANKS

333. A "banking company" means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely:—

Definition of
banking
company.

- (1) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, *hoondees*, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not ; the granting and issuing of letters of credit, travellers cheques and circular notes ; the buying, selling and dealing in bullion and specie ; the buying and selling of foreign exchange including foreign bank notes, the acquiring, holding, issuing on commission underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds ; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise and the carrying on of the business of safe deposit ; the collecting and transmitting of money and securities ;
- (2) acting as agents for Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent of any company which is not a banking company, including the power to act as attorneys and to give discharges and receipts ;

- (3) contacting for public and private loans and negotiating and issuing the same ;
- (4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;
- (5) carrying on and transacting every kind of guarantee and indemnity business ;
- (6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;
- (7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability ;
- (8) managing, selling and realizing all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ;
- (9) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advance or which may be connected with any such security ;
- (10) undertaking and executing trusts ;
- (11) undertaking the administration of estates as executor, trustee or otherwise ;
- (12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;

- (13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connexions of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;
- (14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;
- (15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;
- (16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section;
- (17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

334. (1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Ordinance, or under some other enactment.

Prohibition of banking partnerships with more than ten members.

(2) No company, association or partnership consisting of more than ten persons, which is formed outside Ceylon, shall carry on the business of banking in Ceylon unless—

[§ 13, 19 of 1942.]

- (a) it is formed in pursuance of some Act of Parliament of the United Kingdom, Royal Charter or Letters Patent or is duly incorporated as a banking company outside Ceylon, and
- (b) has an established place of business in Ceylon.

[§ 13, 19 of 1942.]

(3) Where any company, association or partnership consisting of more than ten persons is formed in contravention of the provisions of subsection (1) or carries on the business of banking in contravention of the provisions of subsection (2), each of such persons—

(a) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment; and

(b) shall, without prejudice to the provisions of paragraph (a), be severally liable for the payment of the whole debts of the company, association or partnership of which he is or was a member, and may be sued accordingly without the joinder in the suit of any other member of the company, association or partnership.

On registration of banking company with limited liability, notice to be given to customers.
[§ 14, 19 of 1942.]

335. (1) Where a banking company or an association or partnership engaged in the business of banking proposes to register as a limited company, it shall at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, association or partnership, either by delivery of the notice to him, or by posting it to him, at, or delivering it at, his last known address.

[§ 14, 19 of 1942.]

(2) If the company, association or partnership omits to give the notice required by this section, then, as between the company, association or partnership and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

[§ 14, 19 of 1942.]

Limitation of activities of banking companies.

336. (1) No company formed after the appointed date for the purpose of carrying on business as banking company or which uses as part of the name under which it proposes to carry on business the word

“bank”, “banker” or “banking” shall be registered under this Ordinance, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 333.

(2) No banking company incorporated in Ceylon, and no banking company incorporated outside Ceylon which has established a place of business within Ceylon, shall after the expiry of two years from the appointed date carry on any form of business other than those specified in section 333 :

[§ 15, 19 of 1942.]

Provided that the Minister¹ may, by notification in the Gazette, specify in addition to the businesses set forth in paragraphs (1) to (17) of section 333 other forms of business which it may be lawful under this section for a banking company to engage in.

337. No banking company shall after the expiry of two years from the appointed date employ or be managed by a managing agent other than a banking company.

Banking company not to employ managing agent other than a banking company.

338. Notwithstanding anything contained in section 93, no banking company incorporated under this Ordinance shall commence business, unless shares have been allotted to an amount sufficient to yield a sum of at least one hundred and fifty thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the Registrar.

Restriction on commencement of business by banking company.

[§ 16, 19 of 1942].

150,000/- w.c.p

339. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Prohibition of charge on unpaid capital.

340. (1) Every banking company shall, after the appointed date, maintain a reserve fund.

Reserve fund.

(2) Every banking company shall out of the declared profit of each year and before any dividend is declared transfer to the reserve fund—

(a) a sum equivalent to not less than twenty *per centum* of such profits until the amount of the said reserve fund is equal to fifty *per centum* of the paid-up capital; and

(b) thereafter, in every year in which the liabilities exceed the paid-up capital, a sum equivalent to not less than ten *per centum* of such profits until the amount of the said reserve fund is equal to the paid-up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in securities mentioned in section 20 of the Trusts Ordinance or in any approved security or keep such amount deposited in a special account to be opened by the company for the purpose in any bank mentioned in the Tenth Schedule :

Provided that the Provision of this subsection shall not apply to a banking company incorporated before the appointed date till after the expiry of two years from such date.

(4) In this section "approved security" means any security approved by the Minister¹ by notification in the Gazette.

[§ 17, 19 of 1942.]

(5) Subject as hereinafter provided, the foregoing provisions of this section shall apply to every banking company incorporated in Ceylon and to every banking company incorporated outside Ceylon which has an established place of business within Ceylon :

Provided, however, that such provisions shall not apply to any banking company mentioned in the Eleventh Schedule.

**Amendment
of Tenth and
Eleventh
Schedules.**

341. The Minister¹ may by notification in the Gazette amend or vary the Tenth and Eleventh Schedules.

342. (1) A banking company shall not form any subsidiary company which is not a banking company.

Restriction on nature of subsidiary company.

(2) Save as provided in subsection (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty *per centum* of the issued share capital of that company :

[§ 19, 19 of 1942.]

Provided that nothing in this subsection shall apply to shares held by a banking company before the 1st day of April, 1939.

343. If default is made in complying with any of the requirements of section 336, section 337, section 338, section 339, section 340 or section 342, every director or other officer of the company who is knowingly and wilfully a party to the default shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Penalty for default in complying with certain requirements of this Part.

[§ 20, 19 of 1942.]

[§ 130, 58 of 1949.]

344. (1) The court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.

Power of court to stay proceedings.

(2) No such application shall be maintainable unless accompanied by a report of the Director of Bank Supervision of the Central Bank of Ceylon :

[§ 130, 58 of 1949.]

Provided, however, the court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report.

(3) The provisions of this section shall apply to every banking company incorporated in Ceylon and every banking company incorporated outside Ceylon which has an established place of business within Ceylon.

[§ 22, 19 of 1942.]

“Business of banking”.
[§ 23, 19 of 1942.]

345. For the purposes of this Part, “the business of banking” means the business of accepting deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, whether or not such business is carried on along with any one or more of the forms of business specified in section 333.

PART XIV

MISCELLANEOUS

APPOINTMENTS OF OFFICERS, &c.

Appointment of officers, &c.
[§ 7, 54 of 1946.]

346. (1) There may be appointed—³

- (a) a³ person, by name or by office, to be or to act as the Registrar of Companies ;
- (b) a³ person, by name or by office, to be or to act as an Assistant Registrar of Companies ; and
- (c) such other officers and servants as may from time to time be required for the purposes of this Ordinance.

(2) Any person appointed under subsection (1) to be or to act as an Assistant Registrar of Companies, may subject to the general directions of the Registrar, exercise all the powers, perform all the duties and discharge all the functions of the Registrar under the Ordinance.

Copies of damaged or illegible document.
[§ 7, 54 of 1946.]

347. If any document filed with, or in the custody of, the Registrar of Companies is damaged or is in danger of becoming illegible, the Registrar may, if he thinks fit, direct a copy thereof to be made, verified, and certified in any such manner as he may determine, and thereupon such copy shall be substituted for, and shall for all purposes of this Ordinance be deemed to be, the document so damaged or in danger of becoming illegible.

PROHIBITION OF PARTNERSHIPS WITH MORE THAN TWENTY MEMBERS

Prohibition of partnerships with more than twenty members.

348. (1) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than

the business of banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance or under some other enactment.

[§ 24, 19 of 1942.]

(2) No company, association or partnership consisting of more than twenty persons, which is formed outside Ceylon, shall carry on in Ceylon any business (other than the business of banking) that has for its object the acquisition of gain by the company, association or partnership or by the individual members thereof unless—

[§ 24, 19 of 1942.]

(a) it is formed in pursuance of some Act of Parliament of the United Kingdom, Royal Charter or Letters Patent or is duly incorporated as a company outside Ceylon, and

(b) has an established place of business within Ceylon.

(3) Where any company, association or partnership consisting of more than twenty persons is formed in contravention of the provisions of subsection (1) or carries on any business in contravention of the provisions of subsection (2), each of such persons—

[§ 24, 19 of 1942.]

(a) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment; and

(b) shall without prejudice to the provisions of paragraph (a), be severally liable for the payment of the whole debts of the company, association or partnership of which he is or was a member, and may be sued accordingly without the joinder in the suit of any other member of the company, association or partnership.

MISCELLANEOUS OFFENCES

349. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Ordinance specified in the Twelfth Schedule hereto, wilfully makes a statement false in any material particular,

Penalty for
false
statement.

knowing it to be false, he shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

Penalty for improper use of word "Limited".

350. If any person or persons trade or carry on business under any name or title of which "Limited", or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be guilty of an offence and shall be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

GENERAL PROVISIONS AS TO OFFENCES

Provision with respect to default fines and meaning of "officer in default".

351. (1) Where by any enactment in this Ordinance it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be guilty of an offence and be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding fifty rupees.

(2) For the purpose of any enactment in this Ordinance which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the enactment.

Compounding of certain offences.

[§ 25, 19 of 1942.]

352. (1) Where any company has made default in complying with any provision of this Ordinance requiring it to file with, or deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, and has by reason of such default committed an offence against this Ordinance, the Director of Commerce² may, if he thinks fit, instead

of instituting proceedings in court against the company or any officer of the company in respect of such offence, accept from the company or such officer such sum of money as the Director may think proper in composition of the offence ; and any sum so accepted shall be credited to the Consolidated Fund.¹

(2) Where the Director of Commerce² has accepted any sum of money under subsection (1) in composition of any offence, proceedings shall not be taken against the company or any officer of the company in respect of that offence, or if already taken, shall not be continued.

353. All offences under this Ordinance made punishable—

Offences summarily triable.

(a) by a fine only, or

(b) by a fine not exceeding one thousand rupees with imprisonment of either description for a term not exceeding one year, or

(c) by imprisonment of either description for a term not exceeding one year,

may be tried summarily by a Magistrate.

354. The court imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered.

Application of fines.

355. Nothing in this Ordinance relating to the institution of criminal proceedings by the Attorney-General shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving as to private prosecutors.

356. Where proceedings are instituted under this Ordinance against any person by the Attorney-General, nothing in this Ordinance shall be taken to require any person who has acted as proctor or counsel for the accused to disclose any privileged communication made to him in that capacity.

Saving for privileged communications.

SERVICE OF DOCUMENTS AND LEGAL PROCEEDINGS

Service of documents on company.

357. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Documents to be received in evidence.
[§ 2, 35 of 1951.]

358. Any document purporting to be made or furnished for the purposes of this Ordinance by or on behalf of a company or by any person shall for all purposes be, until the contrary is proved, deemed to have been made or furnished by such company or person, as the case may be. Any person signing any such document shall be deemed to be cognizant of all matters therein.

Costs in actions by certain limited companies.

359. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

360. (1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as

under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the following :—

- (a) directors of a company ;
- (b) managers of a company ;
- (c) officers of a company ;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

361. (1) The Minister¹ may make regulations generally for the purpose of carrying out or giving effect to the provisions of this Ordinance. Regulations.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister¹ may make regulations for or in respect of any matter stated or required in this Ordinance to be prescribed.

(3) No regulation shall have effect unless it has been approved by the Senate and the House of Representatives¹ Notification of such approval shall be published in the Gazette.

(4) Every regulation shall, upon publication of the approval¹ of that regulation as provided for in subsection (3), be as valid and effectual as if it were herein enacted.

(5) All regulations made under this Ordinance shall be printed by the Government Printer and shall be available for sale to the public.

362. (1) The Minister¹ may by regulation alter Table A, the form in the Seventh Schedule and the table of fees in the Ninth Schedule so that the amount of fees payable to the Registrar under the said Ninth

Power to alter tables and forms.

Schedule is not thereby increased, and may alter or add to Tables B, C, D and E in the First Schedule, and the forms in the Second and Sixth Schedules :

Provided that no alteration made by the Minister¹ in Table A shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table.

INTERPRETATION

Interpretation.

363. (1) In this Ordinance, unless the context otherwise requires—

“annual return” means the return required to be made, in the case of a company having a share capital, under section 106, and, in the case of a company not having a share capital, under section 107 ;

“appointed date” means the 1st day of April, 1939 ;

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the company, the regulations contained in Part C of the Schedule to the Joint Stock Companies Ordinance, 1861, * or in Table B in the Schedule to the Joint Stock Banking Ordinance, 1897 * or in Table A in the First Schedule to this Ordinance ;

“banking company” means a banking company as defined in section 333 ;

“book and paper” and “book or paper” include accounts, deeds, writings, and documents ;

“company” means a company formed and registered under this Ordinance or an existing company ;

“existing company” means a company formed and registered under the Joint Stock Companies Ordinance, 1861, * or the Joint Stock Banking Ordinance, 1897 ;*

“the court” used in relation to a company means the District Court having jurisdiction to wind up the company ;

* Repealed by Ordinance No. 51 of 1938.

- “deventure” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not ;
- “director” includes any person occupying the position of director by whatever name called ;
- “Director of Commerce”² means the person for the time being holding the office of Director of Commerce² and includes the Deputy Director of Commerce³ and any Assistant Director of Commerce ;³ [§ 8, 6 of 1939.]
- “district” means a judicial district as defined in sections 4 and 5 of the Courts Ordinance for the purposes of that Ordinance ;
- “document” includes summons, notice, order, and other legal process, and registers ;
- “general rules” means the general rules referred to in section 282, and includes forms ;
- “legal representative” means an executor or administrator, or in the case of an estate below the value of two thousand five hundred rupees the next of kin who have adiated the inheritance ;
- “managing agents” means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called ;
- Explanation.*—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Ordinance ;
- “memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of any enactment ;
- “prescribed” means as respects the provisions of this Ordinance relating to the winding up of companies, prescribed by general rules, and as

respects the other provisions of this Ordinance, prescribed by regulation ;

“prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company ;

“regulation” means a regulation made by the Minister¹ under this Ordinance ;

“the Registrar of Companies”, or, when used in relation to registration of companies, “the Registrar”, means the Registrar or other officer performing under this Ordinance the duty of registration of companies ;

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

“Table A” means Table A in the First Schedule.

(2) A person shall not be deemed to be within the meaning of any provision in this Ordinance a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions.

364. (1) Without prejudice to the provisions of sections 5 and 10 of the Interpretation Ordinance—

(a) nothing in the repeal of any former written law relating to companies shall affect any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former written law relating to companies, but any such order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in

force at the appointed date, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Ordinance shall have effect as if made, passed, given, taken, insued or done under this Ordinance ;

- (b) any document referring to any former written law relating to companies shall be construed as referring to the corresponding provision of this Ordinance ;
- (c) any person appointed to any office under or by virtue of any former written law relating to companies shall be deemed to have been appointed to that office under or by virtue of this Ordinance ;
- (d) any register kept under any former written law relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Ordinance ;
- (e) all funds and accounts constituted under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former written law relating to companies.

(2) In this section the expression "former written law relating to companies" means any written law repealed by Ordinance No. 51 of 1938. *

365. Nothing in this Ordinance shall affect—

Savings.

- (1) the incorporation of any company registered under any written law repealed by Ordinance No. 51 of 1938 ; *
- (2) Part C of the Schedule to the Joint Stock Companies Ordinance, 1861, † or Any part thereof, so far as the same applies to any company in existence on the appointed date ;

* The following enactments have been repealed by Ordinance No. 51 of 1938 :—

- 1. The Joint Stock Companies Ordinance, No. 4 of 1861, and all Ordinances amending that Ordinance ;
- 2. Ordinance No. 4 of 1888 ;
- 3. The Joint Stock Companies Ordinance, No. 6 of 1888 ;
- 4. The Joint Stock Companies Ordinance, No. 3 of 1893 ;
- 5. The Joint Stock Banking Ordinance, No. 2 of 1897.

† Repealed by Ordinance No. 51 of 1938.

- (3) Table B in the Schedule to the Joint Stock Banking Ordinance, 1897, * or any part thereof so far as the same applies to any company in existence on the appointed date.

Saving of pending proceedings for winding up.

[§ 26, 19 of 1942.]

366. Subject as hereinafter provided, the provisions of this Ordinance with respect to winding up shall not apply to any company of which the winding up has commenced before the appointed date, but every such company shall be wound up in the same manner and with the same incidents as if this Ordinance had not been enacted, and, for the purposes of the winding up, the written law under which the winding up commenced shall be deemed to remain in full force :

[§ 26, 19 of 1942.]

Provided, however, that where any such company is being so wound up, the court may, on application made by the Registrar or by any creditor of the company and if the court is of opinion that it is expedient to do so in the circumstances of the case, make order that any specified provision of this Ordinance with respect to winding up shall apply to the winding up of such company, and may give such incidental or supplemental directions as may appear to the court to be necessary for the purposes of the application of such provision ; and where the court makes any such order, any provision of this Ordinance specified in the order shall, subject to any such directions, apply accordingly.

FIRST SCHEDULE

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Preliminary

1. In these regulations—

“The Ordinance” means the Companies Ordinance.

When any provision of the Ordinance is referred to, the reference is to that provision as modified by any written law for the time being in force.

* Repealed by Ordinance No. 51 of 1938.

Unless the context otherwise requires, expressions defined in the Ordinance or in any written law modifying the Ordinance in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

1ST SCHEDULE
TABLE A
—contd.

Shares

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is or at the option of the company is liable to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

$\frac{3}{4}$ of issued share
Extra ord. Resolution

2 persons or proxy
 $\frac{1}{3}$ of the issued shares

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding fifty cents, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 46 (1) of the Ordinance.

Lien

7. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at

1ST SCHEDULE
TABLE A
—contd.

any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death, insolvency, or bankruptcy.

9. For giving effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five *per centum* per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

not exceed 1/4
14 days

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per centum) as may be agreed upon between the member paying the sum in advance and the directors.

1ST SCHEDULE
TABLE A
—contd.

6% interest

Transfer and Transmission of Shares

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve :—

I, A. B., of _____, in consideration of the sum of Rs. _____ paid to me by C. D. of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called the _____ Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the _____ day of _____.

Witness to the signatures of, &c.

19. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless—

- (a) a fee not exceeding one rupee 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.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal. •

20. The legal representatives of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal representatives of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

1ST SCHEDULE
TABLE A
—contd.

21. Any person becoming entitled to a share in consequence of the death, insolvency, or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to 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 the insolvent or bankrupt 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 the insolvent or bankrupt person before the death, insolvency, or bankruptcy.

22. A person becoming entitled to a share by reason of the death, insolvency, or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares

23. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

14 days

24. 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 the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the 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.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. 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 be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the

share is sold or disposed of and he shall thereupon be registered as the holder of the share, and 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 any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

1ST SCHEDULE
TABLE A
—contd.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder".

Alteration of Capital

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they

1ST SCHEDULE
TABLE A
—contd.

think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 51 (1) (d) of the Ordinance ;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings

39. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The abovementioned general meetings shall be called ordinary general meetings ; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 112 of the Ordinance. If at any time there are not within Ceylon sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

42. Subject to the provisions of section 115 (2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served

or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

1ST SCHEDULE
TABLE A
—contd.

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

Proceedings at General Meetings

44. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. 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; save as herein otherwise provided, three members personally present shall be a quorum.

3 members quorum

46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

1ST SCHEDULE
TABLE A
—contd.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per centum of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book 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, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in cases relating to persons of unsound mind, may vote, whether on a show of hands or on a poll, by his manager, curator, or other person in the nature of a manager, or curator appointed by that court, and any such manager, curator, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notorially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:—

———— Company, Limited.

“I, _____, of _____, being a member of the _____ Company, Limited, hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.”

Signed this _____ day of _____.

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized 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.

Directors

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Ordinance or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

1ST SCHEDULE
TABLE A
—contd.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital, of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors,
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors,
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors

72. The office of director shall be vacated, if the director—

- (a) ceases to be a director by virtue of section 139 of the Ordinance; or
- (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
- (c) becomes insolvent or bankrupt; or
- (d) becomes prohibited from being a director by reason of any order made under sections 208 or 263 of the Ordinance; or
- (e) is found to be a person of unsound mind or becomes of unsound mind; or

- (f) resigns his office by notice in writing to the company ;
 or
 (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company :

1ST SCHEDULE
 TABLE A
 —contd.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 147 of the Ordinance, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject of retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

1ST SCHEDULE
TABLE A
—contd.*Proceedings of Directors*

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. 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. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they 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.

86. 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 five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks 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.

88. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

1ST SCHEDULE
TABLE A
—contd.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. 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 or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipt for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

96. No dividend shall bear interest against the company.

Accounts

97. The directors shall cause proper books of account to be kept with respect to—

all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;

all sales and purchases of goods by the company ; and the assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

1ST SCHEDULE
TABLE A
—contd.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 121 of the Ordinance, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

7 days
101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit

102. Auditors shall be appointed and their duties regulated in accordance with sections 130, 131, and 132 of the Ordinance.

Notices

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Ceylon) to the address, if any, within Ceylon supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within Ceylon and has not supplied to the company an address within Ceylon for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death, insolvency, or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent, trustee of the bankrupt, or by any like description, at the address, if any, within Ceylon supplied for the purpose by the persons claiming to be so entitled, or (until such an

address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, insolvency, or bankruptcy had not occurred.

1ST SCHEDULE
TABLE A
—contd.

107. Notice of every general meeting shall be given in some manner herein before authorized to (a) every member except those members who (having no registered address within Ceylon) have not supplied to the company an address within Ceylon for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death, insolvency, or bankruptcy of a member, who, but for his death, insolvency, or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B

[Section 12
and 362.]

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY
LIMITED BY SHARES

1st. The name of the company is "The Eastern Steam Packet Company, Limited".

2nd. The registered office of the company will be situated in the district of Colombo.

3rd. The objects for which the company is established are, the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th The liability of the members is limited.

5th. The share capital of the company is two hundred thousand rupees divided into one thousand shares of two hundred rupees each.

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
1. John Jones of _____, merchant ..	200
2. John Smith of _____, merchant ..	25
3. Thomas Green of _____, merchant ..	30
4. John Thompson of _____, merchant ..	40
5. Caleb White of _____, merchant ..	15
6. Andrew Brown of _____, merchant ..	5
7. Caesar White of _____, merchant ..	10
Total shares taken ..	325

Dated the _____ day of _____, 19—.

Witness to the above signatures,
A. B., No. 20, Main Street, Colombo.

[Sections 12
and 362.]

Table C

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION
OF A COMPANY LIMITED BY GUARANTEE, AND
NOT HAVING A SHARE CAPITAL*Memorandum of Association*

1st. The name of the company is "The Kandy School Association, Limited".

2nd. The registered office of the company will be situate in the district of Kandy.

3rd. The objects for which the company is established are the carrying on a school for boys in the district of Kandy and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one hundred rupees.

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.

Names, Addresses, and Descriptions of Subscribers

1. John Jones of _____, schoolmaster.
2. John Smith of _____, schoolmaster.
3. Thomas Green of _____, schoolmaster.
4. John Thompson of _____, schoolmaster.
5. Caleb White of _____, schoolmaster.
6. Andrew Brown of _____, schoolmaster.
7. Caesar White of _____, schoolmaster.

Dated the _____ day of _____, 19—.

Witness to the above signatures,

A. B., No. 13, Trincomalee Street, Kandy.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING
MEMORANDUM OF ASSOCIATION*Preliminary*

1. In these regulations—

The Ordinance means the Companies Ordinance.

When any provision of the Ordinance is referred to the reference is to such provision as modified by any written law for the time being in force.

Unless the context otherwise requires expressions defined in the Ordinance or in any written law modifying the Ordinance in force at the date at which these regulations become bindings on the company, shall have the meanings so defined.

*Members*1ST SCHEDULE
TABLE C
—contd.

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible at that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

7. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 112 of the Ordinance. If at any time there are not within Ceylon sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

8. Subject to the provisions of section 115 (2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit.

1ST SCHEDULE
TABLE C
—contd.

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

Proceedings at General Meetings

10. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11. 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; save as herein otherwise provided, three members personally present shall be a quorum.

12. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book 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, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

1ST SCHEDULE
TABLE C
—contd.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

20. Every member shall have one vote.

21. A member of unsound mind or in respect of whom an order has been made by any court having jurisdiction in cases relating to persons of unsound mind, may vote, whether on a show of hands or on a poll, by his manager, curator, or other person in the nature of a manager or curator appointed by that court, and any such manager, curator or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the seal or under the hand of an officer or attorney so authorized. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the powers of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy may be in the following form, or any other form which the director shall approve:—

———— Company, Limited.

“I, _____ of _____, being a member of the _____ Company Limited, hereby appoint _____ of _____ as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.”

Signed this _____ day of _____

1ST SCHEDULE
TABLE C
—contd.

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company and the person so authorized 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.

Directors

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Powers and Duties of Directors

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Ordinance, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles to the provisions of the Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors.
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors.
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Disqualifications of Directors*1ST SCHEDULE
TABLE C
—contd.

34. The office of director shall be vacated, if the director—
- (a) without the consent of the company in general meeting holds any other office of profit under the company ;
or
 - (b) becomes insolvent or bankrupt ; or
 - (c) becomes prohibited from being a director by reason of any order made under sections 208 or 263 of the Ordinance ;
 - (d) is found to be a person of unsound mind or becomes of unsound mind ; or
 - (e) resigns his office by notice in writing to the company ;
 - (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 147 of the Ordinance.

A director shall not vote in respect of any contract, in which he is interested or any matter arising thereout and if he does so vote his vote shall not be counted.

Rotation of Directors

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the Directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

1ST SCHEDULE
TABLE C
—contd.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. 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. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors and unless so fixed shall, when the number of directors exceeds three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. 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 five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks 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.

50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that, it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Accounts*1ST SCHEDULE
TABLE C
—contd.

51. The directors shall cause proper books of account to be kept with respect to—

all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place ;

all sales and purchases of goods by the company ; and the assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

54. The directors shall from time time in accordance with section 121 of the Ordinance cause to be prepared and to be laid before the company in general meeting such profit and loss accounts balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit

56. Auditors shall be appointed and their duties regulated in accordance with sections 130, 131 and 132 of the Ordinance.

Notices

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Ceylon) to the address, if any, within Ceylon supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

58. If a member has no registered address within Ceylon and has not supplied to the company an address within Ceylon for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

1ST SCHEDULE
TABLE C
—contd.

59. Notice of every general meeting shall be given in some manner herein before authorized to every member except those members who (having no registered address within Ceylon) have not supplied to the company and address within Ceylon for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers

1. John Jones of _____, schoolmaster.
2. John Smith of _____, schoolmaster.
3. Thomas Green of _____, schoolmaster.
4. John Thompson of _____, schoolmaster.
5. Caleb White of _____, schoolmaster.
6. Andrew Brown of _____, schoolmaster.
7. Caesar White of _____, schoolmaster.

Dated the _____ day of _____, 19—.

Witness to the above signatures,
A. B., No. 13, Trincomalee Street, Kandy.

TABLE D

[Section 12
and 362.]

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY
LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL*Memorandum of Association*

1st. The name of the company is "The Lanka Hotel Company, Limited".

2nd. The registered office of the company will be situate in the district of Colombo.

3rd. The objects for which the company is established are the facilitating travelling in Ceylon, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required, not exceeding two hundred rupees.

6th. The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

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	1ST SCHEDULE TABLE D —contd.
1. John Jones of _____, merchant ..	200	
2. John Smith of _____, merchant ..	25	
3. Thomas Green of _____, merchant ..	30	
4. John Thompson of _____, merchant ..	40	
5. Caleb White of _____, merchant ..	15	
6. Andrew Brown of _____, merchant ..	5	
7. Caesar White of _____, merchant ..	10	
Total shares taken ..	325	

Dated the _____ day of _____, 19—.

Witness to the above signatures,
A. B., No. 13, Main Street, Colombo.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING
MEMORANDUM OF ASSOCIATION

The Articles of Table A set out in the First Schedule to the Companies Ordinance shall be the articles of association of the company and apply to the company.

Names, Addresses, and Descriptions of Subscribers

1. John Jones of _____, merchant.
2. John Smith of _____, merchant.
3. Thomas Green of _____, merchant.
4. John Thompson of _____, merchant.
5. Caleb White of _____, merchant.
6. Andrew Brown of _____, merchant.
7. Caesar White of _____, merchant.

Dated the _____ day of _____, 19—.

Witness to the above signatures,
A. B., No. 13, Main Street, Colombo.

TABLE E

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED
COMPANY HAVING A SHARE CAPITAL

[Sections 12
and 362.]

Memorandum of Association

1st. The name of the company is "The Patent Stereotype Company".

2nd. The registered office of the company will be situate in the district of Colombo.

3rd. The objects for which the company is established are the working of a patent method of founding and casting stereotype plates, of which method John Smith of Colombo, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects.

1st SCHEDULE
TABLE E
—contd

We, the several persons whose names 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
1. John Jones of _____, merchant ..	3
2. John Smith of _____, merchant ..	2
3. Thomas Green of _____, merchant ..	1
4. John Thompson of _____, merchant ..	2
5. Caleb White of _____, merchant ..	2
6. Andrew Brown of _____, merchant ..	1
7. Abel Brown of _____, merchant ..	1
Total shares taken ..	<u>12</u>

Dated the _____ day of _____, 19—.

Witness to the above signatures,
A. B., No. 20, Main Street, Colombo.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING
MEMORANDUM OF ASSOCIATION

1. The share capital of the company is two hundred thousand rupees divided into two hundred shares of one thousand rupees each.
2. The company may by special resolution—
 - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
 - (b) consolidate its shares into shares of a larger amount than its existing shares;
 - (c) subdivide its shares into shares of a smaller amount than its existing shares;
 - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
 - (e) reduce its share capital in any way.
3. The articles of Table A set out in the First Schedule to the Companies Ordinance (other than articles 30, 31, 32, 33, 34, 37, and 38) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses and Descriptions of Subscribers

1. John Jones of _____, merchant.
2. John Smith of _____, merchant.
3. Thomas Green of _____, merchant.
4. John Thompson of _____, merchant.
5. Caleb White of _____, merchant.
6. Andrew Brown of _____, merchant.
7. Abel Brown of _____, merchant.

Dated the _____ day of _____, 19—.

Witness to the above signatures,
A. B., No. 20, Main Street, Colombo.

SECOND SCHEDULE

FORM OF LICENCE TO HOLD LANDS

[Sections 15
and 362.]

I, _____, Director of Commerce² of Ceylon do hereby license the _____ to hold the lands hereunder described (*insert description of lands*) [or to hold lands not exceeding in the whole _____ acres].

The conditions of this licence are (*insert conditions, if any*).

THIRD SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE
DELIVERED TO REGISTRAR BY A PRIVATE COMPANY
ON BECOMING A PUBLIC COMPANY

[Section 28.]

THE COMPANIES ORDINANCE

Statement in lieu of Prospectus
delivered for registration by

[*Insert the name of the Company.*]

Pursuant to section 28 of the Companies Ordinance

Delivered for registration by—

The nominal share capital of the Company	Rs.——.
Divided into	Shares of Rs.——each.

Amount (if any) of above capital which consists of redeemable preference shares. The date on or before which these shares are, or are liable, to be redeemed.	Shares of Rs.——each.
Names, descriptions and addresses of directors or proposed directors.	
Amount of shares issued.. .. .	Shares.
Amount of commissions paid in connection therewith.	
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	
Unless more than one year has elapsed since the date on which the Company was entitled to commence business :—	
Amount of preliminary expenses	Rs.——.
Amount paid to any promoter	Name of promoter.
	Amount Rs.——.
Consideration for the payment	Consideration :—

3RD SCHEDULE
—contd.

If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.

Consideration for the issue of those shares or debentures.

Names and addresses of vendors of property (1) purchased or acquired by the Company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the Company.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property specifying the amount paid or payable for goodwill.

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of the statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the Company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.

1. —shares of Rs.—
fully paid.

2. —shares upon which
Rs.—per share
credited as paid.

3. —debenture Rs. —

4. Consideration :—

Total purchase price	..	Rs. —
Cash	..	Rs. —
Shares	..	Rs. —
Debentures..		Rs. —
Goodwill	..	Rs. —

Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.

3RD SCHEDULE
—contd.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above named as directors or proposed directors or of their agents authorized in writing.)

Date_____.

NOTE.—In this Form the expression “ vendor ” includes a vendor as defined in Part III of the Fourth Schedule, and the expression “ financial year ” has the meaning assigned to it in that Part of the said Schedule.

FOURTH SCHEDULE

[Sections 36
and 331.]

PART I

MATTERS REQUIRED TO BE STATED IN PROSPECTUS

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.
2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4TH SCHEDULE
—contd.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company ;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ;

(d) working capital ; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing

to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

4TH SCHEDULE
—contd

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II

REPORTS TO BE SET OUT IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

4TH SCHEDULE
—contd.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

1. The provisions of this Schedule with respect to the memorandum and the qualifications, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus ;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

FIFTH SCHEDULE

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE
DELIVERED TO REGISTRAR BY A COMPANY WHICH
DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT
GO TO ALLOTMENT ON A PROSPECTUS ISSUED

[Section 41.]

THE COMPANIES ORDINANCE

Statement in lieu of Prospectus delivered for registration by

[Insert the name of the Company.]

Pursuant to section 41 of the Companies Ordinance.

Delivered for registration by

<p>The nominal share capital of the Company</p>	<p>Rs.</p>
<p>Divided into</p>	<p>Shares of Rs.—each.</p>
<p>Amount (if any) of above capital which consists of redeemable preference shares. The date on or before which these shares are, or are liable, to be redeemed.</p>	<p>” ” ” Shares of Rs.—each.</p>
<p>Names, discriptions and addresses of directors or proposed directors.</p>	
<p>If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.</p>	
<p>Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.</p>	<p>1. —shares of Rs.— fully paid. 2. —shares upon which Rs.—per share credited as paid. 3. —debenture Rs.—. 4. Consideration :—</p>
<p>The consideration for the intended issue of those shares and debentures.</p>	
<p>Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company.</p>	
<p>Amount (in cash, shares, or debentures) payable to each separate vendor.</p>	
<p>Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill. ..</p>	<p>Total purchase price Rs.— Cash .. Rs. — Shares .. Rs. — Debentures Rs. — <hr/>Goodwill .. Rs. — <hr/></p>
<p>Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company ; or</p>	<p>Amount paid. Amount payable</p>
<p>Rate of the commission ..</p>	<p>Rate per centum.</p>

5TH SCHEDULE
—contd.

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.

Estimated amount of preliminary expenses. Rs.———.

Amount paid or intended to be paid to any promoter. Name of promoter.
Amount Rs.———.

Consideration for the payment .. Consideration :—

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the Company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the Company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorized in writing.)

Date———.

NOTE.—In this Schedule the expression “ vendor ” includes a vendor as defined in Part III of the Fourth Schedule, and the expression “ financial year ” has the meaning assigned to it in that Part of the said Schedule.

SIXTH SCHEDULE

FORM OF ANNUAL RETURN OF A COMPANY HAVING
A SHARE CAPITAL

[Sections 106
and 362.]

Annual Return of the _____ Company, Limited made up to the _____ day of _____, 19 — (being the fourteenth day after the date of the first or only ordinary general meeting in 19—).

The address of the registered office of the Company is as follows :—

Summary of Share Capital and Shares

Nominal share Capital, Rs. _____ divided into* } — shares of
Rs. _____ each.
} — shares of
Rs. _____ each.

Total number of shares taken up* to the _____ day of _____, 19—, being the date of the return (which number must agree with the total shown in the list as held by existing members).

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash.

Number of shares issued as partly paid up to the extent of _____ per share otherwise than in cash.

†Number of _____ shares (if any) issued at a discount.

Total amount of discount on the issue of shares which has not been written off at the date of this return. Rs. _____

‡There has been called up on each of _____ shares. Rs. _____

‡There has been called up on each of _____ shares. Rs. _____

‡There has been called up on each of _____ shares. Rs. _____

§Total amount of calls received, including payments on application and allotment. Rs. _____

* Where there are shares of different kinds or amounts (e.g., Preference and Ordinary or Rs. 10 and Re. 1) state the number and nominal values separately.

† If the shares are of different kinds, state them separately.

‡ Where various amounts have been called, or there are shares of different kinds, state them separately.

§ Include what has been received on forfeited as well as on existing shares.

<p>6TH SCHEDULE —contd.</p>	<p>Total amount (if any) agreed to be considered as paid on _____ shares which have been issued as fully paid up otherwise than in cash.</p>	<p>Rs. _____</p>
	<p>Total amount (if any) agreed to be considered as paid on _____ shares which have been issued as partly paid up to the extent of _____ per share otherwise than in cash.</p>	<p>Rs. _____</p>
	<p>Total amount of calls unpaid</p>	<p>Rs. _____</p>
	<p>Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last return.</p>	<p>Rs. _____</p>
	<p>Total number of shares forfeited</p>	
	<p>Total amount paid (if any) on shares forfeited..</p>	<p>Rs. _____</p>
	<p>Total amount of shares for which share warrants to bearer are outstanding.</p>	<p>Rs. _____</p>
	<p>Total amount of share warrants to bearer issued and surrendered respectively since the date of the last return.</p>	<p>Issued Rs. _____ Surrendered Rs. _____</p>
	<p>Number of shares comprised in each share warrant to bearer.</p>	
	<p>Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Ordinance.</p>	<p>Rs. _____</p>

The name and address of the auditor or the names and addresses of the auditors of the Company at the date of the return _____.

Copy of last audited Balance Sheet of the Company

NOTE.—Except where the Company is (1) a "Private Company" within the meaning of section 27 of the Companies Ordinance this return must include a written copy, certified by a director or by the manager or secretary of the Company to be a true copy, of the last balance sheet which has been audited by the Company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a language other than English there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

PRIVATE COMPANY

6TH SCHEDULE
— contd.

Certificates to be given by a Private Company

A. "I certify that the Company has not since the date of the "last annual return issued any invitation to the public to subscribe for any shares or debentures of the Company."

(Signature.)

(State whether Director or Secretary.)

B. Should the number of members of the Company exceed fifty the following certificate is also required:—

"I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company."

(Signature.)

(State whether Director or Secretary.)

Note.—Banking companies must add a list of all their places of business.

The return must be signed at the end by a director or by the manager or secretary of the Company.

Delivered for filling by _____.

Particulars of the † directors of the _____ Company, Limited, at the date of the annual return.

‡The present Name or Names and Surname	Any former Name or Names or Surname	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	§ Other business occupation if any. If none state so

* In the case of the first annual return strike out the words "last annual return" and substitute therefor the words "incorporation of the Company".

† "Director" includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

‡ In the case of a corporation its corporate name and registered or principal office should be shown.

§ In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

6TH SCHEDULE
—contd.

List of persons holding shares in the _____ Company, Limited, on the _____ day of _____, 19____, and of persons who have held shares therein at any time since the date of the last return, or (in the case of the first return) of the incorporation of the Company, showing their names and addresses, and an account of the shares so held.

N.B.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger containing Particulars	Names, Addresses and Occupations			Account of Shares				Remarks
	Surname	Name	Address	Occupation	*Number of shares held by existing Members at date of Return†	†Particulars of Shares transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who are still Members	†Particulars of Shares transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who have ceased to be Members	
						Number†	Date of Registration of Transfer	
						Number†	Date of Registration of Transfer	

(Signature.)
(State whether Director or Manager or Secretary.)

*The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

†When the shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" Column immediately opposite the particulars of each transfer.

SEVENTH SCHEDULE

[Sections 129
and 362.]FORM OF STATEMENT TO BE PUBLISHED BY BANKING
AND INSURANCE COMPANIES AND DEPOSIT
PROVIDENT, OR BENEFIT SOCIETIES

* The share capital of the company is _____, divided into _____ shares of _____ each.

The number of shares issued is _____.

Calls to the amount of _____ rupees per share have been made, under which the sum of _____ rupees has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth day of June) were—

Debts owing to sundry persons by the company :

On judgment, Rs. _____.
On mortgages or bonds, Rs. _____.
On notes or bills, *hoondies*, Rs. _____.
On other contracts, Rs. _____.
On estimated liabilities, Rs. _____.

The assets of the company on that day were—

Government securities [*stating them*].
Bills of exchange, *hoondies* and promissory notes,
Rs. _____.
Cash at the bankers, Rs. _____.
Other securities, Rs. _____.

* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

EIGHTH SCHEDULE

PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP [Section 250.]
SUBJECT TO SUPERVISION OF THE COURT

Statement of Company's affairs to be submitted to official receiver.	s. 175
Report by official receiver.	s. 176
Power of court to appoint liquidator.	s. 177
Appointment and powers of provisional liquidator.	s. 178
Appointment, style, &c., of liquidators in winding up	s. 179
Provisions where person other than official receiver is appointed liquidator.	s. 180
General provisions as to liquidators.	s. 181 except subs. (5)
Exercise and control of liquidators' powers.	s. 185
Books to be kept by liquidator in winding up.	s. 186
Payments of liquidator in winding up into bank.	s. 187
Audit of liquidators' accounts in winding up.	s. 188
Control of Director of Commerce ² over liquidators.	s. 189
Release of liquidators.	s. 190
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed	s. 191
Constitution and proceedings of committee of inspection.	s. 192

8TH SCHEDULE —contd	Powers of court where no committee of inspection.	s. 193
	Appointment of special manager.	s. 201
	Power to order public examination of promoters, directors, &c.	s. 207
	Power to restrain fraudulent persons from managing companies.	s. 208
	Delegation to liquidator of certain powers of court.	s. 211
	Power to appoint official receiver as receiver for debenture holders or creditors	s. 284

NINTH SCHEDULE

[Sections 290, 292, 305, and 362.]

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES

I.—BY A COMPANY HAVING A SHARE CAPITAL

	Rs.	c.
For registration of a company whose nominal share capital does not exceed Rs. 20,000	.. 30	0
For registration of a company whose nominal share capital exceeds Rs. 20,000, the following fees, regulated according to the amount of nominal share capital (that is to say) :—		Rs. c.
For every Rs. 10,000 of nominal share capital, or part of Rs. 10,000 up to Rs. 50,000	15	0
For every Rs. 10,000 of nominal share capital, or part of Rs. 10,000 after the first Rs. 50,000, up to Rs. 1,000,000	5	0
For every Rs. 10,000 of nominal share capital, or part of Rs. 10,000 after the first Rs. 1,000,000	1	0
For registration of any increase of share capital made after the first registration of the company, the same fees per Rs. 10,000, or part of Rs. 10,000, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration :		
<p>Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than Rs. 250, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.</p>		
For registration of any existing company except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance the same fee as is charged for registering a new company.		
For registering any document by this Ordinance required or authorized to be registered or required to be delivered, sent or forwarded to the Registrar other than the memorandum or the abstract required to be delivered to the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding up	5	0
For making a record of any fact by this Ordinance required or authorized to be recorded by the Registrar	5	0

II.—BY A COMPANY NOT HAVING A SHARE CAPITAL

9TH SCHEDULE
—contd

	Rs.	c.
For registration of a company whose number of members as stated in the articles does not exceed 25	30	0
For registration of a company whose number of members as stated in the articles exceeds 25, but does not exceed 100, the above fee of Rs. 30 with an additional Rs. 15 for every additional 25 members or less after the first 25.		
For registration of a company whose number of members as stated in the articles exceeds 100 but is not stated to be unlimited, a fee of Rs. 75 with an additional Rs. 5 for every additional 50 members or less after the first 100.		
For registration of a company in which the number of members is stated in the articles to be unlimited ..	300	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase	5	0
<p>Provided that no company shall be liable to pay on the whole a greater fee than Rs. 300 in respect of its number of members, taking into account the fee paid on the first registration of the company.</p>		
For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.		
For registering any document by this Ordinance required or authorized to be registered or required to be delivered, sent or forwarded to the Registrar, other than the memorandum or the abstract required to be delivered to the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding up	5	0
For making a record of any fact by this Ordinance required or authorized to be recorded by the Registrar	5	0

III.—BY A COMPANY TO WHICH PART XI OF THIS ORDINANCE APPLIES

For registering any document required to be delivered to the Registrar under Part XI of this Ordinance	5	0
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TENTH SCHEDULE

LIST OF BANKS IN WHICH A BANKING COMPANY MAY DEPOSIT ITS RESERVE FUND

[Section 340
(3).]

1. Chartered Bank of India, Australia and China.
2. Eastern Bank, Ltd.
3. Hongkong and Shanghai Banking Corporation.
4. Imperial Bank of India.
5. Mercantile Bank of India, Ltd.
6. National Bank of India, Ltd.
7. Grindlays Bank, Ltd.
8. Bank of Ceylon

ELEVENTH SCHEDULE

[Section 340
(5).]

LIST OF BANKS EXCLUDED FROM THE OPERATION OF
SECTION 340

1. Bank of Uva, Ltd.
2. Chartered Bank of India, Australia and China.
3. Eastern Bank, Ltd.
4. Hongkong and Shanghai Banking Corporation.
5. Imperial Bank of India.
6. Indian Bank.
7. Mercantile Bank of India, Ltd.
8. National Bank of India, Ltd.
9. Grindlays Bank, Ltd.
10. Hatton Bank, Ltd.

TWELFTH SCHEDULE

[Section 349.]

PROVISIONS REFERRED TO IN SECTION 349 OF THE
ORDINANCE

Provisions relating to—

Conclusiveness of certificate of incorporation.	s. 16
Specific requirements as to particulars in prospectus	s. 36
Prohibition of allotment in certain cases unless state- ment in lieu of prospectus delivered to Registrar	s. 41
Return as to allotments. . .	s. 43
Registration of charges created by company regis- tered in Ceylon	s. 78
Duty of company to register charges created by company	s. 79 (1)
Duty of company to register charges existing on property acquired.	s. 80
Application of Part III to companies incorporated outside Ceylon.	s. 89
Restrictions on commencement of business.	s. 93
The particulars as to directors and indebtedness of the company	s. 106 (3) (n) & (o)
Statutory meeting and statutory report.	s. 111
Auditors' report and right to information and expla- nations.	s. 132 (1) (2)
Restrictions on appointment or advertisement of director.	s. 138
Notice by liquidator of his appointment.	s. 241
Delivery to Registrar of accounts of receivers and managers.	s. 287
Documents, &c., to be delivered to Registrar by com- panies carrying on business in Ceylon	s. 320
Return to be delivered to Registrar where documents, &c., altered.	s. 322
Balance sheet of company carrying on business in Ceylon.	s. 323
Obligation to state name of company, &c.	s. 324

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GOVERNMENT OF CEYLON

**Companies (Amendment) Act
(Chapter 145)**

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CHAPTER 145

COMPANIES (AMENDMENT)

AN ACT TO AMEND THE COMPANIES ORDINANCE.

Acts Nos. 15 of 1964. 18 of 1965.

[Sections 2 to 11 and 13 to 20—19th September, 1964.]

[Section 12—30th March, 1963.]

Short title.

1. This Act may be cited as the Companies (Amendment) Act.

Amendment of Chapter 145.

2. The Companies Ordinance, hereinafter referred to as the "principal enactment", is hereby amended by the substitution—

[§ 2, 15 of 1964.]

(a) for the words "the Director of Commerce", wherever those words occur collectively in the principal enactment, other than in section 363, of the words "the Registrar of Companies"; and

(b) for the word "Director", wherever that word refers to the Director of Commerce, of the words "Registrar of Companies".

Replacement of section 6 of the principal enactment.

3. (1) Section 6 of the principal enactment is hereby repealed and the following new section substituted therefor:—

[§ 3, 15 of 1964.]

Mode in which and extent to which objects of company may be altered.

6. (1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) to restrict or abandon any of the objects specified in the memorandum ; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company ; or
- (g) to amalgamate with any other company or body of persons :

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect cancelled, it shall not have effect the court.

(2) An application under this section may be made—

- (a) by the holders of not less in the aggregate than fifteen *per centum* in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen *per centum* of the company's members ; or
- (b) by the holders of not less than fifteen *per centum* of the company's debentures entitling the holders to object to alterations of its objects :

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

21 days
(3) An application under this section must be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company shall be expended in any such purchase.

(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before such date as may be appointed by the Minister by Order published in the Gazette, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company. In default of any provisions regulating the giving of notice to any such debenture holders, the provisions

of the company's articles regulating the giving of notice to members shall apply.

(6) In the case of a company which is, by virtue of a licence from the Registrar of Companies, exempt from the obligation to use the word "Limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the Registrar of Companies as to members of the company.

(7) Where a company passes a resolution altering its objects—

(a) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the Registrar of Companies a printed copy of its memorandum as altered ; and

15 days

(b) if such an application is made it shall—

(i) forthwith give notice of that fact to the Registrar ; and

(ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for the delivery of the documents to the Registrar under paragraph (b) of this subsection for such period as the court may think proper.

100/2
(8) If a company makes default in giving notice or delivering any document to the Registrar of Companies as required by the last foregoing subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of one hundred rupees.

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorized by subsection (1) of this section, except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing subsections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.'

(2) The amendment made in the principal enactment by subsection (1) of this section shall not apply in relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of a company passed before the date of commencement of this Act, and accordingly the provisions of the principal enactment shall apply in relation to any such resolution as if that enactment had not been amended by that subsection

4. Section 18 of the principal enactment is hereby repealed and the following new section substituted therefor :—

“ Prohibition of the registration of companies by undesirable names.

18. No company shall be registered by a name which in the opinion of the Registrar of Companies is undesirable.”

Replacement of section 18 of the principal enactment.

[§ 4, 15 of 1964.]

5. Section 91 of the principal enactment is hereby amended—

(a) by the renumbering of subsection (3) of that section as subsection (4) ; and

(b) by the insertion, immediately after subsection (2) of that section, of the following new subsection :—

“ (3) With the previous sanction of the Registrar of Companies, a company may, by special resolution, change the situation of its registered office to any district, whether or not it is a district specified in the memorandum of the company as the district in which such office is to be situated. Notice of such change shall be given in the prescribed form by the company to the Registrar within fourteen days of the date of the resolution. Where the Registrar refuses to give his sanction under this subsection, the company may appeal against the refusal to the Permanent Secretary and the decision of the Permanent Secretary on such appeal shall be final.”

Amendment of section 91 of the principal enactment.

[§ 5, 15 of 1964.]

6. Section 94 of the principal enactment is hereby amended, in subsection (1) of that section, by the substitution, in paragraph (a) of that subsection, for the words “ addresses, and the occupations, if any,” of the words “ addresses, and nationalities”.

Amendment of section 94 of the principal enactment.

[§ 6, 15 of 1964.]

7. Section 106 of the principal enactment is hereby amended, in subsection (2) of that section, by the substitution, for the words “ addresses, and occupations”, of the words “ addresses and nationalities”.

Amendment of section 106 of the principal enactment.

[§ 7, 15 of 1964.]

Amendment
of section 108
of the
principal
enactment.
[§ 8, 15 of 1964.]

8. Section 108 of the principal enactment is hereby amended, in subsection (3) of that section, by the substitution, for the words "of the last balance sheet which has been audited by the company's auditors", of the words "of the balance sheet which was, or should have been, in accordance with the provisions of section 121, laid before the company at the general meeting subsequent to which the annual return is required by sub-section (1) of this section to be made."

Insertion of
new section
136A in the
principal
enactment.
[§ 9, 15 of 1964.]

9. The following new section is hereby inserted immediately after section 136, and shall have effect as section 136A, of the principal enactment:—

"Registrar's
power to
call for
information
and to inspect
books,
registers and
documents.

136A. (1) The Registrar of Companies may, from time to time, by written notice, direct any company—

(a) to furnish before a date specified in the notice such information relating to the company as the Registrar may require for any purpose of this Ordinance or any other enactment affecting such company, or such information or explanation as the Registrar may require in respect of any particulars—

(i) which have or should have been stated in any return, declaration or other document furnished by the company, or

(ii) which should have been stated in any return or other document which should have, but actually has not, been furnished by the company,

as at the date or dates specified in the notice; and

(b) to produce before a date specified in the notice any book, register or other document kept or required to be kept by the company in connection with its business or transactions.

(2) If default is made in complying with any direction given by the Registrar of Companies under subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.”

10. The following new section is hereby inserted immediately after section 141, and shall have effect as section 141A, of the principal enactment :—

Insertion of new section 141A in the principal enactment.

[§ 10, 15 of 1964.]

“ Power to restrain persons convicted of certain offences from managing companies.

141A. (1) Where a person is convicted of any offence in connection with the promotion, formation or management of a company, the court convicting such person may, in addition to imposing any punishment provided for such offence by this Ordinance, make an order that—

(a) that person shall be removed from the office of director ; or

(b) that person shall be suspended for a specific period from the office of director,

and the court may, whether or not in addition to an order under paragraph (a) or paragraph (b), make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company for such period not exceeding five years as may be specified in such order.

(2) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and shall, in respect of each offence, be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment."

11. The following new heading and the following new sections are hereby inserted immediately after section 153, and the new sections shall have effect as sections 153A to 153I, of the principal enactment:—

“ PREVENTION OF OPPRESSION AND
MISMANAGEMENT.

Insertion of new heading and new sections 153A to 153I in the principal enactment.
[§ 11, 15 of 1964.]

Alternative remedy to winding up in cases of oppression.

S. 210 of E. Law. 1948.

153A. (1) Any member or members of a company having a complaint that the affairs of the company are being conducted in a manner oppressive to any member or members (including the member or members with such complaint) may apply to the District Court of the district in which the registered office of the company is situate for an order under this section, if such member has or such members have a right so to apply in accordance with the provisions of section 153c.

(2) If, on any application under subsection (1), the court is of opinion—

(a) that the affairs of the company are being conducted in a manner oppressive to any member or members, and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a

winding-up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to remedying the matters complained of, make such order as it thinks fit.

153B. (1) Any member or members of a company having a complaint—

Alternative remedy to winding up in cases of mismanagement.

(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company whether by an alteration in its board of directors, or of its agent or secretary, or in the constitution or control of the firm or body corporate acting as its agent or secretary, or in the ownership of the company shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company,

may apply to the District Court of the district in which the registered office of the company is situate for an order under this section, if such member has

or such members have a right so to apply in accordance with the provisions of section 153c.

(2) If, on any application under subsection (1), the court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to remedying or preventing the matters complained of or apprehended, make such order as it thinks fit.

Who may
apply to
court.

153c. (1) The following member or members of a company shall have the right to apply under sections 153A and 153B :—

(a) in the case of a company having a share capital, not less than ten *per centum* of the total number of its members or the holders of not less than the aggregate of ten *per centum* in the nominal value of the company's issued share capital provided that the applicant or applicants have paid all calls and other sums due on their shares ;

(b) in the case of a company not having a share capital, not less than twenty *per centum* of the company's members.

(2) For the purposes of subsection (1), where any shares are held by two or more persons jointly they shall be counted only as one member.

(3) Where several members of a company are entitled to make an application in accordance with the provisions of sub-section (1), any one or more of them having obtained the consent in writing of the remaining members may make the application on behalf and for the benefit of all of them.

153D. Notwithstanding the provisions of Part V of this Ordinance, at any stage of the winding-up proceedings in respect of a company, where a court is of the opinion that to wind up the company would be prejudicial to the interests of a member of the company, it shall be lawful for the court to act under section 153A or 153B in like manner as if an application has been made to court under either of those two sections.

Power of court to act under section 153A or 153B during winding-up proceedings.

154E. Without prejudice to the generality of the powers of the court under section 153A or 153B, any order under either of those sections may provide for—

Power of court on application under the foregoing sections.

- (a) the regulation of the conduct of the company's affairs in future ;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company ;
- (c) in the case of a purchase of shares by the company as aforesaid, the consequent reduction of its share capital ;
- (d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand,

Regular procedure (only document)
Summary procedure (document of evidence)

and any of the following persons, on the other, namely :—

- (i) the managing director,
- (ii) any other director,
- (iii) the board of directors,
- (iv) the agent or secretary, or
- (v) the manager,

upon such terms and conditions as may, in the opinion of the court, be just and equitable in all the circumstances of the case ;

- (e) the termination, setting aside or modification of any agreement between the company and any person not referred to in paragraph (d), but always so that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and after obtaining his consent ;
- (f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application, or the commencement of winding-up proceedings, as the case may be, which would, if made or done by or against an individual, be deemed in a case of his insolvency to be a fraudulent preference ; and
- (g) any other matter for which in the opinion of the court it is just and equitable that provision should be made.

153F. Pending the making by it of a final order under section 153A or 153B, the court may, on the application of any party to the proceedings, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

Interim order
by court.

153G. (1) Where an order under section 153A or 153B makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Ordinance, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the court, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

Effect of
alteration of
memorandum
or articles of
company by
order under
section 153A
or 153B.

(2) Subject to the provisions of subsection (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Ordinance; and the said provisions shall apply accordingly to the memorandum or articles as so altered.

(3) A certified copy of every order altering, or giving leave to alter a company's memorandum or articles, shall within fifteen days after the making thereof, be filed by the company with the Registrar of Companies who shall register the same.

(4) If default is made in complying with the provisions of subsection (3), the company, and every officer of the company who is in default, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

Addition of respondents to application under section 153A or 153B.

153H. If the managing director or any other director, the agent or secretary or the manager, of a company, or any other person who has not been impleaded as a respondent to any application under section 153A or 153B applies to be added as a respondent thereto, the court shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

Consequences of termination or modification of certain agreements.

153I. (1) Where an order of a court made under section 153A or 153B terminates, sets aside, or modifies an agreement such as is referred to in paragraphs (d) or (e) of section 153E—

- (a) the order shall not give rise to any claim whatsoever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise ; and
- (b) no managing director or other director, agent, secretary or manager whose agreement is so terminated or set aside and no person who, at the date of the order terminating or setting aside the agreement was or subsequently becomes, an associate of such agent or secretary shall, for a period of five years from the date of the order terminating the agreement, without the leave of the court, be appointed, or act, as the managing director or other director, agent, secretary or manager of the company.

(2) (a) Any person who knowingly acts as a managing director or other director, agent or secretary or manager of a company in contravention of paragraph (b) of subsection (1) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(b) In the case of any offence under this section committed by a body of persons—

(i) where the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence, and

(ii) where the body of persons is a firm, every partner of the firm shall be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this section, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.”

12. Section 253 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution, in paragraph (a) of that subsection, for the words “Income Tax Ordinance;”, of the following:—

Amendment
of section 253
of the principal
enactment.
[§ 56 (1), 18 of
1965.]

“the Income Tax Ordinance or of section 109 (2) of the Inland Revenue Act, No. 4 of 1963, as the case may be;”

Replacement
of section 290
of the
principal
enactment.

[§1 2, 15 of 1964.]

13. Section 290 of the principal enactment is hereby repealed and the following new section substituted therefor :—

“Registration
of documents,
copies of
documents,
notices, &c.

290. (1) The Registrar may, subject to the provisions of subsections (2) and (3), accept and register, or record or file—

(a) any document which is by any provision of this Ordinance required or authorized to be registered or recorded by, or filed with, the Registrar; and

(b) any document or copy of a document, and any return or notice, which is by any such provision required or authorized to be sent, forwarded, given, delivered, produced or in any way notified to the Registrar.

(2) Where the Registrar is not satisfied that any document or copy of a document or any return or notice is in order or in compliance with the provisions of this Ordinance, it shall be lawful for him to refuse to register, record or file such document, copy of a document, return or notice except on an order of the court.

(3) Where no special provision is made for the payment of a fee in respect of any registration, recording or filing of any document, copy of a document, return or notice, the fees mentioned in the Table set out in the Ninth Schedule shall be paid to the Registrar in respect of such registration, recording or filing, the fee for filing being deemed to be the same as the fee for making a record of any fact.”.

14. Section 293 of the principal enactment is hereby amended as follows:—

Amendment
of section 293
of the
principal
enactment.
[§ 13, 15 of 1964.]

(1) in subsection (1) of that section—

(a) by the substitution, for the words “prescribed fees, not exceeding fifty cents for each inspection,” of the words “prescribed fees,”; and

(b) by the substitution, for all the words from “prescribed fee not exceeding two rupees” to “certified copy or extract:”, of the words “prescribed fees:”; and

(2) by the repeal of subsection (3) of that section.

15. Section 346 of the principal enactment is hereby amended—

Amendment
of section 346
of the
principal
enactment.
[§ 14, 15 of 1964.]

(a) in subsection (1) of that section, by the insertion, immediately after paragraph (a) of that subsection, of the following new paragraph:—

“(aa) a person, by name or by office, to be or to act as the Deputy Registrar of Companies;”; and

(b) in subsection (2) of that section, by the substitution, for the words “as an Assistant Registrar of Companies”, of the words “as the Deputy Registrar of Companies or an Assistant Registrar of Companies”.

16. Section 352 of the principal enactment is hereby amended, in subsection (1) of that section, by the substitution, for the words “instead of instituting proceedings in court”, of the words “instead of instituting proceedings in court or, where such proceedings have already been instituted, instead of continuing such proceedings”.

Amendment
of section 352
of the
principal
enactment.
[§ 15, 16 of 1964.]

Replace-
ment of Sec-
tion 357 of the
principal
enactment.

[§ 16, 15 of 1964.]

17. Section 357 of the principal enactment is hereby repealed and the following new section substituted therefor :—

“ Service of
documents on
company.

357. A document may be served on a company—

- (a) by leaving it at or sending it by post to the registered office of the company ; or
- (b) by delivering it, or sending it by post to any director, secretary, manager or other officer of the company ; or
- (c) if for any reason it cannot be served on such director, secretary, manager or other officer, by delivering it, or sending it by post, to any member of the company.”.

Insertion of
new sections
360A and 360B
in the
principal
enactment.

[§17, 15 of 1964.]

18. The following new sections are hereby inserted immediately after section 360, and shall have effect as sections 360A and 360B, of the principal enactment:—

‘ Recovery of
expenses
and fees.

360A. If any expenses or fees payable to the Registrar of Companies under this Ordinance are not paid by the person liable to pay the same upon demand, such default may be reported to a Magistrate, and the amount thereof shall be recovered in the same way as if it were a fine imposed by such Magistrate.

Proceedings
in actions by
a member or
members
against a
company to
be by way of
summary
procedure.

360B. (1) Where an action is instituted against any company by any person in his capacity as a holder of shares in such company, the proceedings in such action shall be taken by way of summary procedure and, for the purpose of enabling such proceedings to be so taken, section 8 of the Civil

Cap. 101. Procedure Code shall have effect as if for the words "by this Ordinance" occurring therein, there were substituted the words "by this Ordinance or by the Companies Ordinance".

(2) Notwithstanding anything to the contrary in any written law, the petition presented in court in any action referred to in subsection (1), and the written objections, if any, of the respondent, shall be stamped to the value of ten rupees, but no further stamps shall be required for any other document in the same legal proceedings.

19. Section 363 of the principal enactment is hereby amended by the omission of the definition of "Director of Commerce".

Amendment of section 363 of the principal enactment.

[§ 18, 15 of 1964.]

20. The Twelfth Schedule to the principal enactment is hereby amended by the substitution, for the item "The particulars as to directors and indebtedness of the company. s. 106 (3) (n) and (o)", of the new item "The particulars as to directors and indebtedness of the company. s. 106 (3) (m) and (n)".

Amendment of the Twelfth Schedule to the principal enactment.

[§ 19, 15 of 1964.]

