

264. (1) An off-shore company shall have power to carry on any business outside Sri Lanka; but shall not be entitled to carry on any business within Sri Lanka.

Prohibition on carrying on business in Sri Lanka.

(2) Nothing in subsection (1) shall preclude an off-shore company securing in Sri Lanka any benefits or advantages available under any written law which may be applicable to it.

265. An off-shore company may cease carrying on business as an off-shore company by giving notice to the Registrar in the prescribed form of its intention to do so.

Cessation of business as an off-shore company.

PART XII

WINDING UP

(1) PRELIMINARY

Modes of winding up

266. In this Part of this Act, the expression “contributory” means every shareholder of the company and every other 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 and includes any person alleged to be a contributory.

Definition of contributory.

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

Modes of winding up.

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

(2) The provisions of this Act with respect to winding up shall apply unless the contrary appears, to the winding up of a company in any manner set out in subsection (1).

CONTRIBUTORIES

Power of liquidator to enforce liability of share holders and former shareholders.

268. (1) The liquidator may—

- (a) if a shareholder is liable to calls, make calls on the shares held by that shareholder;
- (b) if a shareholder or former shareholder is otherwise liable to the company, enforce that liability.

(2) A call under paragraph (a) of subsection (1) shall be made in writing.

Liability of former shareholders for unpaid calls.

269. (1) Subject to the provisions of subsection (2), if a shareholder of a company in liquidation fails to pay any amount due in respect of a share, that amount shall be payable by and may be recovered by the liquidator from any other person who was registered as the holder of the share at any time, within—

- (a) the period of one year before the commencement of the liquidation; or
- (b) in the case of a company that was put into liquidation by the court, the period of one year before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date on which the order of the court was made.

(2) A former shareholder shall not be liable under subsection (1), if at all times that he was registered as the holder of the share during the period referred to in subsection (1), the company was able to pay its debts as they fell due.

(3) Where the liability attached to a share has increased after the time at which the former shareholder was registered as the holder of the share, he shall be liable only for the amount of any liability attached to the share at the time at which it was held by him.

(II) WINDING UP BY THE COURT

CASES IN WHICH COMPANY MAY BE WOUND UP BY THE COURT

- 270.** A company may be wound up by the court, if—
- (a) the company has by special resolution resolved that the company be wound up by the court;
 - (b) the company does not commence its business within a year from its incorporation or suspends its business for one year;
 - (c) if the number of the members falls below the minimum number required under subsection (2) of section 4 of this Act;
 - (d) the company has no directors;
 - (e) the company is unable to pay its debts; or
 - (f) the court is of opinion that it is just and equitable that the company should be wound up.

Circumstance in which a company may be wound up by the court.

- 271.** A company shall be deemed to be unable to pay its debts where—

Definition of inability to pay debts.

- (a) a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty thousand 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 from the date of so leaving, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) 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

- (c) 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

Application for winding up.

272. (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, jointly or separately:

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—
 - (i) the number of members falls below the minimum number required under subsection (2) of section 4 of this Act ; 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 immediately preceding the date of commencement of the winding up or have devolved on him through the death of a former holder ;
- (b) 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 ; and

- (c) the Registrar may present a winding-up petition in the case of a company referred to in subsection (3) of section 177.

(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 authorised in that behalf under the 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.

273. (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 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 a winding-up petition is presented by shareholders of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court shall where it is of opinion that—

- (a) the petitioners are entitled to relief either by winding-up the company or by some other means ;
and
- (b) in the absence of any other remedy it would be just and equitable that the company should be wound up,

make a winding-up order, unless it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay or
restrain
proceedings
against a
company.

274. 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-

- (a) where any action or proceeding against the company is pending in any court in Sri Lanka, make an application to the court in which such action or proceeding is pending for a stay of proceedings therein ; and
- (b) where any other action or proceeding is pending against the company, make an application to the court having jurisdiction to wind up the company, to restrain further proceedings in such 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
disposition of
property &c.
after
commencement
of winding-up.

275. 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.

276. (1) Where any company is being wound up by the court, subject to the provisions of subsection (2) any attachment, sequestration, or execution put in force against the estate or effects of the company after the time of the presentation of the petition for the winding up, shall be void to all intents.

(2) Nothing in this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

COMMENCEMENT OF WINDING UP

277. (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.

Commencement of winding up by the court.

(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

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

Copy of order to be forwarded to Registrar.

279. (1) When a winding up order has been made or a provisional liquidator has been appointed, subject to the provisions of subsection (2), 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.

Actions stayed on winding up.

(2) Nothing in this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

280. 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

Official
receiver.

281. For the purposes of this Act, the expression “official receiver” so far as it relates to the winding up of a company by the court, means the official receiver if any, attached to the court for insolvency purposes, or if there is no such official receiver so attached, such person as the Minister may appoint as official receiver to that court.

Appointment
of official
receiver by
court in
certain cases.

282. If in the case of the winding up of any company by court it appears to the court desirable with a view to securing a more convenient and economical conduct of such winding up, that some officer, other than the person who would by virtue of the provisions of section 281 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 Act.

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

283. (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 in the prescribed form of the affairs of the company, 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.

(2) The statement referred to in subsection (1) 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 of the company or by such of the persons referred to below, who may be appointed by court as the official receiver, subject to the direction of the court —

(a) who are or have been 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 referred to in subsection (1) 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 the provisions of this section, shall be allowed and shall be paid by the official receiver or provisional liquidator, as the case may be, out of 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) Where any person without reasonable excuse fails to comply with the requirements of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(6) Any person claiming 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 the provisions of this section and to a copy of or extract from such statement.

(7) Any person claiming to be a creditor or contributory knowing it to be false shall be guilty of a contempt of court and shall on the application of the liquidator or of the official receiver, be punishable for such contempt.

(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 case where no such appointment is made, the date of the winding up order.

Report by
official receiver.

284. (1) In any case where a windingup order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the provisions of section 283 or in any case where the court orders that no such statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

- (a) as to the number and types of shares issued, the stated capital and the estimated amount of assets and liabilities ;
- (b) where 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 officer of the company in relation to the company since the formation of such company, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) Where the official receiver states in any such further report as is referred to in subsection (2) that in his opinion a fraud has been committed, the court shall exercise the powers set out in section 311 in dealing with such report.

LIQUIDATORS

285. For the purposes 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.

Power of court to appoint liquidators.

286. (1) The court may appoint a liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order and either the official receiver or any other fit person, may be so appointed.

Appointment and powers of provisional liquidator.

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

287. The following provisions with respect to liquidators shall have effect on a winding up order being made—

Appointment style, &c. of liquidators.

- (a) 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 ;
- (b) the official receiver shall summon separate meetings of the creditors and contributories of the company, for the purposes of determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver ;
- (c) the court may make any appointment and make any 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 ;

- (d) in a case where the liquidator is not appointed by the court, the official receiver shall be the liquidator of the company ;
- (e) the official receiver shall by virtue of his office be the liquidator during any vacancy in the office of liquidator ;
- (f) a liquidator shall be described where a person other than the official receiver is the 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.

Provisions where person other than official receiver is appointed a liquidator.

288. Where in the winding up of a company by the court, a person other than the official receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has been notified of such appointment and given security in the prescribed manner to the Registrar ;
- (b) 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 required for enabling that officer to perform his duties under this Act.

General provisions as to liquidators.

289. (1) A liquidator appointed by the court may resign or on cause shown, be removed by the court.

(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 where more than one such persons 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) Where more than one liquidator is appointed by the court, the court shall declare whether any act required or authorised to be done under the provisions of this Act by the liquidator, is to be done by all or any one or more of the persons so appointed.

(5) No act of a liquidator shall be or shall be deemed to be invalid by reason only of any defect in the appointment or qualification of such liquidator.

290. Where a windingup 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.

Custody of company's property.

291. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that that all or any part of the property of whatever 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 proceedings 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.

Vesting of property of company in liquidator.

Powers of
liquidator.

292. (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—

- (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 of such company ;
- (c) to appoint an attorney-at-law to assist him in the performance of his duties ;
- (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 alleged 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 seal of the company, if any ;
- (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 endorse any bills of exchange or promissory note or like instruments 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 or such instrument had been drawn, accepted, made, or endorsed 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 required ;
- (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 (Cap. 88) ;

- (g) to appoint an agent to do any business on behalf of such liquidator ;
- (h) to do all such other things as may be necessary for windingup 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 the provisions of this section, shall be subject to the control of the court and any creditor or contributory may make an application to the court for the exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

293. (1) Subject to the provisions of this Act, 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 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 prevail over any directions given by the committee of inspection.

(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 of the total number of creditors or contributories, as the case may be.

(3) The liquidator may make an application to court in the prescribed manner for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) Where any person is aggrieved by any act or decision of the liquidator, that person may appeal to the court against such act or decision, and the court may confirm, reverse, or modify the act or decision complained of and make such order as it thinks just.

294. Every liquidator of a company which is being wound up by the court shall keep in the prescribed manner, 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.

Books to be kept
by liquidators.

295. (1) Every liquidator of a company which is being wound up by the court shall pay the money received by him into an account or accounts established for the purpose at one or more licenced commercial banks.

Payments by
liquidator into
bank.

(2) 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.

296. (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 an account of his receipts and payments as liquidator.

Audit of
liquidator's
accounts.

(2) The account shall be in the prescribed form, shall be made in duplicate and shall be certified 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 person on payment of the prescribed fee.

(5) The liquidator shall send a copy of the account or summary by post to every creditor and contributory, unless he considers that it is not practicable to do so, having regard to the cost of so doing and the value of the assets of the company.

Control of
Registrar over
liquidator.

297. (1) The Registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and where a liquidator does not faithfully perform his duties and duly observe all requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or where any complaint is made to the Registrar by any creditor or contributory in regard thereto, the Registrar shall inquire into the matter and if necessary, report to the court.

(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 where the Registrar thinks fit so to do, make an application to court to examine him or any other person on oath on any matter concerning the winding up.

(3) The Registrar may also direct a local investigation to be made of the books and vouchers of the liquidator.

298. (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, 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 for a release from the office of the liquidator, cause a report on the 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 such release accordingly.

Release of
liquidators.

(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 done or default made by him in the administration of the affairs of the company.

(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 from office, his release shall have the effect of a removal of a liquidator from his office.

COMMITTEE OF INSPECTION

Meetings of creditors and contributories to determine whether committee of inspections shall be appointed.

299. (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 shall be made to the court for the appointment of a committee of inspection to act with the liquidator and the persons who shall be members of such committee, if appointed.

(2) The court may make any appointment or order required to give effect to any such determination, and where there is any difference between the determinations of the meetings of the creditors and contributories in respect of the matters referred to in subsection (1), the court shall decide the difference and make such order thereon as the court may think fit.

Constitution and proceedings of committee of inspection.

300. (1) A committee of inspection appointed in pursuance of the provisions of this Act 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 at the meetings of creditors and contributories, or in case of any difference, as may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, provided that a meeting is held at least once in every three months. The liquidator or any member of the committee may also call a meeting of the committee as and when such liquidator or member, as the case may be, thinks necessary.

(3) The committee shall not act unless a majority of the members of the committee are present at the meeting.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) Where a member of the committee becomes insolvent or bankrupt or compounds or arranges with his creditors or is absent from three 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 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, notice of such meeting being given seven days prior to the date and also stating the objects of such 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 be, to fill the vacancy and the meeting may by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that where the liquidator having regard to the state of the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may make an application to the court for an order that the vacancy shall not be filled and the court may make such an order or an order that such vacancy shall not be filled except in such circumstances as may be specified in the order.

301. 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 give any direction or permission which by this Act is authorised or required to be done or given, by the committee.

Powers of court where there is no committee of inspection.

GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

Power to stay winding up.

302. (1) The court may at any time after an order for winding up is made, 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 made under the provisions of subsection (1), 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.

(3) A copy of every order made under the provisions of this section shall forthwith be forwarded by the company or otherwise as may be prescribed to the Registrar, who shall forthwith make a minute of the order in his books relating to the company.

Settlement of list of contributories and application of assets.

303. (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 share register in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

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.

304. 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 hand to which the company is *prima facie* entitled.

Delivery of property to liquidator.

305. (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 the 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 such estate by virtue of any call in pursuance of this Act.

Payment of debts due by contributory to company and extent to which set off is allowed.

(2) The court in making such an order may 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.

(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.

306. (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 endorsed in the same manner as if it had directed payment to the liquidator.

Payment into bank of moneys due to company.

(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.

Appointment of
special manager.

307. (1) Where the official receiver becomes the liquidator of a company whether provisionally or otherwise, he may where 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, make an application to court for the appointment of a special manager of the estate or business of the company, 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.

(2) The special manager appointed under the provisions of subsection (1), shall give such security and account in such manner as the court directs.

(3) The special manager appointed under the provisions of subsection (1) shall receive such remuneration as may be fixed by the court.

Inspection of
books by
creditors and
contributories.

308. 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.

Power to order
costs of winding
up to be paid out
of assets.

309. 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
summon persons
suspected of
having property
of company.

310. (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 alleged 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 on oath any officer or person summoned under the provisions of subsection (1) on any matter referred to in that subsection, either orally or on written interrogatories, and may where such examination is conducted orally, reduce the answers to writing and require such officer or person to sign it.

(3) The court may require any officer or person summoned under the provisions of subsection (1), to produce any books and papers in his custody or power relating to the company, but where such officer or person claims any lien on such 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) Any officer or person summoned under the provisions of subsection (1) who refuses or fails without reasonable cause, to appear before court or to produce any books or papers required to be produced by him at the time and on the date specified in the summons, shall be liable to be arrested and produced before court for examination.

311. (1) Where an order has been made by the court for the winding up of a company and the official receiver has made a further report under the provisions of this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may after consideration of such report, direct that such person 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 dealing as officer thereof.

Power to order public examination of promoters, directors &c.

(2) The official receiver may make representations at the examination referred to in subsection (1), and for that purpose may be represented by an attorney at-law.

(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 an attorney-at-law.

(4) The person or officer examined under the provisions of this section shall be examined on oath or affirmation and shall answer all such questions as the court may put or allow to be put to him

Person or officer
being examined
to be represented
by an attorney-
at-law, &c.,

312. (1) A person or officer directed to be examined under the provisions of section 311 shall at his own cost, before being so examined, be furnished with a copy of the report of the official receiver and may at his own cost be represented by an attorney-at-law, who shall be at liberty to put to such person or officer 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, where any such person or officer makes an application to court to be exculpated from any charges made or alleged against him, it shall be the duty of the official receiver to appear at the hearing of the application and draw the attention of the court to any matters which appear to the official receiver to be relevant, and where the court after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as it may in its discretion, thinks fit.

(2) Proceedings of the examination held under section 311 shall be reduced to writing and shall be read over to or by, and signed by the person or officer 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.

(3) The court may if it thinks fit, adjourn the examination from time to time.

313. The court may at any time either before or after making a winding up order, on reasonable cause being shown for believing that a contributory is about to leave Sri Lanka or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or for avoiding examination with respect to 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 kept in safe custody until such time, as the court may specify.

Power to arrest absconding contributory.

314. Any powers by this Act 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.

315. The Minister may make rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act, in respect of—

Delegation to liquidator of certain powers of court.

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the fixing of a time within which debts and claims shall 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 a company.

316. (1) Where the affairs of a company have been completely wound up, the court shall where the liquidator makes an application in that behalf, make an order that the company be dissolved from the date of such order and the company shall be dissolved accordingly.

(2) A copy of the order made under the provisions of subsection (1) shall, within fifteen days from the date of such order, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) Where the liquidator fails to comply with the requirements of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Manner of enforcing order of court.

317. Any order made by a court under this Act may be enforced in the same manner in which a decree of such court made in any suit pending therein may be enforced.

Enforcement of winding up order in another court.

318. Where any order made by one court is required to be enforced by any other 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 such other 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.

(III) VOLUNTARY WINDING UP

RESOLUTION FOR AND COMMENCEMENT OF VOLUNTARY WINDING UP

319. (1) A company may be wound up voluntarily—

Circumstances in which a 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 at a general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) where the company resolves by special resolution that the company be wound up voluntarily;
- (c) where the company resolves by special 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 Act the expression “a resolution for voluntary winding up” means a resolution passed under the provisions of subsection (1).

320. (1) When the company has passed a resolution for voluntary winding up, it shall within fourteen days from the date of the passing of the resolution, give notice of the resolution by publication in the *Gazette*.

Notice of resolution to wind up voluntarily.

(2) Where the company fails to comply with the provisions of this section —

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and

- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a penalty not exceeding fifty thousand rupees.

(3) For the purposes of this section, the liquidator of company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

321. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

CONSEQUENCES OF VOLUNTARY WINDING UP

Effect of voluntary winding up on business and status of company.

322. In the case of a voluntary winding up, the company shall from the date of commencement of the winding up, cease to carry on its business except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until such company is dissolved.

Avoidance of transfers, &c., after commencement of voluntary

323. 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 shareholders of the company made after the date of commencement of a voluntary winding up, shall be void.

DECLARATION OF SOLVENCY

Statutory declaration of solvency in case of proposal to wind up voluntarily.

324. (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, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that they are of the opinion that the company will be able to pay its debts in full within

such period not exceeding twelve months, from the date of commencement of the winding up as may be specified in the declaration.

(2) A declaration made under the provisions of subsection (1) shall have no effect for the purposes of this Act, unless—

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up of the company and is delivered to the Registrar for registration by that date; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of such declaration.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with the provisions of this section, is in this Act referred to as “a shareholders' voluntary winding up”, and a winding up in the case of which a declaration has not been so made and delivered, is in this Act referred to as “a creditors' voluntary winding up”.

PROVISIONS APPLICABLE TO A SHAREHOLDERS' VOLUNTARY WINDING UP

325. The provisions of sections 326 to 332 (both inclusive) shall, subject to the provisions of section 326, apply in relation to a shareholders' voluntary winding up.

Provisions relating to a shareholders' voluntary winding up.

326. (1) The company at a 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 each such liquidator.

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.

Power to fill vacancy in office of liquidator.

327. (1) Where a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company at a general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For the purpose of filling a vacancy in the office of liquidator, a general meeting of the company may be convened by any contributory or where there are more liquidators than one, by the continuing liquidators.

(3) The meeting referred to in subsection (2) shall be held in the manner provided by this Act 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.

Power of liquidator to accept shares &c. in consideration for sale of property of company.

328. (1) Where a company is proposed to be or is in the course of being, wound up 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 Act 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 shareholders of the transferor company, or may enter into any other arrangement whereby the shareholders of the transferor company may, in lieu of receiving cash, shares, policies, or other like interest, 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 the provisions of this section shall be binding on the shareholders of the transferor company.

(3) Where any shareholder 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 is left at the registered office of the company within seven days from the date of 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 court, upon application made to court by the shareholder or the liquidator in the manner provided for by this section.

(4) Where the liquidator elects to purchase the shareholder's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by 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 where an order is made within a year of the date of passing of the resolution 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.

329. (1) Where the liquidator at any time is of opinion that the company will not be able to pay its debts in full within the period stated in the declaration made under the provisions of section 324, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company.

Duty of liquidators to call creditors' meeting in case of insolvency.

(2) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Duty of liquidator to call general meeting at end of each year.

330. (1) Subject to the provisions of section 332, 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 date of commencement of the winding up, and of each succeeding year or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, 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.

(2) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Final meeting and dissolution.

331. (1) Subject to the provisions of section 332, 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 an explanation thereof.

(2) The meeting referred to in subsection (1) shall be called by a notice published in the *Gazette*, specifying the date, time, place, and object thereof and published at least one month before such date.

(3) Within one week after the meeting referred to in subsection (1), the liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meeting and of its date, and where the copy is not sent or the return is not made in accordance with the provisions of this subsection, the liquidator shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees :

Provided that where a quorum is not present at the meeting, the liquidator shall in lieu of the return referred to in the preceding provisions, 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 referred to in subsection (3), shall forthwith register them and on the expiration of three months from the date of 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 the provisions of this section is made, within seven days from the date of making of the order to deliver to the Registrar a certified copy of such order for registration, and where such person fails so to do, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(6) Where a liquidator fails to call a general meeting of the company as required by the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

332. In any case where the provisions of section 329 have effect, the provisions of sections 340 and 341 shall apply to the winding up to the exclusion of the provisions of sections 330 and 331, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

Alternative provision as to annual and final meetings in case of insolvency.

Provided that the liquidator shall not be required to summon a meeting of creditors under the provisions of section 340 at the end of the first year from the date of the commencement of the winding up, unless the meeting held under the provisions of section 329 is held more than three months before the end of that year.

PROVISIONS APPLICABLE TO A CREDITOR'S VOLUNTARY WINDING UP

Provisions
applicable to a
creditors'
winding up.

333. The provisions of sections 334 to 341 (both inclusive) shall apply in relation to a creditor's voluntary winding up.

Meeting of
creditors.

334. (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 such 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 published in the *Gazette* and at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situated.

(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 creditors of the company and the estimated amount of their claims are to be laid before the meeting of creditors to be held, as referred to in subsection (1) ; and
- (b) appoint one of their number to preside at such 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) Where 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 the provisions of subsection (1), shall have effect as if it had been passed immediately after the passing of the resolution for winding up of the company.

(6) Where default is made—

- (a) by the company in complying with the provisions of subsections (1) and (2) ;
- (b) by the directors of the company in complying with the provisions of subsection (3) ;
- (c) by any director of the company in complying with the provisions of subsection (4),

such company or any such director, as the case may be, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred 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 be liable on conviction to a penalty not exceeding one hundred thousand rupees.

335. The creditors and the company at their respective meetings referred to in section 334, may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company and where the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, and where

Appointment of liquidator.

no person is nominated by the creditors, the person if any, nominated by the company shall be the liquidator :

Provided that, in the case of different persons being nominated, any director, shareholder or creditor of the company may, within seven days from the date on which the nomination was made by the creditors, make an application to 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.

336. (1) The creditors at the meeting held in pursuance of the provisions of section 334 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five person, and where 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 at a general meeting, appoint such number of persons not exceeding five as they think fit, to act as members of the committee :

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 where the creditors so resolve the persons specified 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 the provisions of this section the court may, if it thinks fit, appoint other persons to act as such members in place of the persons specified in the resolution.

(2) Subject to the provisions of any rule made under this Act, the provisions of section 300, other than the provisions of subsection (1) of that section, shall apply with respect to a

committee of inspection appointed under the provisions of this section, as they apply with respect to a committee of inspection appointed in a winding up by the court.

337. (1) The committee of inspection or where there is no such committee the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

Fixing of liquidators' remuneration and ceasing of directors' powers.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or where there is no such committee the creditors, sanction the continuance thereof.

338. Where 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.

339. The provisions of section 328 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 that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

Application of section 328 to a creditors' voluntary winding up.

340. (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 the creditors at the end of the first year from the commencement of the winding up and each succeeding year or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, 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 meetings of company and of creditors at end of each year.

(2) Where the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Final meeting
and dissolution.

341. (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 an explanation thereof.

(2) Every meeting referred to in subsection (1) shall be called by notice published in the *Gazette*, specifying the date, time, place, and object thereof and published at least one month before such date.

(3) Within one week from the date of the meetings referred to in subsection (1), or where such meetings are not held on the same date, from the date of the later meeting, the liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meetings and of their dates, and where the copy is not sent or the return is not made in accordance with the provisions of this subsection, the liquidator shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees :

Provided that, where a quorum is not present at either such meeting, the liquidator shall in lieu of the return referred to in the preceding provisions, 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 in respect of each meeting referred to in subsection (1) and either of the returns referred to in subsection (3), shall forthwith register them and on the expiration of three months from the date of 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 the provisions of this section is made, within seven days from the date of the making of the order, to deliver to the Registrar a certified copy of the order for registration and where that person fails so to do, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(6) Where a liquidator fails to call a general meeting of the company or a meeting of the creditors as required by the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP.

342. The provisions of sections 343 to 350 (both inclusive) shall apply to every voluntary winding up, whether a shareholders' or a creditors' winding up.

Provisions applicable to every voluntary winding up.

343. Subject to the provisions of this Act 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 shareholders according to their rights and interests in the company.

Distribution of property of company.

344. (1) The liquidator may—

- (a) in the case of a shareholders' voluntary winding up with the sanction of a special 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 or (if there is no such

Powers and duties of liquidator in voluntary winding up.

committee) a meeting of creditors, exercise any of the powers specified in the provisions of paragraphs (d), (e) and (f) of subsection (1) of section 292 in relation to a liquidator in a winding up by the court ;

- (b) without sanction exercise any power other than those referred to in paragraph (a), given by this Act to the liquidator in a winding up by the court ;
- (c) exercise the power of the court under the provisions of this Act of setting of 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 resolution or for any other purpose the liquidator may think fit.

(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 Act 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.

345. (1) Where for 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.

346. (1) A liquidator appointed under any of the provisions of this Act shall, within fourteen days from the date of his appointment, publish in the *Gazette* and deliver to the Registrar for registration, a notice of his appointment in the prescribed form.

Notice by liquidator of his appointment.

(2) Where the liquidator fails to comply with the requirements of subsection (1), he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

347. (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 the provisions of this section, be binding on the company where sanctioned by a special resolution, and on the creditors where acceded to by three-fourths the number and value of the creditors.

Arrangement when binding on creditors.

(2) Any creditor or contributory may within three weeks from the completion of the arrangement appeal to the court against such arrangement, and the court may thereupon as it thinks just, amend, vary or confirm the arrangement.

348. (1) The liquidator or any contributory or creditor may make an application to 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.

Power to apply to court to have question determined or powers exercised.

(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.

(3) A copy of an order made by virtue of the provisions of subsection (2) staying the proceedings in the winding up,

shall forthwith be forwarded by the company or otherwise as may be prescribed, to the Registrar who shall make a minute of the order in his books relating to the company.

Costs of
voluntary
winding up.

349. 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.

Saving for rights
of creditors and
contributories.

350. 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 where an application for winding up is made by a contributory, the court shall be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(IV) WINDING UP SUBJECT TO SUPERVISION OF COURT

Power to order
winding up
subject to
supervision.

351. 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.

Effect of
petition for
winding up
subject to
supervision.

352. 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.

Applications of
section 275 and
276 to winding
up subject to
supervision.

353. A winding up subject to the supervision of the court shall for the purposes of sections 275 and 276 be deemed to be a winding up by the court.

Power of
court to
appoint or
remove
liquidators.

354. (1) Where an order is made by court for a winding up subject to supervision, the court may by that or any subsequent order, appoint an additional liquidator.

(2) A liquidator appointed by the court under the provisions of subsection (1) shall have the same powers, be subject to the same obligations, and in all respects have the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator appointed under the provisions of subsection (1), or any liquidator in a winding up continued under the supervision of court and fill any vacancy occasioned by such removal, or by death or resignation of any liquidator.

355. (1) When an order is made under the provisions of section 351 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 voluntarily :

Effect of
supervision
order.

Provided that the powers specified in the provisions of paragraphs (d), (e) and (f) of subsection (1) of section 292 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 creditor's voluntary winding up, with the sanction of either the court or the committee of inspection or where there is no such committee, a meeting of the creditors.

(2) A winding up subject to the supervision of the court shall not constitute a winding up by the court for the purpose of the provisions of this Act which are set out in the Eighth Schedule hereto, 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 purposes of the provisions of section 300, other than the provisions of subsection (1) of that section, except in so far as the operation of that section is excluded in a voluntary winding up by rules made under this Act.

PROOF AND RANKING OF CLAIMS

Admissible claims.

356. A debt or liability present or future, certain or contingent, whether it is an ascertained debt or liability or a liability for damages, may be admitted as a claim against a company in liquidation.

Claims by unsecured creditors.

357. (1) A claim by an unsecured creditor against a company in a winding up shall be made in the prescribed form and shall —

- (a) contain full particulars of the claim; and
- (b) identify any documents that evidence or substantiate the claim.

(2) The liquidator may—

- (a) require the production of a document referred to in paragraph (b) of subsection (1); and
- (b) require a claim to be verified by affidavit.

(3) The liquidator shall as soon as practicable, either admit or reject a claim in whole or in part. If the liquidator subsequently considers that a claim has been wrongly admitted or rejected in whole or in part, he may revoke or amend that decision.

(4) If a liquidator rejects a claim whether in whole or in part, he shall forthwith give notice in writing of the rejection to the creditor.

(5) The costs of making a claim under subsection (1) or producing a document under subsection (2), shall be met by the creditor making the claim.

(6) Every person who—

- (a) makes or authorises the making of a claim under this section that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits or authorises the omission from a claim under this section, of any matter knowing that the omission makes the claim false or misleading in a material particular,

shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

358. (1) A secured creditor may—

Rights and duties
of secured
creditors.

- (a) seize, attach and realise, issue execution against or appoint a receiver in respect of property subject to a charge, if entitled to do so;
- (b) value the property subject to the charge and claim in the liquidation—
 - (i) as a secured creditor for the amount of his claim, up to the value of the security; and
 - (ii) as an unsecured creditor for the balance due, if any; or
- (c) surrender the charge to the liquidator for the general benefit of creditors, and claim in the liquidation as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the power referred to in paragraph (a) of subsection (1) whether or not the secured creditor has exercised the power referred to in paragraph (b) of subsection (1).

(3) A secured creditor who realises property subject to a charge—

- (a) may claim as an unsecured creditor for any balance due after deducting the net amount realised;
- (b) shall account to the liquidator for any surplus remaining from the net amount realised after satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction and after making any proper payments to the holder of any other charge over the property subject to the charge.

(4) If a secured creditor values the security and claims as a secured creditor, the valuation and claim shall be made in the prescribed form and shall—

- (a) contain full particulars of the valuation and claim;
- (b) contain full particulars of the charge including the date on which it was given; and
- (c) identify any documents that substantiate the claim and the charge,

and the provisions of sections 359, 360 and 362 shall apply to any claim as a secured creditor.

(5) The liquidator may—

- (a) require production of any document referred to in paragraph (c) of subsection (4); and

- (b) require a claim under subsection (4) to be verified by affidavit.

(6) Where a claim is made by a secured creditor under subsection (4), the liquidator shall either—

- (a) accept the valuation and claim; or
- (b) reject the valuation and claim in whole or in part, but—
 - (i) where a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within ten working days of receiving notice of the rejection; and
 - (ii) the liquidator may if he subsequently considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.

(7) Where the liquidator—

- (a) accepts a valuation and claim under paragraph (a) of subsection (6);
- (b) accepts a revised valuation and claim under subparagraph (i) of paragraph (b) of subsection (6); or
- (c) accepts a valuation and claim on revoking or amending a decision to reject a claim under subparagraph (ii) of paragraph (b) of subsection (6),

the liquidator shall unless the secured creditor has realised the property, redeem the security on payment of the amount of the claim or the assessed value, whichever is the less.

(8) The liquidator may at any time by notice in writing, require a secured creditor within twenty working days after receipt of the notice—

- (a) to elect which of the powers referred to in subsection (1) the creditor wishes to exercise; and
- (b) if the creditor elects to exercise the power referred to in paragraph (b) or paragraph (c) of that subsection, to exercise the power within that period.

(9) A secured creditor on whom notice has been served under subsection (8) and who fails to comply with the notice shall be taken to have surrendered the charge to the liquidator under paragraph (c) of subsection (1) for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.

(10) A secured creditor who has surrendered a charge under paragraph (c) of subsection (1) or who is deemed to have surrendered a charge under subsection (9) may, with the leave of the court or the liquidator and subject to such terms and conditions as the court or the liquidator thinks fit, at any time before the liquidator has realised the property charged—

- (a) withdraw the surrender and rely on the charge; or
- (b) submit a new claim under this section.

(11) Every person who—

- (a) makes or authorises the making of a claim under subsection (4) that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits or authorises the omission from a claim under subsection (4) of any matter knowing that the omission makes the claim false or misleading in a material particular,

shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

359. (1) The amount of a claim shall be ascertained as at the date of commencement of the winding up of the company.

Ascertainment of amount of claim.

(2) The amount of a claim based on debt or liability denominated in a currency other than Sri Lankan currency, shall be converted into Sri Lankan currency at the rate of exchange applicable at the close of the date of commencement of the winding up of the company.

360. (1) If a claim is subject to a contingency or is for damages or, if for some other reason the amount of the claim is not certain, the liquidator shall make an estimate of the amount of the claim and give notice of that estimate to the creditor.

Claim not of an ascertained amount.

(2) On the application of a claimant who is aggrieved by an estimate made by the liquidator, the court shall determine the amount of the claim.

361. Nothing in this Part of this Act shall limit or affect the recovery of—

Fines, penalties, or recoveries.

- (a) a fine imposed on a company whether before or after the commencement of the winding up of the company, for the commission of an offence;
- (b) a monetary penalty payable to the State imposed on a company by a court whether before or after the commencement of the winding up of the company, for the breach of any enactment;
- (c) costs ordered to be paid by the company in relation to proceedings for the offence or breach; or
- (d) all provident fund dues, employees trust fund dues and gratuity payments accrued due, prior the securing of any assets from the sale proceeds of such secured assets.

Claims relating to debts payable after commencement of winding up.

362. (1) A claim in respect of a debt that but for the winding up, would not be payable until a date that is more than six months after the commencement of the winding up, shall be treated for the purposes of this Part of this Act, as a claim for the present value of the debt.

(2) For the purposes of subsection (1), the present value of a debt shall be determined by deducting from the amount of the debt, interest at the prescribe rate for the period from the date of commencement of the winding up to the date when the debt is due.

Mutual credit and set-off.

363. (1) Where there have been mutual credits, mutual debts or other mutual dealing between a company and a person who seeks or but for the operation of this section, would seek to have a claim admitted in the winding up of the company—

- (a) an account shall be taken of what is due from one party to the other in respect of those credits, debts, or dealings;
- (b) an amount due from one party shall be set-off against an amount due from the other party; and
- (c) only the balance of the account shall be claimed in the winding up or be payable to the company, as the case may be.

(2) This section shall not apply to an amount paid or payable by a shareholder—

- (a) as the consideration or part of the consideration for the issue of a share; or
- (b) in satisfaction of a call in respect of an outstanding liability of the shareholder, made by the board or by the liquidator.

364. (1) The amount of a claim may include interest up to the commencement of the winding up— Interest on claims.

- (a) at such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or
- (b) in the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) If any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on those claims from the date of commencement of the winding up to the date on which each claim is paid. If the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

(3) If any surplus assets remain after the payment of interest in accordance with subsection (2), interest shall be paid on all admitted claims referred to in subsection (1), from the commencement of the winding up to the date on which the claim is paid, at the difference between the rate referred to in paragraph (a) or paragraph (b) of that subsection, as the case may be, and the prescribed rate. If the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.

365. (1) The liquidator shall pay out of the assets of the company the expenses, fees, and claims set out in the Ninth Schedule to the extent and in the order of priority specified in that Schedule and that Schedule shall apply to the payment of those expenses, fees, and claims according to its tenor. Preferential claims.

(2) Without limiting paragraph 7(b) of the Ninth Schedule, the terms “assets” in subsection (1) shall not include assets subject to a charge, unless—

- (a) the charge is surrendered or taken to be surrendered or redeemed under section 358; or

- (b) the charge was when created, a floating charge in respect of those assets.

Claims of other creditors and distribution of surplus assets.

366. (1) After paying preferential claims in accordance with section 365, the liquidator shall apply the assets of the company in satisfaction of all other claims.

(2) The claims referred to in subsection (1) shall rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case payment shall abate rateably among all claims.

(3) Where before the commencement of the winding up, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section shall prevent the agreement from having effect according to its terms.

(4) Subject to section 364, after paying the claims referred to in subsection (1), the liquidator shall distribute the company's surplus assets—

- (a) in accordance with the provisions contained in the company's articles ; or
- (b) if the company's articles do not contain provisions for the distribution of surplus assets, in accordance with the provisions of this Act.

(5) The provisions of the Tenth Schedule shall apply in relation to the payment of claims referred to in subsection (1).

VOIDABLE TRANSACTIONS

Transactions having preferential effect.

367. (1) A transaction by a company is voidable on the application of the liquidator, if the transaction —

- (a) took place—
 - (i) at a time when the company was unable to pay its debts as they fell due; and

- (ii) within the specified period; and
- (b) enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation.

(2) Unless the contrary is proved, for the purposes of subsection (1), a transaction that took place within the restricted period is presumed to have been made at a time when the company was unable to pay its debts as they fell due.

(3) A transaction with a person shall not be set aside under this section, unless the company was influenced in entering into the transaction by a desire to produce in relation to that person, the effect mentioned in paragraph (b) of subsection (1).

(4) A company which has entered into a transaction with any connected person is presumed, unless the contrary is shown, to have been influenced by a desire to produce in relation to that person, the effect mentioned in paragraph (b) of subsection (1).

368. (1) A charge over any property or undertaking of a company is voidable on the application of the liquidator, if the charge was given within the specified period, unless—

Voidable charge.

- (a) the charge secures—
 - (i) money actually advanced or paid, or the actual price or value of property sold or supplied to the company, or any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after the giving of the charge; and
 - (ii) any interest payable on an amount referred to in sub-paragraph (i);
- (b) immediately after the charge was given, the company was able to pay its debts as they fell due; or

- (c) the charge is in substitution for a charge given before the specified period.

(2) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its debts as they fell due immediately after giving the charge.

(3) The provisions of paragraph (c) of subsection (1) shall not apply to the extent that —

- (a) the amount secured by the substituted charge exceeds the amount secured by the existing charge; or
- (b) the value of the property subject to the substituted charge at the date of the substitution, exceeds the value of the property subject to the existing charge at that date.

(4) Nothing in subsection (1) shall apply to a charge given by a company that secures the unpaid purchase price of property and any interest payable on that amount, whether or not the charge is given over that property, if the instrument creating the charge is executed not later than thirty days after the sale of the property or in the case of the sale of an estate or interest in land, not later than thirty days after the final settlement of the sale.

(5) For the purposes of paragraph (a) of subsection (1) and subsection (4), where any charge was given by the company within the period specified in subsection (1), all payments received by the grantee of the charge after it was given shall be deemed to have been appropriated so far as may be necessary—

- (a) towards repayment of money actually advanced or paid by the grantee to the company on or after the giving of the charge;

- (b) towards payment of the actual price or value of property sold by the grantee to the company on or after the giving of the charge;
- (c) towards payment of any other liability of the company to the grantee in respect of any other valuable consideration given in good faith on or after the giving of the charge; or
- (d) towards interest payable on any amount referred to in paragraphs (a), (b) or (c).

369. (1) A transaction by a company is voidable on the application of the liquidator, if — Uncommercial transactions.

- (a) the transaction took place within the specified period;
- (b) the transaction was an uncommercial transaction;
- (c) when the transaction took place, the company—
 - (i) was unable to pay its due debts;
 - (ii) was engaged or about to engage in business for which its financial resources were grossly inadequate; or
 - (iii) incurred an obligation knowing that the company would not be able to perform the obligation when required to do so.

(2) A transaction by a company is an “uncommercial transaction” if, and only if, a reasonable person in the company’s circumstances would not have entered into the transaction having regard to—

- (a) the benefits (if any) to the company of entering into the transaction;

- (b) the detriment to the company of entering to the transaction;
- (c) the respective benefits to the other parties to the transaction; and
- (d) any other relevant matters.

(3) A transaction may be an uncommercial transaction for the purposes of this section—

- (a) whether or not a creditor of the company is a party to the transaction; and
- (b) even if the transaction is given effect to or is required to be given effect to, because of an order made by a court.

(4) Unless the contrary is proved for the purposes of subsection (1), a transaction that took place within the restricted period is presumed to have been made at a time when the company was unable to pay its debts as they fell due.

Procedure
for setting
aside
voidable
transactions
and charges.

370. (1) A liquidator who wishes to set aside a transaction that is voidable under section 367 or section 369 or a charge that is voidable under section 368 shall—

- (a) file in the court a notice by way of a motion to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover, and setting out the effect of subsections (2), (3) and (4) of this section ; and
- (b) serve a copy of the notice as filed in court under paragraph (a), on the other party to the transaction or the grantee of the charge and or every other person from whom the liquidator wishes to recover the property or value.

(2) A person —

- (a) who would be affected by the setting aside of the transaction or charge specified in the notice; and
- (b) who considers that the transaction or charge is not voidable,

may apply to the court for an order that the transaction or charge, be not set aside.

(3) Unless a person on whom the notice was served has applied to the court under subsection (2), the transaction or charge shall be deemed to be set aside on the twentieth working day after the date of service of the notice.

(4) If one or more persons have applied to the court under subsection (2), the transaction or charge shall be deemed to be set aside on the day on which the last application is finally determined, unless the court orders otherwise.

371. If a transaction or charge is set aside under section 370, the court may make one or more of the following orders:—

Other orders.

- (a) an order requiring a person to pay to the liquidator in respect of benefits received by that person as a result of the transaction or charge, such sums as fairly represent those benefits;
- (b) an order requiring property transferred to a person as part of the transaction to be restored to the company;
- (c) an order requiring property to be vested in the company if that property represents the application either of the proceeds of sale of property or of money so transferred;
- (d) an order releasing in whole or in part a debt incurred or a guarantee or charge given by the company;

- (e) an order declaring an agreement constituting, forming part of or relating to the transaction or charge or specified provisions of such an agreement, to have been void at and after the time when the agreement was made or at and after a specified later time;
- (f) an order varying such an agreement in the manner specified in the order and if the court thinks fit, declaring the agreement to have had effect as so varied at and after the time when the agreement was made or at and after a specified later time;
- (g) an order declaring such an agreement or specified provisions of such an agreement to be unenforceable;
- (h) an order requiring security to be given for the discharge of an order made under this section;
- (i) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this section, is entitled to claim as a creditor in the liquidation.

Additional provisions relating to setting aside of transactions and charges.

372. (1) The setting aside of a transaction or an order made under section 371 shall not affect the title or interest of a person in property, which that person has acquired—

- (a) from a person other than the company;
- (b) for valuable consideration ; and
- (c) in good faith.

(2) The setting aside of a charge or an order made under section 371 shall not affect the title or interest of a person in property which that person has acquired—

- (a) as the result of the exercise of a power of sale by the grantee of the charge;

(b) for valuable consideration; and

(c) in good faith.

(3) Recovery by the liquidator of property or its equivalent value, whether under section 371 or any other section of this Act or under any other enactment or in equity or otherwise, may be denied wholly or in part if—

(a) the person from whom recovery is sought received the property in good faith and has altered his position in the reasonably held belief that the transfer to that person was validly made; and

(b) in the opinion of the court, it is inequitable to order recovery or recovery in full.

373. (1) In sections 367 and 369 “transaction” in relation to a company, includes—

Interpretation in relation to preferences &.

(a) a conveyance or transfer or any other disposition of property by the company;

(b) the giving of a security or charge over the property of the company;

(c) the incurring of an obligation by the company;

(d) the acceptance by the company of execution under a judicial proceeding;

(e) the payment of money by the company including the payment of money under a judgment or order of a court.

(2) For the purposes of sections 367, 368 and 369 “specified period” means—

(a) in the case of a transaction entered into with or a charge granted to a connected person—

(i) the period of two years before the commencement of the winding up; and

- (ii) in the case of a company that is being wound up by the court, the period of two years before the filing of the petition in the court, together with the period commencing on the date of the filing of that petition and ending on the date on which the order of the court was made;
 - (b) in any other case—
 - (i) the period of one year before the commencement of the winding up; and
 - (ii) in the case of a company that is being wound up by the court, the period of one year before the filing of the petition in the court, together with the period commencing on the date of the filing of that petition and ending on the date on which the order of the court was made.
- (3) For purposes of subsection (4) and of section 367, a person is a “connected person”, if that person is—
- (a) a person who was at the time of the transaction, a director of the company or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company;
 - (b) a person or a relative of a person, who at the time of the transaction, had control of the company;
 - (c) another company that was at the time of the transaction, controlled by a director of the company or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company;
 - (d) another company that was at the time of the transaction, a related company.

(4) For the purposes of sections 367, 368 and 369 “restricted period” means—

- (a) the period of one month before the commencement of the winding up; and
- (b) in the case of a company that is being wound up by the court, the period of one month before the filing of the petition in the court together with the period commencing on the date of the filing of that petition and ending on the date on which the order of the court was made.

MALPRACTICE BEFORE WINDING UP AND LIABILITY OF OFFICERS

374. (1) When a company is wound up, a person who is a past or present officer of the company is deemed to have committed an offence if, within the two years preceding the commencement of the winding up, he has—

Fraud &c. in anticipation of winding up.

- (a) concealed any part of the company’s property to the value of ten thousand rupees or more or concealed any debt due to or from the company;
- (b) fraudulently removed any part of the company’s property to the value of ten thousand rupees or more;
- (c) concealed, destroyed, mutilated or falsified any book or document affecting or relating to the company’s property or affairs;
- (d) made any false entry in any book or document affecting or relating to the company’s property or affairs;
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company’s property or affairs;

- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposal was in the ordinary course of the company's business;
- (g) 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 company's property, with the intent of defrauding the company's creditors; or
- (h) concealed or removed any part of the company's property since or within two months before the date of any unsatisfied judgment or order for the payment of money obtained against the company, with the intent of defrauding the company's creditors.

(2) It is a defence—

- (a) for a person charged under paragraph (a) or (f) of subsection (1), to prove that he had no intent to defraud;
- (b) for a person charged under paragraph (c) or (d) of subsection (1), to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Fraudulent
trading.

375. (1) Where any business of a company that has been wound up has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner, shall be

deemed to have committed an offence and shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) Where 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 may, on the application of the liquidator or any creditor of the company, declare that any persons who were knowingly parties to the carrying on of the business in that manner, shall be—

- (a) liable to make such contribution to the company's assets; or
- (b) personally responsible for such debts or other liabilities of the company,

as the court may think fit.

376. (1) Where in the course of the winding up of a company it appears to the court that a person who has taken part in the formation or promotion of the company or a past or present director, manager, liquidator or receiver of the company, has misapplied or retained or become liable or accountable for money or property of the company, or been guilty of negligence, default or breach of duty or trust in relation to the company, the court may, on the application of the liquidator or a creditor or shareholder—

Power of court to require persons to repay money or return property.

- (a) inquire into the conduct of the promoter, director, manager, liquidator, or receiver; and
- (b) order that person—
 - (i) to repay or restore the money or property or any part of it with interest at a rate the court thinks just; or

- (ii) to contribute such sum to the assets of the company by way of compensation as the court thinks just; or
- (c) where the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the court thinks just, to the creditor.

(2) The provisions of this section shall have effect even though the conduct may constitute an offence under this Act.

(3) Where an order for payment of money is made under this section, it shall for the purposes of the Insolvency Ordinance (Cap. 97), be deemed to be a judgment for the recovery of a debt or money demand referred to in section 12 of that Ordinance.

Disclaimer of
onerous
property.

377. (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, 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 from the date of 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 from the date of commencement of the winding up, the power of disclaiming the property under the provisions of this section

may be exercised at any time within twelve months from the date 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 the 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 such 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 the provisions of this section, in any case where an application in writing has been made to him by any person 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 from the date of receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to make an application to the court for leave to disclaim, and in the case of a contract, where the liquidator upon receipt of 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 such 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 Act in respect of any disclaimed property and on hearing any such person 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 date of commencement of the winding up; or
- (b) where 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 where 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 by himself or jointly with the company to perform

the lessor's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under the provisions of 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.

378. (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 of the company, unless he has completed the execution or attachment before the date of 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 preceding provisions, be substituted for the date of commencement of the winding up;
- (b) a person who purchases in good faith under a sale by order of 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;
- (c) the rights conferred by the provisions of this subsection on the liquidator may be set aside by the court in favour of the creditor, to such extent and subject to such terms as the court may think fit.

(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 debts, 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.

(4) Nothing this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

Duty of fiscal as to goods taken in execution.

379. (1) Subject to the provisions of subsection (3), where any goods of a company are taken in execution and before the sale thereof or the completion of the execution, by 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) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding two hundred and fifty rupees, the goods of a company are sold or money is paid in order to avoid the 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 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) The rights conferred by the provisions of this section on the liquidator may be set aside by the court in favour of the creditor, to such extent and subject to such terms as the court may think fit.

(4) 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.

(5) Nothing in this section shall apply to an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of that property.

OFFENCES ANTECEDENT TO OR IN THE COURSE OF WINDING UP

380. (1) Where any person being a past or present 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—

Offences by officers of companies in liquidation.

- (a) does not to the best of his knowledge and belief fully and truly make known 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 course of the business of the company;
- (b) does not deliver to the liquidator or as he directs, all such part of the movable and immovable property of the company as in his custody or under his control, and which he is required by law to deliver;
- (c) does not deliver 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;

- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof;
- (f) after the date of commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) after the date of commencement of the winding up or at any meeting of the creditors of the company within the twelve months immediately prior to the date of commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses;
- (h) has within the twelve months immediately prior to the date of 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;
- (i) within the twelve months immediately prior to the date of commencement of the winding up or at any time thereafter, under the false pretense 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
- (j) 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,

shall be guilty of an offence and shall on conviction, in the case of the offences referred to in paragraphs (h), (i) and (j), be liable to a fine not exceeding one million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment, and in the case of any other offence under the provisions of this subsection, be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that it shall be a good defence to a charge under the provisions of paragraphs (a), (b), (c), (d) and (i), for the accused to prove that he had no intent to defraud, and to a charge under the provisions of paragraph (f), to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) For the purposes of this section, the expression “officer” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

381. (1) Where in the course of winding up of a company it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the date of commencement of the winding up, or the period between the incorporation of the company and the date of commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was inevitable, be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand rupees.

Liability where proper accounts are not kept.

(2) For the purposes of this section, proper books of accounts 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 dealing in goods, statement or 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.

Prosecution of delinquent officers and members of the company.

382. (1) Where 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 officer or any shareholder 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) Where it appears to the liquidator in the course of a voluntary winding up that any past or present officer or any shareholder 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 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 provisions of subsection (2) to the Attorney-General, he may if he thinks fit, refer the matter to the Registrar for inquiry, and the Registrar shall thereupon investigate the matter and may where he thinks it expedient, make an application to 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 Act in the case of a winding up the court.

(4) Where on any report to the Attorney-General under the provisions of subsection (2), it appears to the Attorney-General 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) Where it appears to the court in the course of voluntary winding up that any past or present officer or any shareholder 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 the provisions of 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 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 provision of subsection (2).

(6) If where any matter is reported or referred to the Attorney-General under the provisions of this section, the Attorney-General considers that the case is one in which a prosecution ought to be instituted, 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 connection 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 attorney-at-law 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) Where any person fails or neglects to give assistance in the 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

Qualifications
of
liquidators.

383. (1) None of the following persons may be appointed or act as a liquidator of a company :—

- (a) a person below eighteen years of age;
- (b) a creditor of the company in liquidation;
- (c) a person who has within the two years immediately preceding the commencement of the winding up, been a shareholder, director, auditor, or receiver of the company or of a related company;
- (d) an undischarged bankrupt;
- (e) a person who has been adjudged to be of unsound mind under the provision of the Mental Diseases Ordinance (Cap. 227);
- (f) a person in respect of whom an order has been made under section 468;
- (g) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 186 of the Companies Act, No. 17 of 1982, or who would be so prohibited, but for the repeal of that Act; or
- (h) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or 214.

(2) A body corporate shall not be appointed or act as a liquidator.

(3) Every person who acts in contravention of the provisions of subsection (1) or subsection (2) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

384. Any person who gives or agrees or offers to give to any shareholder or creditor of a company any valuable consideration with a view to securing his own appointment or nomination or to securing or preventing the appointment or nomination of some person other than himself as the company's liquidator, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Corrupt
inducement
affecting
appointment as
liquidator.

385. (1) Where any liquidator, who has made any default in filing, delivering or making any account, document or return, as the case may be, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within ten working days from the date of 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, make an order directing the liquidator to make good the default within such time as may be specified in the order.

Enforcement of
duty of
liquidator to
make returns,
&c.,

(2) Any order made under the provisions of subsection (1), 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 is referred to in subsection (1).

Notification that a company is in liquidation.

386. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntary, 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.

(2) Where default is made in complying with the provisions of this section, the company and any of the following persons who knowingly and willfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Exemption of certain documents from stamp duty on winding up of companies.

387. In the case of a winding up by the court or of a creditors' voluntary winding up of a company—

- (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 of 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.

Books of company to be evidence.

388. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be there in recorded.

389. (1) Where a company has been wound up and is about to be dissolved, the books of the company and of the liquidators may be disposed of as follows, that is to say—

Disposal of books and papers of the company.

- (a) in the case of a winding up by or subject to the supervision of the court, in such a way as the court directs;
- (b) in the case of a shareholders' voluntary winding up, in such a way as the company by special resolution directs, and in the case of a creditors' voluntary winding up, in such a way as the committee of inspection or where there is no such committee, as the creditors of the company may direct.

(2) After five years from the date of 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) Rules may be made for enabling the Registrar to prevent, for such period (not exceeding five years from the date of dissolution of the company) as he thinks fit, 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 Registrar and to appeal to the Court of Appeal from any direction which may be given by the Registrar in the matter.

(4) Where any person acts in contravention of any rule made under the provisions of subsection (3) or of any direction of the Registrar thereunder, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand rupees.

Information as to pending liquidation.

390. (1) Where the winding up of a company is not concluded within one year from the date of its commencement, the liquidator shall at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Where a liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Resolutions passed at adjourned meetings of creditors and contributories.

391. Where 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.

392. (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 Act or the company's articles.

PROVISIONS AS TO DISSOLUTION

393. (1) Where a company has been dissolved, the court may at any time within two years from 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 under the provisions of subsection (1) was made, within seven days from the date of the order or such further time as the court may allow, to deliver to the Registrar for registration a certified copy of such order, and where such person fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand rupees.

394. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

Registrar may strike off defunct company from register.

(2) Where the Registrar does not within one month of the date of sending the letter referred to in subsection (1) receive any answer thereto, he shall within ten working days from the date of expiry of the said period of one month, send to the company a letter by registered post 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 off the name of the company from the register.

(3) Where the Registrar under the provisions of subsection (2), 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 an answer, he may publish 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 specified therein will, unless cause is shown to the contrary, be struck off the register and be dissolved.

(4) Where in the winding up of a company 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 under the provisions of this Act 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 notice as is referred to in subsection (3).

(5) Upon the expiration of the period specified in the notice given under the provisions of subsection (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike off the name of the company from the register, and shall publish notice thereof in the *Gazette*, and upon such publication the company shall be dissolved:

Provided that—

- (a) the liability, if any, of every director, manager and shareholder of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in the provisions of 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) Where a company or any shareholder or creditor thereof is aggrieved by the company having been struck off the register, the court on an application made by the company

or shareholder or creditor, as the case may be, before the expiration of five years from the publication in the *Gazette* of the notice referred to in subsection (5) may, if satisfied, that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the name of the company should 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 the register, and the court may by such order give such directions and make such provisions as to it seems 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 the register.

(7) A notice to be sent under the provisions of 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 the provisions of this section to a company may be addressed to the company at its registered office, or where no office has been registered, to the care of some officer of the company at the most recent address recorded for that person in the annual returns or any other documents sent to the Registrar by the company.

395. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before the date of its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject to and without prejudice to any order which may at any time be made by the court under the provisions of sections 393 and 394, vest in and be at the disposal of the State.

Property of dissolved company to vest in the State.

COMPANIES LIQUIDATION ACCOUNT

396. (1) An Account to be called the Companies Liquidation Account, shall be kept by the Registrar with such bank as may from time to time be approved by the Minister in charge of the subject of Finance.

Establishment of Companies Liquidation Account.

(2) Whenever the balance standing to the credit of the Companies Liquidation Account is in the opinion of the Registrar, in excess of the amount required for the time being to meet claims under section 397, the Registrar shall notify the Deputy Secretary to the Treasury of the excess and shall pay to him, to such account as he may direct, the whole or any part of that excess which he may require. The Deputy Secretary to the Treasury may invest the sums paid to him or any part of them in Government securities, to be held to the credit of the Companies Liquidation Account.

(3) When any part of the money paid to the Deputy Secretary to the Treasury under subsection (2) is in the opinion of the Registrar, required to meet any claim under section 397, the Registrar shall give notice of that requirement to the Deputy Secretary to the Treasury who shall repay the amount required to the Registrar to the credit of the Companies Liquidation Account, and may for that purpose sell any of the securities referred to in subsection (2).

(4) The dividends on investments made under this section shall be paid into the Companies Liquidation Account.

Payments into
and out of
Companies
Liquidation
Account.

397. (1) Money representing unclaimed assets of a company standing to the credit of a liquidator shall after completion of the winding up, be paid to the Registrar to be credited to the Companies Liquidation Account.

(2) Money held in the Companies Liquidation Account may be paid or distributed to any person who would have been entitled to payment or distribution in the winding up of a company of any money or surplus assets the proceeds of which, have been credited to the Companies Liquidation Account.

(3) Where any funds have been paid into the Companies Liquidation Account in respect of any company, and that company subsequently is dissolved, the provisions of section 395 shall apply to those funds.

398. (1) For the purposes of this section, an “essential service” means—

Refusal to supply essential services prohibited.

- (a) the retail supply of electricity ;
- (b) the supply of water ; and
- (c) the supply of telecommunications services.

(2) Notwithstanding the provisions contained in any written law to the contrary or any contract, a supplier of an essential service shall not—

- (a) refuse to supply the service to a liquidator or to a company in liquidation, by reason of the company’s default in paying charges due for the service in relation to a period before the commencement of the liquidation ; or
- (b) make it a condition of the supply of the service to a liquidator or to a company in liquidation, that payment be made of outstanding charges due for the service, in relation to a period before the commencement of the liquidation.

(3) For the avoidance of doubt, nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any written law in respect of a failure by a company to pay charges due for the service, in relation to any period after the commencement of the liquidation.

(4) The charges incurred by a liquidator for the supply of an essential service shall be an expense incurred by the liquidator, for the purposes of sub-paragraph (a) of paragraph 1 of the Ninth Schedule to this Act.

RULES AND FEES

Rules and fees
for winding up.

399. (1) Rules may be made by the Minister to provide for the carrying into effect of the objects of this Act, so far as it relates to the winding up of companies.

(2) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies, such reasonable fees as the Minister may, by regulation, prescribe.

PART XIII

ADMINISTRATORS

APPOINTMENT OF ADMINISTRATOR

Interpretation.

400. In this Part of this Act, unless the context otherwise requires —

(a) “initial period” means the period beginning from the date of appointment of the administrator, until—

(i) the date on which a meeting is held under section 404 ; or

(ii) a receiver is appointed in accordance with the provisions of subsection (2) of section 402 ; or

(iii) the expiry of twenty working days, or such longer period as court may allow,

whichever occurs first ; and

(b) references to hire-purchase agreements include conditional sale agreements, chattel leasing arrangements and retention of title agreements.