

thereafter, the Registrar shall, within six months of the publication of its name in the newspapers, strike off the name of such company from the register maintained by him under the provisions of section 473.

(4) During the period of six months referred to in subsection (3), in addition to a director of the company, a shareholder of such company or a person who has registered a charge under section 102 or a person who has a money claim pending before a court or in arbitration proceedings, shall also be entitled to apply to the Registrar to have a new number assigned to such company under subsection (2).

(5) Where a company's name is struck off from the register under subsection (3), all property and rights whatsoever vested in or held on trust for the company immediately before the date on which the name is struck off, (including leasehold property but not including property held by the company on trust for any other person), shall vest in and be at the disposal of the State.

PART XVIII

OVERSEAS COMPANIES

488. For the purposes of this Part of this Act, the expressions — Interpretation.

“director” in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“overseas company” means any company or body corporate incorporated outside Sri Lanka, which —

- (a) after the appointed date, established a place of business within Sri Lanka; or

- (b) has, before the appointed date, established a place of business within Sri Lanka and continues to have an established place of business within Sri Lanka on the appointed date;

“place of business” includes a share transfer or share registration office;

“registered overseas company” means an overseas company which has delivered or is deemed to have delivered to the Registrar, the documents and particulars required under section 489; and

“secretary” includes any person occupying the position of secretary, by whatever name called.

Documents and particulars to be delivered to Registrar by overseas companies.

489. (1) Every company incorporated outside Sri Lanka which after the appointed date, establishes a place of business within Sri Lanka, shall within one month from the date of establishment of its place of business, deliver to the Registrar for purpose of registration—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and where that instrument is not in an official language of Sri Lanka or in English, a translation of that instrument in such language as may be specified by the Registrar;
- (b) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors, in the register of the directors of a company;
- (c) the names and addresses of one or more persons resident in Sri Lanka authorized to accept on behalf of the company, service of documents and of any notices required to be served on the company;

(d) a statement containing the full address of—

- (i) the registered or principal office of the company; and
- (ii) the principal place of business of the company within Sri Lanka ;

(e) a certified copy, certified of recent date, of any document effecting or evidencing the incorporation of the company.

(2) The Registrar may upon sufficient cause being shown by the defaulting company, extend the period of one month specified in subsection (1).

(3) Every company incorporated outside Sri Lanka which, on or before the appointed date, establishes or has established a place of business within Sri Lanka shall, subject to subsection (4), within a period of one month from that date, deliver to the Registrar for registration, the documents and particulars specified in subsection (1).

(4) Where an overseas company has established a place of business within Sri Lanka before the appointed date, and has complied with the requirements of Part XIII of the Companies Act, No. 17 of 1982 in relation to the delivery to the Registrar, of documents and particulars —

- (a) such company shall be deemed to have complied with subsection (3); and
- (b) the Registrar shall enter on the register of overseas companies, the documents and particulars delivered under Part XIII of the Companies Act, No. 17 of 1982, and issue a certificate of registration to such overseas company.

(5) The Registrar may upon receipt of the documents referred to in subsections (1) or (3), as the case may be, register the company as a registered overseas company and enter its

name in the register of overseas companies. A certificate of registration shall be issued to every registered overseas company, upon its registration.

(6) The Registrar may extend the period of one month referred to in subsection (3), if it appears to him expedient to do so having regard to the circumstances of any particular case.

(7) A company incorporated outside Sri Lanka shall not establish a place of business within Sri Lanka or be registered as an overseas company, where the business being carried on by that company does not conform to the stipulations made by or under the Exchange Control Act.

Power of overseas companies to hold lands.

490. A registered overseas company shall have the same power to hold lands in Sri Lanka, as if it were a company incorporated under this Act.

Return to be delivered to Registrar where documents &c. altered.

491. Where in the case of a registered overseas company, any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of the company or any other instrument constituting or defining the constitution of the company;
- (b) the directors of the company or the particulars contained in the list of the directors;
- (c) the names and addresses of the persons authorised to accept service on behalf of the company; or
- (d) the address of —
 - (i) the registered or principal office of the company; or
 - (ii) the principal place of business of the company within Sri Lanka,

the company shall, within the prescribed time, deliver to the Registrar for registration, a return containing the prescribed particulars of the alteration.

492. (1) Every registered overseas company shall in every calendar year prepare financial statements, and where the company is a holding company, group financial statements, in such form and containing such particulars and including such documents, as under the provisions of this Act (subject however to any prescribed exceptions) it would, if it had been a company of the same description within the meaning of this Act, have been required to prepare and deliver certified copies of those documents to the Registrar for registration.

Financial
statements of
overseas
company.

(2) Where any document referred to in subsection (1) is not in an official language of Sri Lanka or in English, there shall be annexed to it a translation in a language specified by the Registrar and certified in the prescribed manner.

493. (1) Where it appears to the Registrar that the corporate name of a registered overseas company is a name by which the company, had it been formed under this Act, would on the relevant date have been precluded from being registered under section 7 of this Act, or in respect of which a direction could have been given under subsection (1) of section 10, the Registrar may serve a notice on that registered overseas company stating why the name could not have been registered, or the grounds on which such a direction could have been given, as the case may be.

Name of
overseas
company.

(2) No notice under subsection (1) may be served on a company later than twelve months after the relevant date.

(3) The “relevant date” for the purposes of subsections (2) and (3) is—

- (a) the date on which the overseas company has complied with the provisions of section 489; or

- (b) if there has been a change in the corporate name of the overseas company, the date on which notice of that change was given under section 491.

(4) A registered overseas company on which a notice has been served under subsection (1) —

- (a) may deliver to the Registrar a notice in the prescribed form, specifying a name approved by the Registrar, other than its corporate name under which it proposes to carry on business in Sri Lanka; and
- (b) may after that name has been registered, at any time deliver to the Registrar, a notice in the prescribed form specifying a name approved by the Registrar, other than its corporate name, in substitution for the name previously registered.

(5) The name by which an overseas company is for the time being registered under subsection (4), shall for all purposes of the law of Sri Lanka, be deemed to be the name of the company. The provisions of this subsection—

- (a) shall not affect references to the corporate name of the company in this section;
- (b) shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company. Any legal proceedings that might have been commenced or continued against the company by its corporate name, may be commenced or continued against it by the name by which it is for the time being registered.

(6) The Registrar may withdraw a notice given under subsection (1), if he is satisfied that it ought not to have been given, or that the circumstances in which it was given have changed, and at the time of withdrawal there would not be any grounds on which such a notice could be given. The provisions of subsection (7) shall not apply in respect of a notice that has been withdrawn under this subsection.

(7) A registered overseas company on which a notice has been served under subsection (1), shall not at any time after the expiration of two months from the service of that notice, (or such longer period as may be specified in the notice) carry on business in Sri Lanka under its corporate name.

(8) Where a registered overseas company fails to comply with the requirements of subsection (7)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees;
- (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding one hundred thousand rupees.

494. Every registered overseas company shall—

Obligation to state name and particulars of company.

- (a) in every prospectus inviting subscriptions for its shares or debentures in Sri Lanka, state the country in which the company is incorporated;
- (b) ensure that at every place where it carries on business in Sri Lanka, the name of the company and the country in which the company is incorporated are clearly displayed;
- (c) ensure that its name and the name of the country in which it is incorporated, are clearly stated in—
 - (i) all business letters of the company;
 - (ii) all notices and other official publications of the company;
 - (iii) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods signed on behalf of the company;
 - (iv) all invoices, receipts and letters of credit of the company; and

- (v) all other documents issued or signed by the company which evidence or create a legal obligation of the company; and
- (d) where the liability of the members of the company is limited, cause notice of that fact to be clearly stated in every such prospectus and in all letters and other documents referred to in paragraph (c), and to be clearly displayed at every place where it carries on its business.

Service on
overseas
company.

495. (1) Any document or notice required to be served on a registered overseas company, shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part of this Act, and left at or sent by post to the address which has been so delivered.

(2) Where—

- (a) any registered overseas company has failed to deliver to the Registrar the name and address of a person resident in Sri Lanka, who is authorised to accept on behalf of the company service of documents or notices; or
- (b) at any time, all the persons whose names and addresses have been so delivered are dead or have ceased to reside in Sri Lanka or refuse to accept service on behalf of the company or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post, to any place of business established by the company in Sri Lanka.

Registrar to be
notified when
company ceases
to have place of
business in Sri
Lanka.

496. Where any registered overseas company ceases to have a place of business in Sri Lanka, it shall forthwith give notice of the fact to the Registrar. As from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

497. (1) An application may be made to the court for the winding up of the assets in Sri Lanka of an overseas company in accordance with Part XII, subject to the modifications and exclusions set out in the Thirteenth Schedule.

Liquidation of assets in Sri Lanka of overseas company.

(2) An application may be made under subsection (1), whether or not the overseas company—

- (a) is a registered overseas company;
- (b) has given notice under section 496 that it has ceased to have a place of business in Sri Lanka ; or
- (c) has been dissolved or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

498. Where any company to which this Part of this Act applies, fails to comply with any of the provisions of this Part other than section 493, the company, and every officer or agent of the company who knowingly and willfully authorises or permits the default, shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Penalties for non-compliance.

499. (1) Where any overseas company has failed to comply with any provision of this Part of this Act, and fails to make good the default within ten working days from the date of service of a notice on the company requiring it to do so, the court may on an application made to the court by the Registrar or by any creditor of the company or by any other person who appears to the court to be interested, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order.

Enforcement of duty to comply with provisions of this Part.

(2) Any order made under subsection (1) may provide that, all costs of and incidental to the application, shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a company or its officers, in respect of any default referred to in subsection (1).

RESTRICTIONS ON SALE OF SHARES AND OFFER OF SHARE
FOR SALE

Dating of
prospectus and
particulars to be
contained
therein.

500. (1) It shall not be lawful for any person to issue, circulate, or distribute in Sri Lanka any prospectus offering for subscription any shares in or debentures of a company, incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established or when formed will or will not establish a place of business in Sri Lanka, unless the prospectus is dated and—

- (a) contains particulars with respect to the following matters :—
 - (i) the instrument constituting or defining the constitution of the company ;
 - (ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;
 - (iii) an address in Sri Lanka where the said instrument, enactments, or provisions or copies thereof and if the same are in a language other than the official language of Sri Lanka or in English, a translation thereof in a language specified by the Registrar and certified in the prescribed manner, can be inspected ;
 - (iv) the date on which and the country in which the company was incorporated ;
 - (v) whether the company has established a place of business in Sri Lanka and, if so, the address of its principal office in Sri Lanka ;

- (b) states the matters specified in Part I of the Fourth Schedule hereto, and subject to the provisions contained in Part III, sets out the reports specified in Part II, of that Schedule :

Provided that the provisions of subparagraphs (i), (ii) and (iii) of paragraph (a) shall not apply in the case of a prospectus issued more than two years from the date on which the company is entitled to commence business, and in the application of Part I of the Fourth Schedule hereto for the purposes of this subsection, paragraph 3 of Part I of such Schedule shall have effect with the substitution for the reference to the articles, of a reference to the constitution, of the company.

(2) Any condition requiring or binding an applicant for shares or debentures, to waive compliance with any requirements imposed by virtue of paragraph (a) or paragraph (b) of subsection (1), or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any person in Sri Lanka a form of application for shares in or debentures of such a company or intended company as is referred to in subsection (1), unless the form is issued with a prospectus which complies with this Part and the issue thereof in Sri Lanka, does not contravene the provisions of subsection (1) of section 501 :

Provided that the provisions of this subsection shall not apply, where it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1), a director or other person responsible for

the issue of the prospectus shall not incur any liability by reason of such non-compliance or contravention, where—

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 17 of the Fourth Schedule hereto, no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.

(5) The provisions of this section—

- (a) shall not apply to the issue to existing members or debenture holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures has or does not have a right to renounce in favour of other persons ; and
- (b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects, uniform with the shares or debentures previously issued,

but, subject as aforesaid, the provisions of this section shall apply to a prospectus or form of application whether issued on or with reference to, the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the provisions of this Act, other than this section.

501. (1) It shall not be lawful for any person to issue, circulate or distribute in Sri Lanka, any prospectus offering for subscription shares in or debentures of a company incorporated outside Sri Lanka, whether the company has or has not established or when formed, will or will not be established, a place of business in Sri Lanka—

Provisions as to expert's consent and allotment.

- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given or has before delivery of the prospectus for registration withdrawn his written consent to the issue of the prospectus, with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid ; or
- (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions other than penal provisions of section 47, so far as applicable thereto.

(2) In this section the expression “expert” includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in or in any report or memorandum appearing on the face of or by reference incorporated in or issued with, such prospectus.

Registration of prospectus.

502. It shall not be lawful for any person to issue, circulate or distribute in Sri Lanka, any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established or when formed will not establish a place of business in Sri Lanka, unless before the issue, circulation or distribution of the prospectus in Sri Lanka, a copy thereof certified by the Chairman of the company as having been approved by resolution of the managing body, has been so delivered and there is endorsed on or attached to the copy—

- (a) any consent to the issue of the prospectus required by the provisions of section 501 ; and
- (b) where the person making any report in accordance with Part II of the Fourth Schedule hereto, have made therein or have without giving reasons indicated therein, any such adjustments as are mentioned in paragraph 30 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

Penalty for contravention of section 500, section 501 or section 502.

503. Any person who is knowingly responsible for the issue, circulation or distribution of prospectus or for the issue of a form of application for shares or debentures in contravention of any of the provisions of section 500, section 501, or section 502, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand rupees.

Civil liability for misstatements in prospectus.

504. The provisions of section 41 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Sri Lanka, whether the company has or has not established or when formed will or will not establish a place of business in Sri Lanka, with the substitution for any reference to section 38, of the reference to section 501.

505. (1) Where any document by which shares in or debentures of a company incorporated outside Sri Lanka are offered for sale to the public would, where the company concerned had been a company within the meaning of this Act, have been deemed by virtue of the provisions of section 43 to be a prospectus issued by the company, that document shall be deemed to be for the purposes of this Part of this Act, a prospectus issued by the company.

Interpretation of provisions as to prospectuses.

(2) An offer of shares or debentures for subscription or sale to any person, whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions “prospectus”, “shares” and “debentures” shall have the same meanings as and when used in relation to a company incorporated under this Act.

PART XIX

ADVISORY COMMISSION

506. (1) For the purposes of advising the Minister on any matters in relation to the law relating to companies, the Minister may—

Appointment &c. of Advisory Commission.

(a) constitute a Commission (hereinafter referred to as the “Advisory Commission”) consisting of not less than five and not more than ten persons with suitable qualifications ; and

(b) appoint one of such persons to be Chairman of the said Advisory Commission.

(2) It shall be the duty of the Advisory Commission—

(a) to inquire into and report to the Minister on any matter or question relating to companies and the