

after the making of a distribution which is deemed not to have been validly made, each shareholder who agreed to the making of such distribution will be personally liable to the company, to repay to the company so much of the distribution which the company is not able to recover from the shareholders to whom the distribution was made.

(6) Where an action for recovery is brought against a shareholder under subsection (4) or (5), and the court is satisfied that the company could by making a distribution of a lesser amount have satisfied the solvency test, the court may —

- (a) permit the shareholder to retain; or
- (b) relieve the shareholder from liability in respect of,

an amount equal to the value of any distribution that the company could properly have made under the circumstances.

PART III

COMPANIES LIMITED BY GUARANTEE

32. Any two or more persons may apply to form a company limited by guarantee by making an application to the Registrar for the same in the prescribed form signed by each of the initial members, together with the following documents :—

Application for incorporation of a company limited by guarantee.

- (a) the articles of association of the company;
- (b) a consent under section 203 from each of the initial directors, to act as a director of the company; and
- (c) a consent under section 221 from the initial secretary, to act as secretary of the company.

Company limited by guarantee must have articles.

33. (1) A company limited by guarantee shall have articles which sets out—

- (a) the objects of the company; and
- (b) the amount which each member of the company undertakes to contribute to the assets of the company, in the event of such company being put into liquidation.

(2) Nothing in subsection (1) shall prevent a company limited by guarantee from providing in its articles, that specified clauses of the articles of association set out in the First Schedule hereto, shall apply to that company and any such provision shall have effect accordingly.

Power to dispose with “limited” in the name of charitable and other companies.

34. (1) Where the Registrar is satisfied that an association about to be formed as a company limited by guarantee is to be formed for promoting commerce, art, science, religion, charity, sport, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members —

- (a) the Registrar may by licence direct that the association be registered as a company limited by guarantee, without the addition of the word “Limited” to its name; and
- (b) the association may be registered accordingly and shall on registration enjoy all the privileges and subject to the provisions of this section, be subject to all the obligations of a limited company.

(2) Where it is proved to the satisfaction of the Registrar—

- (a) that the objects of a company limited by guarantee are restricted to those specified in subsection (1) and to objects incidental or conducive to them; and

- (b) that by its articles the company is required to apply its profits or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Registrar may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word “Limited”. The provisions of subsections (2), (3), (4) and (5) of section 8 shall apply to a change of name under this subsection.

(3) A licence granted under this section may be subject to such terms and conditions as the Registrar thinks necessary for the purpose of ensuring that the association conforms to the requirements of subsection (1). The terms and conditions shall be binding on the association and shall, if the Registrar so directs, be incorporated into the articles of such company.

(4) No alteration may be made in the articles of a company to which a licence has been granted under this section, without the prior written approval of the Registrar.

(5) The provisions of section 6 shall not apply in respect of a company to which a licence is granted under this section.

(6) A licence granted under this section may at any time be revoked by the Registrar where the company to which the licence is granted fails to comply with the requirements of subsection (1) or subsection (3). Upon revocation of a licence, the Registrar shall enter upon the register the word “Limited” at the end of the name of the company, and the company shall cease to enjoy the exemptions and privileges granted by the provisions of this section. The provision of subsections (3) and (4) of section 8 shall apply to a change of name under this subsection.

(7) Before a licence is revoked under subsection (6), the Registrar shall give the company notice in writing of his

intention and shall afford the association or company an opportunity of being heard in opposition to the revocation.

(8) Where an association in respect of which a licence under this section is in force alters the provisions of its constitution with respect to its objects, the Registrar may, unless he sees fit to revoke the licence, vary, add to or alter the terms and conditions subject to which the license was granted.

Provisions
which apply to
companies
limited by
guarantee.

35. (1) The provisions contained in the list of sections of this Act specified in the Third Schedule hereto, shall not apply to and in respect of a company limited by guarantee.

(2) The provisions of this Act other than the sections referred to in subsection (1), shall apply to a company limited by guarantee with all necessary modifications, as if—

- (a) the company were a limited company ;
- (b) references to shareholders were references to members of the company ;
- (c) each member held one share in the company ; and
- (d) references to the share register were references to the register of members.

PART IV

SHARES AND DEBENTURES

PROSPECTUS

Dating of
prospectus.

36. A prospectus issued by or on behalf of a company or in relation to a company to be formed shall bear a date, and such date shall unless the contrary is proved, be taken as the date of publication of such prospectus.