

516. (1) A fine may be imposed by a court for any offence under this Act, notwithstanding that the fine exceeds the amount of the fine which the court may impose in the exercise of its ordinary jurisdiction.

Imposition and application of fines.

(2) The court imposing any fine under this Act, may direct that the whole or any part of it shall be applied in or towards payment of the costs of the proceedings or in or towards rewarding the persons on whose information or at whose suit the fine is recovered.

517. Nothing in this Act relating to the institution of criminal proceedings by the Attorney-General, shall be taken to preclude any person from instituting or carrying on any such proceedings.

Savings as to private prosecutors.

518. Where proceedings are instituted under this Act against any person by the Attorney-General, nothing in this Act shall be taken to require any person who has acted as attorney-at-law for the accused, to disclose any privileged communication made to him in that capacity.

Savings for privileged communications.

PART XXII

MISCELLANEOUS

PROHIBITION OF PARTNERSHIP WITH MORE THAN TWENTY MEMBERS

519. (1) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by its individual members, unless it is registered as a company under this Act or under some other enactment.

Prohibition of partnership with more than twenty members.

(2) No company, association or partnership consisting of more than twenty persons, which is formed outside Sri Lanka, shall carry on in Sri Lanka any business that has for its object

the acquisition of gain by the company, association or partnership or by its individual members, unless—

- (a) it is duly incorporated as a company outside Sri Lanka ; and
- (b) has an established place of business within Sri Lanka.

(3) Nothing in subsection (1) or (2) shall apply to—

- (a) a partnership formed for the purpose of carrying on practice as attorneys-at-law, consisting of persons each of whom is an attorney-at-law ;
- (b) a partnership formed for the purpose of carrying on practice as accountants, consisting of persons each of whom is a chartered accountant ;
- (c) a partnership formed for the purpose of carrying on practice as members of a licensed stock exchange, consisting of persons each of whom is a member of that licensed stock exchange ;
- (d) a partnership formed for any purpose that may be prescribed, consisting of such persons as may be prescribed.

(4) Where any company, association or partnership consisting of more than twenty persons is formed in contravention of the provisions of subsection (1) or carries on any business in contravention of the provisions of subsection (2), each of those persons—

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

- (b) shall, without prejudice to paragraph (a), be severally liable for the payment of the whole of the debts of the company, association or partnership of which he is or was a member, may be sued accordingly without joining in the suit any other member of the company, association or partnership.

APPLICATION AND REFERENCE TO COURT

520. (1) Every application or reference to court under the provisions of this Act shall, unless otherwise expressly provided or unless the court otherwise directs, be by way of petition and affidavit, and every person against whom such application or reference is made, shall be named a respondent in the petition and be entitled to be given notice of the same and to object to such application or reference.

Procedure.

(2) Every application or reference made to the court in the course of any proceeding under this Act or incidental thereto, shall be made by motion in writing.

(3) The Registrar shall be entitled to be heard or represented in any application or reference made to the court under this Act at any stage of such application or reference.

(4) In all proceedings before court by way of application or reference under this Act, no order for costs shall be made against the Registrar.

521. (1) Subject to the provisions of subsections (2) and (3), pending the making of a final order in any application or reference to court made under this Act, the court may on the application of a party to the proceedings, make such interim order, including a restraining order, as it thinks fit. Such order may at the discretion of the court, be made *ex-parte* or after notice to the respondent. The respondent may make an application for an order of revocation or variation of the *ex-parte* order, with notice to the petitioner.

Grant of
interim relief.

(2) The court shall not grant a restraining order or any other form of interim order under this Act on the application of a shareholder, former shareholder or a director, unless the applicant has first lodged with the court an undertaking in writing that if the order sought is granted, and the company or any other person suffers loss or damage which the court considers as just and equitable for the applicant to bear, the applicant will indemnify the company or other person against that loss or damage.

(3) The court shall, before or at the time of granting a restraining order or any other form of interim order, fix the amount of security which the applicant shall provide for the undertaking given under subsection (2). Security may be provided by depositing funds with the court or by providing a bank guarantee or in such other manner as the court may consider sufficient.

(4) The court may from time to time, on the application of the company or any other person who may suffer loss or damage as a consequence of the making or continuation in force of an interim order, increase the amount of security to be provided by the applicant for the undertaking given under subsection (2). Where an order for an increase in the amount of security to be provided is made, it shall be a condition of the continuation of the interim order, that the increased security be provided within a period specified by the court.

(5) The court may make such orders as it think just and equitable—

- (a) by way of enforcement of an undertaking given under subsection (2) ;
- (b) for the payment out to any person of funds deposited as security under subsection (3) ;
- (c) for the investment in an interest bearing bank account, of any funds deposited as security under subsection (3).

522. Nothing in this Act shall require disclosure by any person to the Registrar or to an inspector appointed by the Registrar—

Savings for attorney-at-law and bankers.

- (a) of any information which he would in proceedings in a court be entitled to refuse to disclose on grounds of legal professional privilege, except if he is an attorney-at-law, the name and address of his client ; or
- (b) unless the court orders otherwise, by a company's bankers, of any information as to the affairs of any of their customers other than the company.

523. A document may be served on a company—

Service of documents on company.

- (a) by leaving it at or sending it by post to the registered office of the company ;
- (b) by delivering it or sending it by post to any director, secretary, manager or other officer of the company ; or
- (c) if for any reason it cannot be served as aforesaid, on such director, secretary, manager or other officer, by delivering it or sending it by post or by serving it in such manner as may be ordered by the court.

524. Any document purporting to be made or furnished for the purposes of this Act by or on behalf of a company or by any person, shall for all purposes be, until the contrary is proved, deemed to have been made or furnished by such company or person, as the case may be. Any person signing any such document shall be deemed to be cognizant all matters therein.

Documents to be received in evidence.

525. Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, where it appears by credible testimony that there is reason to believe that the company will be unable to

Costs in action by certain limited companies.

pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

526. (1) Where in any proceeding for negligence, default, breach of duty, or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is or not an officer of the company), it appears to the court hearing the case that the officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Where any such officer or person referred to in subsection (1) has reason to apprehend that, any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had, if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust has been brought.

Regulations.

527. (1) The Minister may make regulations for or in respect of all matters which are stated or required by this Act to be prescribed or for which regulations are required or authorised by this Act to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is so deemed to be rescinded, shall be published in the *Gazette*.

528. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

529. (1) In this Act, unless the context otherwise requires—

Interpretation.

“accounting period” means in relation to any body corporate, the period in respect of which the financial statements of such body corporate are made up, whether the said period is a year or not ;

“agent” does not include any person’s attorney-at-law acting as such ;

“annual return” means the return required to be made by a company under section 131;

“articles” means articles of association of a company as originally framed or as altered by special resolution, including so far as they apply to the company, the regulations contained in Part C of the Schedule to the Joint Stock Companies Ordinance, 1861 or in Table B in the Schedule to the Joint Stock Banking Ordinance, 1897 or in Table A in the First Schedule to the Companies Ordinance (Cap. 145) or in Table A in the First Schedule to the Companies Act, No. 17 of 1982, or the model articles ;

“balance sheet date” means the close of the 31st day of March or of such other date as the Board of the company has adopted as the company’s balance sheet date and the notification of which is given forthwith to the Registrar ;

“board” and “board of directors” in relation to a company, means —

- (a) directors of the company who number not less than the required quorum acting together as a board of directors ; or
- (b) if the company has only one director, that director ;

“book and paper” and “book or paper” includes accounts, deeds, writings and documents ;

“certified” means certified in such manner as may be prescribed, or if no manner of certification is prescribed in relation to any document or class of documents, in such manner as the Registrar may require ;

“class” means a class of shares having attached to them identical rights, privileges, limitations and conditions ;

“company” means a company incorporated under this Act or an existing company ;

“the court” means a High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the *Gazette* under section 2 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, within the Province for which such High Court is established, or where no such High Court vested

with such civil jurisdiction is established for any Province, the High Court established for the Western Province ;

“debenture” includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not ;

“director” includes—

- (a) a person occupying the position of director of the company, by whatever name called ;
- (b) for the purposes of sections 187, 188, 189, 190, 197, 374 and 377 —
 - (i) a person in accordance with whose directions or instructions a person referred to in paragraph (a) may be required or is accustomed to act ;
 - (ii) a person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act ; and
 - (iii) a person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the articles of the company, would be required to be exercised by the board ; and
- (c) for the purposes of sections 187 to 195 (both inclusive), 197, 374 and 377, a person to whom a power or duty of the board has been directly delegated by the board with that person’s consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board.

The provisions of paragraphs (b) and (c) shall not apply to a person to the extent that the person acts only in a professional capacity ;

“distribution” means—

- (a) the direct or indirect transfer of money or property, other than the shares of a company, to or for the benefit of a shareholder ; or
- (b) the incurring of a debt to or for the benefit of a shareholder,

in relation to a share or shares held by that shareholder, whether by means of a payment of a dividend, a redemption or other acquisition of the share or shares, a distribution of indebtedness or otherwise ;

“dividend” shall have the same meaning as given in section 60 ;

“document” means a document in any form, including—

- (a) any writing on material ;
- (b) information recorded or stored by means of a tape recorder, computer, or other device and material subsequently derived from information so recorded or stored ;
- (c) a book, graph, or drawing ; and
- (d) a photograph, film negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced ;

“employees’ share scheme”, in relation to a company, means a scheme for encouraging or facilitating the holding of shares in the company by or for the benefit of—

- (a) the *bona fide* employees or former employees of the company or any related company ; or
- (b) the wives, husbands, widows, widowers or children or step-children of such employees or former employees ;

“existing company” means, a company formed and registered under the Joint Stock Companies Ordinance, 1861, or the Joint Stock Banking Ordinance, 1897, the Companies Ordinance (Cap. 145), or the Companies Act, No. 17 of 1982 ;

“financial statements” means—

- (a) a balance sheet for the company as at the balance sheet date ; and
- (b) in the case of—
 - (i) a company trading for profit, a profit and loss statement for the company in relation to the accounting period ending at the balance sheet date ; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance sheet date,

together with any notes or documents giving information relating to the balance sheet or statement ;

“Fund” means, the Fund established under section 479;

“group financial statements” means—

- (a) a consolidated balance sheet for the group as at that balance sheet date ;
- (b) where a member of the group trades for profit, a consolidated profit and loss statement for the group in relation to the accounting period ending at that balance sheet date ; and
- (c) where no member of the group trades for profit, a consolidated income and expenditure statement for the group, in relation to the accounting period ending at that balance sheet date,

together with any notes or documents giving information relating to the balance sheet or statement ;

“holding company”, a company shall be deemed to be another company’s holding company, if and only if that other company is its subsidiary. For the purpose of this definition “company” includes any body corporate;

“interest group” in relation to any action or proposal affecting rights attached to shares, means a group of shareholders—

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way;

“legal representative” means, an executor or administrator or in the case of an estate not administrable in law, the next-of -kin who have adiated the inheritance;

“listed company” means, a company, any shares or securities of which are quoted on a licensed stock exchange;

“licensed commercial bank” means, a company or institution issued with a licence under the Banking Act, No. 30 of 1988, to carry on business as a licensed commercial bank;

“manager” includes, any person occupying the position of manger by whatever name called;

“minimum subscription” means, the amount stated in a prospectus as the minimum amount, which in the opinion of the directors must be raised by the issue of share capital and reckoned exclusively of any amount payable otherwise than in cash;

“officer” in relation to a body corporate, includes a director, manager or secretary;

“ordinary resolution” means, a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question;

“overseas company” shall have the same meaning as given in section 488;

“prescribed” means, prescribed by regulation;

“prospectus” means, any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription to or purchase of any shares or debentures of a company, and includes any such notice, circular, advertisement, or other invitation, notwithstanding that it may contain on the face thereof, that it is not a prospectus or offer of shares to the public;

“receiver” means, a receiver of the whole or a part of the property and undertaking of a company, appointed under Part XV;

“redeemable” shall have the same meaning as given in section 66;

“Register” means, the Register required to be kept under section 473;

“Registrar” means, the Registrar-General of Companies or other officer performing under this Act, the duty of registration of companies;

“resolution altering articles” shall have the same meaning as given in section 15;

“share” means, a share issued by a company;

“share register” means, the register required to be kept under section 123;

“shareholder” shall have the same meaning as given in section 86;

“stated capital” shall have the same meaning as given in section 58;

“subsidiary”, a company shall be deemed to be a subsidiary of another, if and only if—

(a) that other company either—

- (i) controls the composition of its board of directors ;
- (ii) is in a position to exercise or control the exercise of more than half the maximum number of votes that can be exercised at a meeting of the company;

- (iii) hold more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital;
 - (iv) is entitled to receive more than half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary.

For the purpose of this definition, the composition of a company's board of directors shall be deemed to be controlled by another company if, and only if, that other company by the exercise of any power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and that other company shall be deemed to have power to appoint a director, if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other company, of a power to so appoint ; or
- (b) a person's appointment as a director follows necessarily from his appointment as a director of that other company.

In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by a company in a fiduciary capacity shall be treated as not held or exercisable by it;

- (b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
 - (ii) by or by a nominee for a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company, or of a trust deed for securing any issue of such debentures, shall be disregarded;
- (d) any shares held or power exercisable by or by a nominee for that other or its subsidiary (not being held or exercisable as referred to in paragraph (c)), shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money, and the shares are held or the power is exercisable by way of security only, for the purposes of a transaction entered into in the ordinary course of that business.

For the purpose of this definition “company” includes a body corporate; and

“working day” means a day other than Saturday, Sunday or a public holiday.

(2) For the purposes of this Act, —

- (a) a company is related to another company, if—
 - (i) that company is the subsidiary or holding company of the other company;
 - (ii) the holding company of that company is also a holding company of the other company; or
 - (iii) that company is related to a company which is related to the other company ;
- (b) where any section of this Act provides that an officer of a company who is in default shall be liable to a penalty, the expression “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that section;
- (c)
 - (i) one or more groups may exist in relation to any action or proposal; and
 - (ii) if—
 - (A) action is taken in relation to some holders of shares in a class and not others; or
 - (B) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class,

holders of shares in the same class, may fall into two or more interest groups.
- (3) Any reference in this Act—
 - (a)
 - (i) to the shareholders of a company includes, in relation to a company which has only one shareholder, a reference to that shareholder;

- (ii) to the directors of a company includes, in relation to a company which has only one director, a reference to that director ;
 - (b) to a body corporate or to a corporation, shall be construed as not including a corporation sole but as including a company incorporated outside Sri Lanka;
 - (c) unless the context otherwise requires, to a person by whom, or in whose interests a receiver was appointed, includes a reference to a person to whom the rights and interests under any deed or agreement by or under which the receiver was appointed, have been transferred or assigned.
- (4) Where public notice of any matter is required to be given under this Act, that notice shall be given by publishing a notice of that matter—
- (a) in at least one issue of the *Gazette*; and
 - (b) in at least one issue of a daily newspaper in the Sinhala, Tamil and English languages, circulating in the area in which—
 - (i) the company's place of business;
 - (ii) if the company has more than one place of business, the company's principal place of business; or
 - (iii) if the company has no place of business or the location of neither its principal place of business nor any other place of business is known to the person required to give the notice, the company's registered office,
- is situated.

TRANSITIONAL PROVISIONS AND SAVINGS

530. (1) Without prejudice to the provisions contained in sections 5 and 10 of the Interpretation Ordinance—

Transitional provisions.

- (a) nothing in the repeal of any former written law relating to companies shall affect any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former written law relating to companies, but any such order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement, resolution, direction, proceeding, instrument or thing shall, if in force on the appointed date, continue to be in force, and so far as it could have been made, passed, given, taken, issued or done under this Act, shall have effect as if made, passed, given, taken, issued, or done under the provisions of this Act;
- (b) any document referring to a provision in any former written law relating to companies, shall be construed as referring to the corresponding provision contained in this Act;
- (c) any person appointed to any office under or by virtue of any former written law relating to companies, shall be deemed to have been appointed to that office under or by virtue of the provisions of this Act;
- (d) any Register kept under any former written law relating to companies, shall be deemed part of the Register to be kept under the corresponding provisions of this Act;
- (e) all funds and accounts constituted under the provisions of this Act, shall be deemed to be in

continuation of the corresponding funds and accounts constituted under the former written law relating to companies.

(2) In this section the expression “former written law relating to companies” means any written law repealed by the Companies Ordinance (Cap. 145) or the Companies Act, No. 17 of 1982 or this Act.

(3) All actions, proceedings or matters, other than those referred to in section 532, and pending in a District Court on the day preceding the date on which this Act came into operation, shall stand removed to the court as defined in this Act and such court shall have jurisdiction to take cognizance of, hear and determine, or continue and complete, the same:

Provided that any such action, proceeding or matter, in which the adducing of evidence has commenced in the District Court on the day preceding the date on which this Act came into operation, shall be heard and determined by the said District Court.

Savings.

531. Nothing in this Act shall affect—

- (a) the incorporation of any company registered under any written law repealed by the Companies Ordinance (Cap. 145), Companies Act, No. 17 of 1982 or this Act;
- (b) Part C of the Schedule to the Joint Stock Companies Ordinance, 1861, or any part thereof, so far as the same applies to any company in existence on the appointed date;
- (c) Table B in the Schedule to the Joint Stock Banking Ordinance, 1897, or any part thereof, so far as the same applies to any company in existence on the appointed date;

- (d) Tables A and C in the First Schedule to the Companies Ordinance (Cap. 145) or any part thereof, so far as the same applies to any company in existence on the appointed date;
- (e) Table A and C in the First Schedule to the Companies Act, No. 17 of 1982 or any part thereof, so far as the same applies to any company in existence on the appointed date.

532. (1) Subject to the provisions of subsection (2), the provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the appointed date. Every such company shall be wound up in the same manner and with the same incidents, as if this Act had not been enacted, and for the purposes of the winding up, the written law under which the winding up commenced shall be deemed to remain in full force.

Savings of
pending
proceedings for
winding up.

(2) Where any company is being wound up in accordance with subsection (1), the court may, on application made by the Registrar or by any creditor of the company, and where the court is of opinion that it is expedient to do so in the circumstances of the case, make order that any specified provision of this Act with respect to liquidation shall apply to the winding up of that company, and may give such incidental or supplemental direction as may appear to the court to be necessary for the purposes of the application of such provision. Where the court makes any such order, any provision of this Act specified in the order shall, subject to any such directions, apply accordingly.

PART XXIII

REPEALS AND AMENDMENTS

Repeals.

533. (1) The Companies Act, No. 17 of 1982 is hereby repealed.

(2) The Companies (Special Provisions) Law, No. 19 of 1974 and the Foreign Companies (Special Provisions) Law, No. 9 of 1975 are hereby repealed.

Amendment of
the First
Schedule of Act,
No. 10 of 1996.

534. The First Schedule to the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 is hereby amended by the substitution for item (2) of that Schedule, of the following item :—

“(2) All application and proceedings under the Companies Act, No. 07 of 2007”.

FIRST SCHEDULE

[Section 14]

MODEL ARTICLES

A. SHARES

1. *Issue of shares*

(1) Subject to articles 1 (2) and 1 (3), of these articles, the board may issue such shares to such persons as it thinks fit in accordance with section 51 of this Act. Where the shares confer rights other than those specified in subsection (2) of section 49 of this Act, or impose any obligation on the holder, the board must approve terms of issue which set out the rights and obligations attached to the shares as required by subsection (2) of section 51.

(2) Before it issues shares, the board must decide the consideration for which the shares will be issued. The consideration must be fair and reasonable to the company and to all existing shareholders.

(3) Where the company issues shares which rank equally with or prior to existing shares, those shares must be offered to the holders of the existing shares in a manner which would, if accepted, maintain the relative voting and distribution rights of those shareholders. The offer must remain open for acceptance for a reasonable time.