

stamp duty. But it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

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

(5) The re-issue after the appointed date of debentures redeemed before that date, shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date.

Specific performance of contracts to subscribe for debentures.

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

PART V

SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS

Meaning of “shareholder”.

86. (1) In this Act, the term “shareholder” means—

- (a) a person whose name is entered in the share register as the holder for the time being of one or more shares in the company ;
- (b) until a person’s name is entered in the share register, a person named as a shareholder in an application for incorporation of a company at the time of registration of the company ;

- (c) until a person's name is entered in the share register, a person who is entitled to have that person's name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company ;
- (d) until a person's name is entered in the share register, a person to whom a share has been transferred and whose name ought to be but has not been entered in the register.

(2) Where a notice of any trust has been entered in the share register in respect of any shares in a company under subsection (2) of section 129, the person for whose benefit those shares are held in trust—

- (a) shall be deemed to be a shareholder in the company ;
and
- (b) shall in respect of those shares, enjoy all such rights and privileges and be subject to all such duties and obligations under this Act, as if his name had been entered in the share register as the holder of those shares.

(3) Where a company has wrongfully failed to enter in the share register the name of a person to whom shares have been transferred, that person—

- (a) shall be deemed to be a shareholder in the company ;
and
- (b) shall in respect of those shares, enjoy all such rights and privileges and be subject to all such duties and obligations under this Act, as if his name had been entered in the share register as the holder of those shares.

LIABILITY OF SHAREHOLDERS

Liability of shareholder.

87. (1) A shareholder shall not be liable for any act, default or an obligation of the company, by reason only of being a shareholder.

(2) The liability of a shareholder to the company is limited to any liability expressly provided for in the articles of the company or under this Act.

(3) Nothing in this section shall effect the liability of a shareholder to a company under a contract including a contract for the issue of shares, or for any tort or breach of a fiduciary duty or other actionable wrong committed by the shareholder.

Liability for calls.

88. (1) Subject to section 269, where a share renders its holder liable to calls or otherwise imposes a liability on its holder, that liability shall attach to the holder of the share for the time being and not to a former holder of the share, whether or not the liability became enforceable before the share was registered in the name of the current holder.

(2) Where—

(a) all or part of the consideration payable in respect of the issue of a share remains unsatisfied ; and

(b) the person to whom the share was issued no longer holds that share,

liability in respect of that unsatisfied considerations shall not attach to subsequent holders of the share, but shall remain the liability of the person to whom the share was issued or of any other person who assumed that liability at the time of issue.

89. Notwithstanding anything to the contrary in the articles of the company, a shareholder shall not be—

Shareholders must agree to increase in liability.

- (a) bound by a resolution altering its articles ; or
- (b) required to acquire or hold more shares in the company,

where that resolution or the holding of those shares would increase the liability of the shareholder to the company, unless the shareholder agrees in writing to be bound by the resolution or to accept the shares, as the case may be.

POWERS OF SHAREHOLDERS

90. (1) Powers reserved to the shareholders of a company by this Act may be exercised only—

Exercise of powers reserved to shareholders.

- (a) at a meeting of shareholders ; or
- (b) by a resolution in lieu of a meeting in terms of section 144.

(2) Powers reserved to the shareholders of a company by the articles of the company may subject to the articles, be exercised—

- (a) at a meeting of shareholders ; or
- (b) by a resolution in lieu of a meeting pursuant to section 144.

91. Unless otherwise provided by this Act or in the articles of a company, a power reserved to shareholders may be exercised by an ordinary resolution.

Exercise of powers by ordinary resolution.

92. (1) Notwithstanding anything to the contrary contained in the articles of a company, when shareholders exercise a power to—

Powers exercised by special resolution.

- (a) alter the company's articles ;

- (b) approve a major transaction for the purpose of paragraphs (a) or (b) of subsection (1) of section 185 of this Act;
- (c) approve an amalgamation of the company under section 241 of this Act ;
- (d) reduce the company's stated capital ;
- (e) resolve that the company be wound up voluntarily in terms of paragraph (b) or (c) of subsection (1) of section 319 of this Act;
- (f) change the name of a company ; or
- (g) change the status of a company,

such powers shall be exercised by special resolution.

(2) A special resolution passed in relation to a power referred to in paragraph (a), paragraph (b) or paragraph (c) of subsection (1), may be rescinded only by another special resolution.

(3) A special resolution passed in relation to a power referred to in paragraph (d) or paragraph (e) of subsection (1), cannot be rescinded thereafter.

MINORITY BUY-OUT RIGHTS

Shareholder
may require
company to
purchase shares.

93. Where a shareholder is entitled to vote on the exercise of the power set out in paragraph (a) of subsection (1) of section 92 and the proposed alteration imposes or removes a restriction on the business or activities in which the company may engage, or set out in paragraph (b) or (c) of subsection (1) of section 92, and the shareholder resolved to exercise those powers , and-

- (a) the shareholder cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the exercise of the power ; or

- (b) where the resolution to exercise the power was passed under section 144, the shareholder did not sign the resolution in respect of the shares registered in the shareholder's name and having the same beneficial owner,

that shareholder shall be entitled to require the company to purchase those shares in accordance with section 94.

94. (1) A shareholder of a company who is entitled to require the company to purchase shares by virtue of the provisions of section 93 or section 100 may—

Notice requiring purchase.

- (a) within ten working days of the passing of the resolution at a meeting of shareholders ; or
- (b) where the resolution was passed under section 144, before the expiration of ten working days after the date on which notice of the passing of the resolution is given to the shareholder,

give a written notice to the company, requiring the company to purchase those shares.

(2) Within twenty working days of receiving a notice under subsection (1), the board shall—

- (a) agree to the purchase of the shares by the company ;
- (b) arrange for some other person to agree to purchase the shares ;
- (c) apply to the court for an order under section 97 or section 98 ; or
- (d) arrange before taking the action concerned for the resolution to be rescinded in accordance with section 92 or decide in the appropriate manner not to take the action concerned, as the case may be,

and give written notice to the shareholder of the board's decision under this subsection.

Purchase by
company.

95. (1) Where the board agree under paragraph (a) of subsection (2) of section 94 to the purchase of the shares by the company, it shall, on giving notice under that subsection or within five working days of doing so—

- (a) nominate a fair and reasonable price for the shares to be acquired ; and
- (b) give notice of the price nominated to the holder of those shares.

(2) The shares are deemed to have been purchased by the company upon receipt by the shareholder of a notice under subsection (1).

(3) A shareholder who considers that the price nominated by the board is not fair or reasonable, shall forthwith give a notice of objection to the company.

(4) If within ten working days of giving notice to a shareholder under subsection (1), no objection to the price has been received by the company—

- (a) the company shall forthwith pay the price nominated to the shareholder ; and
- (b) the shareholder shall forthwith deliver any share certificate in respect of the shares to the company.

(5) If within ten working days of giving notice to a shareholder under subsection (1), an objection to the price has been received by the company, the company shall within five working days—

- (a) refer the question as to what amounts to a fair and reasonable price to the auditors of the company ; and

- (b) pay a provisional price in respect of the shares, equal to the price nominated by the board.

Upon payment of the provisional price by the company, the shareholder shall forthwith deliver any share certificate in respect of the shares to the company.

(6) Where a reference is made under paragraph (a) of subsection 5, the auditor shall expeditiously determine a fair and reasonable price for the shares to be purchased.

(7) Where the price determined under subsection (6)—

- (a) exceeds the provisional price already paid, the company shall forthwith pay the balance owing to the shareholder ; or
- (b) is less than the provisional price already paid, the shareholder shall forthwith repay the excess to the company.

(8) The auditors may determine the interest on any balance payable or excess to be repaid under subsection (7) at such rate as they think fit, having regard to whether the provisional price paid was reasonable.

(9) Where the company fails to refer the question to the auditors under paragraph (a) of subsection (5), a shareholder who has given notice of objection under subsection (3) and a shareholder not satisfied with the price as determined under subsection (6), may apply to court to appoint a fit and proper person for the purposes of determining a fair and reasonable price for the shares and the court may appoint such person as it thinks fit. A person so appointed by court may award interest according to the provisions of subsection (8).

(10) A purchase of shares by a company under this section is deemed not to be a distribution for the purposes of section 56, but is deemed to be a distribution for the purposes of subsections (1) and (3) of section 61.

Purchase of shares by third party.

96. (1) The provisions of section 95 shall apply to the purchase of shares by a person with whom the company has entered into an arrangement for the purchase in accordance with the provisions of paragraph (b) of subsection (2) of section 94, subject to such modifications as may be necessary, and in particular as if references in that section to the board and the company were references to that person.

(2) Every holder of shares that are to be purchased in accordance with the arrangement, shall be indemnified by the company in respect of any loss that may be suffered by such holder due to the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or as determined under subsections (6) or (9) of section 95, as the case may be.

Court may grant exemption.

97. (1) A company to which a notice has been given under section 94 may apply to court for an order exempting it from the obligation to purchase the shares to which the notice relates, on the ground that—

- (a) the purchase would be disproportionately damaging to the company ; or
- (b) the company cannot reasonably be required to finance the purchase.

(2) On an application made under this section, the court may make an order exempting the company from the obligation to purchase the shares, and may make any other order it thinks fit, including an order—

- (a) setting aside a resolution of the shareholders ;
- (b) directing the company to take or refrain from taking, any action specified in the order ;
- (c) requiring the company to pay compensation to the shareholders affected ; or
- (d) that the company be wound up by the court.

(3) The court shall not make an order under subsection (2) of this section, unless it is satisfied that the company has made reasonable efforts to arrange for another person to purchase the shares in accordance with paragraph (b) of subsection (2) of section 94.

98. (1) Where a notice is given to a company under section 94, and—

Court may grant exemption if company is insolvent.

- (a) the board considers that after the purchase by the company of the shares, the company would fail to satisfy the solvency test ; and
- (b) the company has made reasonable efforts to arrange for the shares to be purchased by another person in accordance with the provisions of paragraph (b) of subsection (2) of section 94, but has been unable to do so,

the company shall apply to the court for an order exempting it from the obligation to purchase those shares.

(2) The court may on an application made under subsection (1) and where it is satisfied that after the purchase of the shares the company would fail to satisfy the solvency test and the company has made reasonable efforts to arrange for the shares to be purchased by another person in accordance with paragraph (b) of subsection (2) of section 94, make—

- (a) an order exempting the company from the obligation to purchase the shares ;
- (b) an order suspending the obligation to purchase the shares ; or
- (c) such other order as it thinks fit, including any order referred to in subsection (2) of section 97.

(3) For the purposes of this section, the stated capital of a company shall not be taken into account in determining whether the company will after the purchase, fail to satisfy the solvency test.

Alteration of
shareholder
rights.

99. (1) A company shall not take any action that would affect the rights attached to shares, unless that action has been approved by a special resolution of each interest group.

(2) For the purposes of this section, the rights attached to a share include—

- (a) the rights, privileges, limitations, and conditions attached to the share under this Act or the articles of the company, including voting rights and rights to distributions ;
- (b) pre-emptive rights under section 53 ;
- (c) the right to have the procedure set out in this section, and any further procedure required by the articles of the company for the amendment or alteration of the articles, observed by the company ; and
- (d) the right that a procedure required by the articles of the company for the amendment or alteration of the articles, not be amended or altered.

Shareholder
may require
company to
purchase shares.

100. Where an interest group has approved the taking of any action that affects the rights attached to shares and the company becomes entitled to take that action, and—

- (a) a shareholder who was a member of the interest group cast all the votes attached to the shares registered in that shareholder's name and having the same beneficial owner against approving the action ; or
- (b) where the resolution approving the taking of the action was passed under section 144, a shareholder

who was a member of the interest group did not sign the resolution in respect of the shares registered in that shareholder's name and having the same beneficial owner,

such shareholder shall be entitled to require the company to purchase those shares in accordance with section 94.

101. The taking of any action by a company affecting the rights attached to shares shall not be invalid by reason only that the action was not approved under section 99.

Action not invalid.

PART VI

REGISTRATION OF CHARGES

REGISTRATION OF CHARGES WITH REGISTRAR

102. (1) Where a company creates a charge to which this section applies, it shall be the duty of the company within the time specified in subsection (3), to cause a copy of the instrument by which the charge is created or evidenced, to be delivered to the Registrar for registration under this Act. The copy of the instrument shall be accompanied by a certificate in the prescribed form issued by a director or secretary of the company or an attorney-at law, verifying the copy as a true copy and containing the prescribed particulars of the charge.

Registration of charges created by companies registered in Sri Lanka.

(2) This section shall apply to the following charges :—

- (a) a charge for the purpose of securing any issue of debentures ;
- (b) a charge on uncalled share capital of the company ;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ;