

(4) Where a company fails to comply with a notice given under subsection (1)—

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

APPLICATION OF THIS PART TO OVERSEAS COMPANIES

**112.** The provisions of this Part of this Act shall apply in relation to charges on property in Sri Lanka which are created and to charges on property in Sri Lanka which is acquired, by an overseas company.

Application of this Part to charges and property to be acquired by an overseas company.

PART VII

MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE

**113.** (1) Every company shall have a registered office in Sri Lanka to which all communications and notices may be addressed.

Registered office of a company.

(2) Subject to section 114, the registered office of a company at a particular time is the place that is described in the register as its registered office at that time.

(3) If the registered office of a company is at the office of any chartered accountant, attorney-at-law, or any other person, the description of the registered office shall state—

- (a) that the registered office of the company is at the office of the chartered accountant, attorney-at-law, or any other person ; and
- (b) particulars of the location of those offices.

Change of  
registered  
office.

**114.** (1) Subject to the company's articles and to the provisions of subsection (2), the board of a company may change the registered office of the company at any time.

(2) Notice in the prescribed form of the change shall be given to the Registrar for registration, and the change shall take effect five working days after the notice is received by the Registrar or on such later date as may be specified in the notice.

Requirement  
to change  
registered  
office.

**115.** (1) The Registrar may require a company to change its registered office by notice in writing delivered or sent—

- (a) to the company at its registered office ; and
- (b) to each person who appears from the documents delivered to the Registrar to be a director of the company, at his latest address as shown in those documents.

(2) The notice which shall be dated and signed by the Registrar, shall—

- (a) state that the company is required to change its registered office by a date specified in the notice, not being a date that is earlier than twenty working days after the date of receipt of the notice ;
- (b) state the reasons for requiring the change ; and
- (c) state that the company has the right to appeal against such requirement to court under section 472 ;

(3) The company shall change its registered office—

- (a) by the date stated in the notice ; or

- (b) if it appeals to court and the appeal is dismissed, within five working days after the decision of the court.
- (4) Where a company fails to comply with this section—
  - (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty 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 fine not exceeding fifty thousand rupees.

COMPANY RECORDS

**116.** (1) Subject to the provisions of subsection (3), a company shall keep the following documents at its registered office :—

Location of  
company  
records.

- (a) the certificate of incorporation and the articles of the company ;
- (b) minutes of all meetings and resolutions of shareholders passed within the last ten years ;
- (c) an interests register, unless it is a private company which is dispensed with the need to keep such a register ;
- (d) minutes of all meetings held and resolutions of directors passed and directors' committees held within the last ten years ;
- (e) certificates required to be given by the directors under this Act within the last ten years ;
- (f) the register of directors and secretaries required to be kept under section 223 ;

- (g) copies of all written communications to all shareholders or all holders of the same class of shares during the last ten years, including annual reports prepared under section 166 ;
- (h) copies of all financial statements and group financial statements required to be completed under this Act for the last ten completed accounting periods of the company ;
- (i) the copies of instruments creating or evidencing charges and the register of charges required to be kept under sections 109 and 110 ;
- (j) the share register required to be kept under section 123 ; and
- (k) the accounting records required to be kept under section 148 for the current accounting period and for the last ten completed accounting periods of the company.

(2) Notwithstanding the provisions of subsection (1), the references in paragraphs (b), (d), (e), and (g) of subsection (1) to the period of ten years and the reference in paragraph (h) and (k) of that subsection to ten completed accounting periods, may be reduced to such lesser period by the Registrar, where he considers it necessary and appropriate.

(3) The documents referred to in—

- (a) paragraphs (a) to (i) of subsection (1) may be kept at a place in Sri Lanka other than in the registered office, notice of which is given to the Registrar in accordance with subsection (4) ;
- (b) paragraph (j) of subsection (1) may be kept at a place other than the registered office, in accordance with section 124 ;

- (c) paragraph (k) of subsection (1) may be kept at a place other than the registered office, in accordance with section 149.

(4) If any records are not kept at the registered office of the company or the place at which they are kept is changed, the company shall ensure that within ten working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar of the place or places where the records are kept.

(5) If a company fails to comply with the requirements in subsection (1) or subsection (4)—

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

**117.** (1) The records of a company shall be kept in written form or in a form or in a manner that allows the documents and information that comprise the records to be easily accessible and convertible into written form.

Form of records.

(2) A company shall ensure that adequate measures exist to prevent the records being falsified and detect any falsification of them.

(3) Where a company fails to comply with the requirements of subsection (2)—

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

#### INSPECTION OF COMPANY RECORDS

Inspection of records by directors.

**118.** (1) Subject to the provisions of subsection (2), every director of a company is entitled on giving reasonable notice, to inspect the written records of the company without a charge, at a reasonable time specified by the director.

(2) A court may on application made in that behalf by the company, if it is satisfied that—

- (a) it would not be in the company's interests for a director to inspect the records ; or
- (b) the proposed inspection is for a purpose that is not properly connected with the director's duties,

direct that the records be not made available for inspection or limit the inspection of them in any manner it thinks fit.

Inspection of company records by shareholders.

**119.** (1) In addition to the records being made available for public inspection under section 120, a company shall keep the following records available for inspection in the manner prescribed in section 121 by a shareholder of the company or by a person authorised in writing by a shareholder for that purpose, who serves a written notice of such intention to inspect the company,;—

- (a) minutes of all meetings and resolutions of shareholders ;
- (b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding ten years, including annual reports, financial statements, and group financial statements ;

- (c) certificates issued by directors under this Act ; and
- (d) the interests register of the company.

(2) Where a company fails to comply with the requirements of subsection (1)—

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

**120.** (1) A company shall keep the following records available for inspection in the manner described in section 121 by any person who serves written notice of such intention to inspect on the company, :—

Public inspection  
of company  
records.

- (a) the certificate of incorporation of the company ;
- (b) the articles of the company, if they are not the model articles ;
- (c) the share register ;
- (d) the register of directors and secretaries ;
- (e) particulars of the registered office of the company ;
- (f) copies of the instruments creating or evidencing charges and the register of charges kept under sections 109 and 110.

(2) Where a company fails to comply with the requirements of subsection (1)—

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

Manner of inspection.

**121.** (1) Documents which may be inspected under section 119 or section 120 shall be available for inspection at the place at which the company's records are kept, between the hours of 9.00 a.m. and 4.00 p.m. on each working day during the inspection period.

(2) A document need not be made available for inspection in the manner specified in subsection (1), if a certified copy of the document has been provided to the person or shareholder concerned without a charge.

(3) In this section, the term "inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending on the eighth working day after the day of service.

Copies of documents.

**122.** (1) A person may require a copy of or extract from a document which is made available for inspection by him under section 119 or section 120 to be sent to him within five working days after he has made a request in writing for such copy or extract and has paid a reasonable copying and administration fee as may be determined by the company.

(2) Where a company fails to provide a copy of or extract from a document in compliance with a request under subsection (1)—

- (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 fine not exceeding fifty thousand rupees.



## SHARE REGISTER

**123.** (1) Every company which has issued shares shall maintain a share register that records the shares issued by the company, and which includes—

Company to maintain share register.

- (a) the name and the latest known address of each person who is or has within the last ten years been a shareholder ;
- (b) the number of shares of each class held by each shareholder within the last ten years ; and
- (c) the date of any—
  - (i) issue of shares to ;
  - (ii) repurchase or redemption of shares from ; or
  - (iii) transfer of shares by or to,

each shareholder within the last ten years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) Where a company fails to comply with the requirements of subsection (1)—

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

**124.** (1) The share register of a company may, if expressly permitted by the articles, be divided into two or more registers kept in different places.

Place of share register.

(2) The principal register shall be kept in Sri Lanka.

(3) Where a share register is divided into two or more registers kept in different places—

- (a) notice of the place where each register is kept shall be delivered to the Registrar within ten working days after the share register is so divided, or the place where a register is kept is altered ;
- (b) a copy of every register shall be kept at the place where the principal register is kept ; and
- (c) if an entry is made in a register other than in the principal register, a corresponding entry shall be made within ten working days in the copy of that register kept with the principal register.

(4) Where the share register is not divided and the principal register is not kept at the registered office of the company, notice of the place where it is kept shall be delivered to the Registrar within ten working days after it ceases to be kept there or after the place at which it is kept is altered.

(5) In this section, “principal register” in relation to a company, means—

- (a) if the share register is not divided into two or more registers, the share register ;
- (b) if the share register is divided into two or more registers, the register described as the principal registers in the last notice sent to the Registrar.

(6) Where a company fails to comply with the requirements of subsection (3) or subsection (4)—

- (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 fine not exceeding fifty thousand rupees.

**125.** An instrument of transfer of a share registered in a register kept outside Sri Lanka shall be deemed to be a transfer of property situated out side of Sri Lanka, and unless executed in Sri Lanka, shall be exempt from stamp duty chargeable in Sri Lanka.

Stamp duties in case of shares registered in a register outside Sri Lanka.

**126.** (1) Every company having more than fifty shareholders shall, (unless the share register is in such a form as to constitute in itself an index) keep an index of the names of the shareholders of the company and shall within ten working days from the date on which any alteration is made in the share register, make any necessary alteration in the index.

Index of shareholders.

(2) The index shall in respect of each shareholder, contain sufficient indication enabling the account of that shareholder in the register to be readily found.

(3) Where an index kept under this section contains the name of a company to which subsection (2) of section 129 applies, there shall be annexed to the index all written notices given by that company relating to the person or persons for whose benefit the shares registered in the name of that company are held in trust.

(4) Where a company fails to comply with subsection (1), subsection (2) or subsection (3)—

- (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 fine not exceeding fifty thousand rupees.

Power to close  
register.

**127.** A company may, after notice published in the *Gazette* and in any newspaper circulating in the district in which the registered office of the company is situated and in which the share register is kept, close the share register for any time or times not exceeding in the whole thirty working days in each year.

Power of court  
to rectify  
register.

**128.** (1) Where—

- (a) the name of any person is without sufficient cause entered in or omitted from the share register of a company ; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a shareholder,

the person aggrieved or the company or any shareholder of the company, may make an application to the court for rectification of the register.

(2) Where an application is made under this section, the court may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application made under this section, the court may decide—

- (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between shareholders or alleged shareholders or between shareholders or alleged shareholders on the one hand and the company on the other hand ; and
- (b) any other question necessary or expedient to be decided for rectification of the register.

(4) If the court makes an order directing the rectification of the register, the company shall within ten working days of the making of the order, deliver a copy of the order to the Registrar.

(5) Where a company fails to comply with the requirements of subsection (4)—

- (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 fine not exceeding fifty thousand rupees.

**129.** (1) Subject to the provisions of subsection (2), no notice of any trust, expressed, implied or constructive, shall be entered on the share register or be receivable by the Registrar in the case of companies registered in Sri Lanka.

Trusts not to be entered on share register.

(2) A company shall enter in its register and the Registrar shall receive notice of any trust, the trustee of which is a company and—

- (a) the principal business of which is to act as a central depository to a stock exchange licensed under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 ; and
- (b) which has been approved by the Minister in consultation with the Securities and Exchange Commission of Sri Lanka, established by that Act.

**130.** (1) The entry of the name of a person in the share register as holder of a share shall be *prima facie* evidence that title to the share is vested in that person.

Share register to be evidence.

(2) Subject to the provisions of subsections (2) and (3) of section 86, a company may treat the registered holder of a share as the only person entitled to—

- (a) exercise the right to vote attaching to the share ;
- (b) receive notices ;
- (c) receive a distribution in respect of the share ; and
- (d) exercise any other rights and powers attaching to the share.

#### ANNUAL RETURN

Annual return.

**131.** (1) Subject to the provisions of subsection (3), every company shall at least once in every year deliver to the Registrar an annual return in the prescribed form, containing the matters specified in the Fifth Schedule hereto.

(2) The annual return shall be completed within thirty working days from the date of the Annual General Meeting for the year, whether or not that meeting is the first or only meeting of the shareholders in the year. The company shall forthwith forward to the Registrar a copy of the return, signed both by a director and the secretary of the company.

(3) The provisions of this section shall not apply to a company in the year of its incorporation.

(4) Where a company fails to comply with the requirements of subsection (1) or subsection (2)—

- (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 fine not exceeding fifty thousand rupees.

**132.** Every private company shall send to the Registrar with its annual return—

Declaration and certificate to be sent by private company with annual return.

- (a) a declaration signed by the directors of the company to the effect that to the best of their knowledge and belief, they have done all things required to be done by them by or under this Act ;
- (b) a certificate signed by a director and by the secretary of the company—
  - (i) that the company has not since the date of the last return or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company ;
  - (ii) where the annual return discloses the fact that the number of shareholders of the company exceeds fifty, that the excess consists wholly of persons who under section 27, are not to be taken into account in relation to that limit.

#### MEETINGS AND PROCEEDINGS

**133.** (1) Subject to the provisions of subsection (2) and of section 144, the board of a company shall call an annual general meeting of shareholders to be held once in each calendar year—

Annual general meeting.

- (a) not later than six months after the balance sheet date of the company ; and
- (b) not later than fifteen months after the previous annual general meeting.

(2) A company is not required to hold its first annual general meeting in the calendar year of its incorporation, but shall hold that meeting within eighteen months of its incorporation.

(3) Where default is made in holding a meeting of the company in accordance with the provisions of this section, the Registrar may on the application of any shareholder of the company, call or direct the calling of an annual general meeting of the company and give such ancillary or consequential directions as the Registrar thinks expedient, including any direction modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles and a direction to the effect that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.

(4) An annual general meeting held in pursuance of the provisions of subsection (3) shall, subject to any direction of the Registrar, be deemed to be an annual general meeting of the company, but where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held, unless at that meeting the company resolves that it shall be so treated.

(5) Where a company resolves that a meeting be treated in the manner referred to in subsection (4), a copy of the resolution shall within ten working days from the date of passing thereof, be forwarded to the Registrar and recorded by him.

(6) Where default is made in holding a meeting of the company in accordance with the provisions of subsection (1) or in complying with any directions of the Registrar under the provisions of subsection (3) or in complying with the provisions of subsection (4)—

- (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 fine not exceeding fifty thousand rupees.

**134.** (1) Notwithstanding anything in its articles, the directors of a company shall on the requisition of shareholders holding at the date of the deposit of the requisition shares which carry not less than ten *per centum* of the votes which may be cast on an issue, forthwith proceed duly to convene an extraordinary general meeting of the company to consider and vote on that issue. The meeting shall be convened not later than fifteen working days after the date of the deposit of the requisition and held not later than thirty working days after the date of the deposit of the requisition.

Convening of extraordinary general meeting on requisition.

(2) The requisition shall state the issue or issues to be considered and voted on at the meeting and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) Where the directors do not within fifteen working days from the date of the deposit of the requisition duly proceed to convene a meeting, the requisitionists or any of them representing more than one-half of the total voting rights of all of them may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

(4) A meeting convened under the provisions of this section by the requisitionists shall be convened in the same manner and as nearly as possible as that in which meetings are to be convened by the directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to duly convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the

company out of any sums due or to become due from the company by way of fees or other remuneration, in respect of their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting, if they do not give such notice thereof as is required by the provisions of section 145.

Length of notice  
for calling  
meetings.

**135.** (1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—

- (a) in the case of the annual general meeting, fifteen working days' notice in writing ; and
- (b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, ten working days' notice in writing in the case of a company other than a private or an unlimited company and five working days' notice in writing in the case of a private or an unlimited company.

(2) Subject to the provisions of subsection (1), save in so far as the articles of a company make other provisions in that behalf, a meeting of the company (other than an adjourned meeting) may be called—

- (a) in the case of the annual general meeting, by fifteen working days' notice in writing ; and
- (b) in the case of a meeting, other than an annual general meeting or a meeting for the passing of a special resolution, by ten days notice in writing in the case of a company other than a private or unlimited company and by five working days' notice in writing in the case of a private or an unlimited company.

(3) A meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in the preceding subsection or in the company's articles, as the case may be, be deemed to have been duly called, if it is so agreed—

- (a) in the case of the meeting called as the annual general meeting, by all the shareholders entitled to attend and vote at such meeting ; and
- (b) in the case of any other meeting, by the shareholders having a right to attend and vote at the meeting, being shareholders together holding shares which carry not less than ninety-five *per centum* of the voting rights, on each issue to be considered and voted on at that meeting.

**136.** The following provisions shall have effect in so far as the articles of the company do not make other provisions in that behalf—

Provisions as to meetings and votes.

- (a) notice of the meeting of a company shall be served on every shareholder of the company in the manner in which notices are required to be served under the provisions of the model articles ;
- (b) two or more shareholders holding shares which carry not less than ten *per centum* of the votes which may be cast on an issue, may call a meeting to consider and vote on that issue ;
- (c) in the case of a private company two shareholders, and in the case of any other company three shareholders, present in person or by an authorised representative under the provisions of paragraph (a) of subsection (1) of section 138 shall be a quorum ;
- (d) any shareholder elected by the shareholders present at a meeting may be chairman thereof ;

- (e) no shareholder shall be entitled to vote at any general meeting, unless all calls or other sums then payable by him in respect of shares in the company have been paid ;
- (f) where voting is by show of hands, each shareholder shall have one vote and on a poll every shareholder shall have one vote in respect of each share held by him.

Power of court  
to order  
meeting.

**137.** (1) Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner specified by the company's articles or this Act, the court may either of its own motion or on the application of any director of the company or of any shareholder of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made, may give such ancillary or consequential direction as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted and any such direction may include a direction that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A copy of each notice calling a meeting under the provisions of this section, shall be sent to the Registrar at the same time as such notice is required to be sent to the shareholders.

(3) Where default is made in complying with the provisions of subsection (2)—

- (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 fine not exceeding fifty thousand rupees.

**138.** (1) A corporation, whether a company within the meaning of this Act or not, may—

Representation of companies at meetings of other companies and of creditors.

- (a) where it is a shareholder of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such a person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of shareholders of the company ;
- (b) where it is a creditor (including a holder of debentures) of another corporation being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company, held in pursuance of this Act or any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same power on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company.

**139.** (1) Any shareholder of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a shareholder or not) as his proxy to attend and vote instead of him. A proxy so appointed shall have the same right as the shareholder to vote on a show of hands or on a poll and to speak at the meeting :

Proxies.

Provided that unless the articles otherwise provide, a shareholder shall not be entitled to appoint more than one proxy to attend on the same occasion.

(2) Notwithstanding anything in this Act, where the Secretary to the Treasury is the holder of more than ten *per centum* of the shares, the Secretary to the Treasury shall be entitled to appoint another person as his proxy for every ten *per centum* or part thereof of the shares held by the Secretary to the Treasury :

Provided where the Secretary to the Treasury is a holder of a golden share in a company in terms of its articles, notwithstanding anything in this Act, the Secretary to the Treasury as the golden shareholder thereof shall be entitled to appoint not more than three other persons as his proxies to attend on the same occasion.

(3) In every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that a shareholder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him and that a proxy need not also be a shareholder. Where default is made in complying with the provisions of this subsection as respects any meeting, 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 fifty thousand rupees.

(4) Any provisions contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting, in order that the appointment may be effective thereat.

(5) Where for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of

persons specified in the invitations are issued at the company's expense to some only of the shareholders entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who knowingly and wilfully authorises and permits their issue as aforesaid, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees :

Provided that an officer shall not be liable under the provisions of this subsection by reason only of the issue to a shareholder at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every shareholder entitled to vote at the meeting by proxy.

(6) The provisions of this section shall apply to meetings of any class of shareholders of a company as it applies to general meetings of the company.

(7) Every shareholder of the company or a proxy holder, shall be entitled to inspect the proxies received under the provisions of this section at least three hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.

**140.** (1) Any provision contained in a company's articles shall be void, in so far as it would have the effect either — Right to demand a poll.

- (a) of excluding the right to demand a poll at a general meeting on any question, other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made either —
  - (i) by not less than five shareholders having the right to vote at the meeting; or

- (ii) by a shareholder or shareholders representing not less than one-tenth of the total voting rights of all the shareholders having the right to vote at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of the provisions of subsection (1), a demand by a person as proxy for a share holder shall be the same as a demand by the shareholder.

Voting on a poll.

**141.** On a poll taken at a meeting of a company or a meeting of any class of shareholders of a company, a shareholder entitled to more than one vote need not if he votes, use or cast all his votes in the same way.

Circulation of shareholder's resolutions on requisition.

**142.** (1) It shall be the duty of a company on the requisition in writing of such number of shareholders as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists—

- (a) to give to shareholders of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting;
- (b) to circulate to shareholders entitled to have notice of any general meeting sent to them, any statement with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of shareholders necessary for a requisition under the provisions of subsection (1) shall be—

- (a) any number of shareholders representing not less than one-twentieth of the total voting rights of all the shareholders having at the date of the requisition



a right to vote at the meeting to which the requisition relates; or

(b) not less than fifty shareholders.

(3) Notice of any such resolution shall be given and any such statement shall be circulated to shareholders of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such shareholder in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other shareholder of the company by giving notice of the general effect of the resolution, in any manner permitted for giving him notice of meetings of the company :

Provided that the copy shall be served or notice of the effect of the resolution shall be given, as the case may be, in the same manner and as far as practicable at the same time as notice of the meeting, and where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under the provisions of this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the resolution signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company —

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the date of the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

- (b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto :

Provided that where after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less from the date on which the copy has been so deposited, the copy though not deposited within the time required by this subsection, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall not be bound under the provisions of this section to circulate any statement, if on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by the provisions of this section are being abused to secure unnecessary publicity for defamatory matter and the court may order the company's costs on an application made under the provisions of this section, to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution, of which notice is given in accordance with the provisions of this section, and for the purpose of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission of giving such notice to one or more shareholders.

(7) Where any default is made in complying with the provisions of this section, 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.

**143.** (1) A resolution shall be a special resolution when it has been passed— Special resolutions.

- (a) by a majority of seventy-five *per centum* of those shareholders entitled to vote and voting on the question;
- (b) at a general meeting of which not less than fifteen working days' notice, specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, where it is so agreed by the shareholders having the right to attend and vote at any such meeting, being shareholders together representing not less than eighty-five *per centum* of the total voting rights at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than fifteen working days' notice has been given.

(2) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(4) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held, when the notice is given and the meeting is held in the manner provided for by the company's articles or by this Act.

Resolution in  
lieu of meeting.

**144.** (1) Subject to the provisions contained in the company's articles, a resolution in writing signed by not less than eighty-five *per centum* of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who together hold not less than eighty-five *per centum* of the votes entitled to be cast on that resolution, shall be as valid as if it had been passed at a meeting of those shareholders.

(2) Subject to the provisions contained in the company's articles, a resolution in writing that—

- (a) relates to a matter that is required by this Act or by the articles to be decided at a meeting of the shareholders of a company; and
- (b) is signed by the shareholders specified in subsection (1),

is deemed to be made in accordance with the provisions of this Act or the articles of the company.

(3) It shall not be necessary for a company to hold an annual general meeting of shareholders under section 133, if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with this section.

(4) Within five working days of a resolution being passed under this section, the company shall send a copy of the resolution to every shareholder who did not sign the resolution.

(5) A resolution may be signed under subsection (1) or subsection (2) without any prior notice being given to shareholders.

(6) Where a company fails to comply with the requirements of subsection (4) —

- (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 who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(7) A person who is registered as the holder of parcels of shares having different beneficial owners, may expressly sign a resolution under this section in respect of shares having one beneficial owner and refrain from signing the resolution in respect of shares having another beneficial owner.

(8) Notwithstanding any provision in this Act, where the Secretary to the Treasury is the holder of a share of a company, any resolution referred to in this section shall not be valid unless the consent in writing of the Secretary to the Treasury as a holder of the share is also obtained in favour of such resolution.

**145.** Where by any provision hereafter contained in this Act, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the date of the meeting at which it is to be moved, and the company shall give its shareholders notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the company's articles, not less than fifteen working days before the date of the meeting:

Resolutions  
requiring special  
notice.

Provided that, where after notice of the intention to move such a resolution has been given to the company a meeting is called for a date twenty-eight days or less from the date of the notice, the notice though not given within the time required by this section, shall be deemed to have been properly given for the purposes thereof.

Resolutions  
passed at  
adjourned  
meetings.

**146.** Where after the appointed date, a resolution is passed at an adjourned meeting of—

- (a) a company ;
- (b) the holders of any class of shares in a company;
- (c) the directors 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.

Minutes of  
proceedings of  
meetings of  
shareholders and  
directors.

**147.** (1) Every company shall cause minutes of all proceedings of general meetings and meetings of its directors to be entered in books kept for that purpose.

(2) Any such minutes purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of such proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting, or a meeting of directors of the company, as the case may be, then until the contrary is proved, the meeting shall be deemed to have been duly held and convened and all appointments of directors, managers or liquidators, made at the meeting, shall be deemed to be valid.

(4) Every director and former director of a company shall be entitled to receive from the company secretary, certified copies of the minutes of all the meetings of the board of directors of such company held during the period when he is or he was a director of that company.

(5) Where a company fails to comply with the provisions of subsection (1)—

- (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 fine not exceeding fifty thousand rupees.

ACCOUNTING RECORDS

**148.** (1) Every company shall keep accounting records which correctly record and explain the company's transactions, and will—

Duty to keep accounting records.

- (a) at any time enable the financial positions of the company to be determined with reasonable accuracy;
- (b) enable the directors to prepare financial statements in accordance with this Act; and
- (c) enable the financial statements of the company to be readily and properly audited.

(2) Without limiting the provisions contained in subsection (1), the accounting records shall contain—

- (a) entries of money received and expended each day by the company and the matters in respect of which such money was spent;
- (b) a record of the assets and liabilities of the company ;
- (c) if the company's business involves dealing in goods—
  - (i) a record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business that identifies both the goods and buyers and sellers and the relevant invoices;
  - (ii) a record of stock held at the end of the financial year together with records of any stock takings during the year;

- (d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) Where a company fails to comply with the requirements of this section—

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

Place where  
accounting  
records are kept.

**149.** (1) A company shall keep its accounting records in Sri Lanka. However, where the Registrar considers it not prejudicial to the national economy or to the interests of shareholders of the company, he may permit a company to keep its accounting records outside Sri Lanka.

(2) If the records are not kept in Sri Lanka—

- (a) the company shall ensure that the accounts and returns of the operations of the company—
  - (i) disclose with reasonable accuracy the financial position of the company at intervals not exceeding periods of six months; and
  - (ii) will enable the preparation in accordance with this Act of the company's financial statements and any group financial statements and any other document required to be maintained under this Act,

are sent to and kept at a place in Sri Lanka; and



- (b) notice of the place where the accounting records and the accounts and returns required under paragraph (a) are kept, shall be given to the Registrar.

(3) Where a company fails to comply with the requirements of subsection (2)—

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

#### DUTY TO PREPARE FINANCIAL STATEMENTS

**150.** (1) The board of every company shall ensure that within six months or within such extended period as may be determined by the Registrar after the balance sheet date of the company, financial statements that comply with the requirements of section 151 are—

Obligation to prepare financial statements.

- (a) completed in relation to the company and that balance sheet date;
- (b) certified by the person responsible for the preparation of the financial statements that it is in compliance with the requirements of this Act; and
- (c) dated and signed on behalf of the board by two directors of the company or if the company has only one director, by that director.

(2) Where the board fails to comply with the requirements specified in subsection (1), every director 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.

Contents and  
form of  
financial  
statements.

**151.** (1) The financial statements of a company shall give a true and fair view of—

- (a) the state of affairs of the company as at the balance sheet date; and
- (b) the profit or loss or income and expenditure, as the case may be, of the company for the accounting period ending on that balance sheet date.

(2) Without limiting the provisions contained in subsection (1), the financial statements of a company shall comply with—

- (a) any regulations made under this Act which specifies the form and content of financial statements; and
- (b) any requirements which apply to the company's financial statements under any other law.

Obligation to  
prepare group  
financial  
statements.

**152.** (1) Subject to the provisions of subsection (2), the board of a company that has on the balance sheet date of the company one or more subsidiaries, shall, in addition to complying with section 150, ensure that within the time specified in that section, group financial statements that comply with section 153 are—

- (a) completed in relation to that group and that balance sheet date;
- (b) certified by the person responsible for the preparation of the financial statements that it is in compliance with the requirements of this Act; and
- (c) dated and signed on behalf of the directors by two directors of the company or if the company has only one director, by that director.

(2) Group financial statements and a balance sheet date shall not be required in relation to a company, if the company is at that balance sheet date the wholly owned subsidiary of another company.

(3) Where the board fails to comply with the requirements specified in subsection (1), every director 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.

**153.** (1) The financial statements of a group shall give a true and fair view of —

Contents and  
form of group  
financial  
statements.

- (a) the state of affairs of the company and its subsidiaries as at the balance sheet date; and
- (b) the profit or loss or income and expenditure, as the case may be, of the company and its subsidiaries for the accounting period ending on that balance sheet date.

(2) Without limiting the provisions contained in subsection (1), the financial statements of a group shall comply with —

- (a) any regulations made under this Act which specifies the form and content of group financial statements; and
- (b) any requirements which apply to the group financial statements under any other law.

(3) Where a subsidiary became a subsidiary of a company during the accounting period to which the group financial statements relate, the consolidated profit and loss statement or the consolidated income and expenditure statement for the group, shall relate to the profit or loss of the subsidiary for each part of that accounting period during which it was a subsidiary, and not to any other part of that accounting period.

(4) Subject to the provisions of subsection (3), where the balance sheet date of a subsidiary of a company is not the same as that of the company, the group financial statements shall —

- (a) if the balance sheet date of the subsidiary does not precede that of the company by more than three months, incorporate the financial statements of the subsidiary for the accounting period ending on that date, or incorporate interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company; or
- (b) in any other case, incorporate interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company.

(5) Subject to the provisions of subsections (3) and (6), group financial statements shall incorporate the financial statements prepared in accordance with section 151, of every subsidiary of the company.

(6) Subject to the provisions of subsection (7), group financial statements prepared by a company need not incorporate the financial statements of a subsidiary of that company, where the board of the company is of the opinion that—

- (a) it is impracticable to do so or would be of no real value to the shareholders of the company in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to shareholders;
- (b) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

- (c) the business of the company and that of the subsidiary are so different, that they cannot reasonably be treated as a single undertaking.

(7) Group financial statement prepared by a company may not omit the financial statements of a subsidiary of that company under subsection (6), without the prior approval in writing of the Registrar, which may be given on such terms or conditions as the Registrar thinks fit.

#### AUDITORS

**154.** (1) A company shall at each annual general meeting, appoint an auditor to—

Appointment of auditor.

- (a) hold office from the conclusion of that meeting until the conclusion of the next annual general meeting; and
- (b) audit the financial statements of the company and if the company is required to complete group financial statements, those group financial statement for the accounting period next after the balance sheet date for which financial statements were audited.

(2) The board of a company may fill any casual vacancy in the office of auditor, but while the vacancy remains the surviving or continuing auditor, if any, may continue to act as auditor.

(3) Where —

- (a) at an annual general meeting of a company no auditor is appointed or re-appointed and no resolution has been passed under subsection (2); or
- (b) a casual vacancy in the office of auditor is not filled within one month of the occurring of such vacancy,

the Registrar may appoint an auditor.

(4) A company shall within five working days of the power becoming exercisable, give written notice to the Registrar of the fact that the Registrar is entitled to appoint an auditor under subsection (3).

(5) Where a company fails to comply with the requirements of subsection (4)—

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

Auditor's fees  
and expenses.

**155.** The fees and expenses of an auditor of a company shall be fixed —

- (a) if the auditor is appointed at a meeting of the company, by the company at such meeting or in such manner as the company determines at the meeting;
- (b) if the auditor is appointed by the directors, by the directors; or
- (c) if the auditor is appointed by the Registrar, by the Registrar.

Appointment of  
partnership as  
auditor.

**156.** (1) A partnership may be appointed by the firm's name to be the auditor of a company, if the partners are persons who are qualified to be appointed as auditors of the company.

(2) The appointment of a partnership by the firm's name to be the auditor of a company is deemed, subject to the provisions of section 157, to be the appointment of all the persons who are partners in the firm, from time to time.

**157.** (1) A person shall not be appointed or act as auditor of a company, unless that person—

Qualifications of auditors.

- (a) is a member of the Institute of Chartered Accountants of Sri Lanka; or
- (b) is a registered auditor.

(2) Notwithstanding the provisions of subsection (1), a person shall not be appointed or act as auditor of a company other than a private company or a company limited by guarantee, unless that person is a member of the Institute of Chartered Accountants of Sri Lanka.

(3) None of the following persons may be appointed or act as an auditor of a company :—

- (a) a director or employee of the company;
- (b) a person who is a partner or in the employment of a director or employee of the company;
- (c) a liquidator or an administrator or a person who is a receiver in respect of the property of the company ;
- (d) a body corporate ;
- (e) a person who, by virtue of paragraph (a), (b) or (c), may not be appointed or act as auditor of a related company.

(4) A person who holds any office referred to in paragraph (a), (b) or (c) of subsection (3), may not be appointed or act as an auditor of a company for a period of two years after such person has ceased to hold that office.

(5) Regulations may be made providing for —

- (a) the qualifications necessary to become a registered auditor;
- (b) the procedure for the registration of auditors;
- (c) the fees payable for such registration.

Automatic re-  
appointment.

**158.** (1) An auditor of a company, other than an auditor appointed under subsection (1) of section 159, shall be deemed to be re-appointed at an annual general meeting of the company, unless—

- (a) he is not qualified for appointment;
- (b) the company passes a resolution at the meeting appointing another person to replace him as auditor;  
or
- (c) the auditor has given notice to the company that he does not wish to be re-appointed.

(2) An auditor is not automatically re-appointed if the person who it is proposed to replace him, dies or is or becomes incapable of or disqualified from being so appointment.

Appointment of  
first auditor.

**159.** (1) The first auditor of a company may be appointed by the board of the company before the first annual general meeting, and if so appointed, will hold office until the conclusion of that meeting.

(2) If the board does not appoint an auditor under subsection (1), the company shall appoint the first auditor at a meeting of the company.



(3) Neither the board nor the company shall be required to appoint an auditor in accordance with the provisions of this section, if a unanimous resolution is passed by the shareholders that no auditor be appointed. Such a resolution ceases to have effect at the commencement of the first annual general meeting.

**160.** (1) A company shall not appoint a new auditor in place of an auditor who is qualified for re-appointment, unless—

Replacement  
of auditor.

- (a) at least twenty working days' written notice of a proposal to do so has been given to the auditor; and
- (b) the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person, either in writing or by the auditor or his representative speaking at a shareholders' meeting (whichever the auditor may choose).

(2) An auditor is entitled to be paid reasonable fees and expenses by the company for making representations to shareholders under this section.

**161.** (1) If an auditor resigns or ceases for any other reason to hold office, he shall deliver to the company a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the shareholders or creditors of the company, or if he considers that there are no such circumstances, a statement that there are none.

Statement by  
person ceasing  
to hold office as  
auditor.

(2) The statement required under subsection (1) shall be delivered by the auditor —

- (a) if he resigns, with the notice of resignation;

- (b) if he gives notice that he does not wish to be re-appointed, with that notice;
- (c) if he ceases to hold office for any other reason, within ten working days of ceasing to hold office.

(3) If the auditor has stated circumstances which he believes ought to be brought to the attention of the shareholders or creditors, the company shall —

- (a) send a copy of the statement to each shareholder; and
- (b) deliver a copy of the statement to the Registrar:

Provided that the company may with permission of court (obtained by an order, the costs of which is to be paid by the auditor) refrain from sending copies to shareholders or reading the representations at the meeting so convened.

(4) Where an auditor fails to comply with subsection (1), he shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(5) If a company fails to comply with subsection (3)—

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

Auditor to avoid conflict of interest.

**162.** An auditor of a company shall in carrying out the duties of an auditor under this Act, ensure that his judgment is not impaired by reason of any relationship with or interest in the company or any of its subsidiaries.

**163.** (1) The auditor of a company shall make a report to the shareholders on the financial statements audited by him. Auditor's report.

(2) The auditor's report shall state—

- (a) the basis of opinion;
- (b) the scope and limitations of the audit;
- (c) whether the auditor has obtained all information and explanations that was required;
- (d) whether in the auditor's opinion as far as appears from an examination of them, proper accounting records have been kept by the company;
- (e) whether in the auditor's opinion the financial statements and any group financial statements give a true and fair view of the matters to which they relate and if they do not, the respects in which they fail to do so; and
- (f) whether in the auditor's opinion the financial statements and any group financial statements comply with the requirements of section 151 or section 153, as the case may be, and if they do not, the respects in which they fail to do so.

(3) The auditor of a company shall at the same time as he delivers his report to the company, deliver to the company a statement of—

- (a) the existence of any relationship (other than that of auditor) which the auditor has with, or any interests which the auditor has in, the company or any of its subsidiaries; and

- (b) the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and expenses and as a separate item, any fees and expenses payable by the company for other services provided by that person or firm.

Auditor's  
access to  
information.

**164.** (1) The board of a company shall ensure that an auditor of a company has access at all times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to require from a director or employee of the company, such information and explanations as he thinks necessary for the performance of his duties as auditor.

(3) Where the board of a company fails to comply with subsection (1), every director 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.

(4) A director or employee who fails to comply with subsection (2) or provides false information, shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

(5) It is a defence to an employee charged with an offence under subsection (4), if he proves that—

- (a) he did not have the information required in his possession or under his control; or
- (b) by reason of the position occupied by him or the duties assigned to him, he was unable to give the explanations required.

Auditor's  
attendance at  
shareholders'  
meeting.

**165.** (1) The board of a company shall ensure that an auditor of the company—

- (a) is permitted to attend every meeting of shareholders of the company;

- (b) receives the notices and communications that a shareholder is entitled to receive relating to a meeting of shareholders; and
- (c) may be heard at a meeting of shareholders which he attends on any part of the business of the meeting which concerns him as auditor.

(2) Where the board of a company fails to comply with subsection (1), every director 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.

#### ANNUAL REPORT TO SHARE HOLDERS

**166.** (1) The board of every company shall within six months after the balance sheet date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.

Obligation to prepare annual report.

(2) Where the board of a company fails to comply with subsection (1), every director 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.

**167.** (1) The board of a company shall cause a copy of the annual general meeting report to be sent to every shareholder of the company not less than fifteen working days before the date fixed for holding the annual general meeting of shareholders :

Sending of annual report to shareholders.

Provided that a company may in the first instance, send every shareholder the financial statement in the summarised form as may be prescribed, in consultation with Institute of Chartered Accountants of Sri Lanka, together with the annual report :

Provided further the company shall inform each shareholder that he is entitled to receive full financial statement if he so requires, within a stipulated period of time.

(2) Where the board of a company fails to comply with subsection (1), every director of the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Contents of  
annual report.

**168.** (1) The annual report of the board shall be in writing and be dated, and subject to subsection (2), shall—

- (a) describe so far as the board believes is material for the shareholders to have an appreciation of the state of the company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in—
  - (i) the nature of the business of the company or any of its subsidiaries ; or
  - (ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise ;
- (b) include financial statements for the accounting period completed and signed in accordance with section 151, and any group financial statements for the accounting period completed and signed in accordance with section 152 ;
- (c) where an auditor has been appointed by the company, include that auditor's report on the financial statements and any group financial statements ;
- (d) describe any change in accounting policies made during the accounting period ;
- (e) state particulars of entries in the interests register made during the accounting period ;

- (f) state the remuneration and other benefits of directors during the accounting period ;
- (g) state the total amount of donations made by the company during the accounting period ;
- (h) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period ;
- (i) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and as a separate item, fees payable by the company for other services provided by that person or firm ;
- (j) state the particulars of any relationship (other than that of auditor) which the auditor has with or any interests which the auditor has in, the company or any of its subsidiaries ; and
- (k) be signed on behalf of the board by-
  - (i) two directors of the company or if the company has only one director, by that director ; and
  - (ii) the secretary of the company.

(2) A company that is required to include group financial statements in its annual report shall include in relation to its subsidiaries, the information specified in paragraphs (b) to (j) of subsection (1).

(3) The annual report of a company need not comply with of paragraph (a) and paragraphs (d) to (j) of subsection (1), if all shareholders agree in writing that it need not do so. Any such agreement shall be noted in the annual report.

Failure to  
send reports  
&.

**169.** Subject to the provisions contained in the articles of a company, the failure to send an annual report, notice, or other document to a shareholder in accordance with any requirement under this Act, shall not affect the validity of proceedings at a meeting of the shareholders of the company, if the failure to do so was accidental.

#### REGISTRATION OF FINANCIAL STATEMENTS

Registration  
of financial  
statements.

**170.** (1) Every company that is not a private company, shall ensure that within twenty working days after the financial statements of the company and any group financial statements are required to be signed, copies of those statements together with a copy of the auditor's report on those statements are delivered to the Registrar for registration.

(2) The Registrar may by notice in writing require a private company to deliver to him within twenty working days, the financial statements of the company and any group financial statements in respect of such accounting periods as may be specified in the notice, together with copies of any auditor's report on those statements.

(3) The copies delivered to the Registrar under this section shall be certified to be correct copies by two directors of the company or where the company has only one director, by that director.

#### INTERPRETATION

Balance sheet  
date.

**171.** (1) Subject to the provisions of subsections (2) and (3), a company shall have a balance sheet date in each calendar year.

(2) A company shall not be required to have a balance sheet date in the calendar year in which it is incorporated, if its first balance sheet date is in the following calendar year and is not later than fifteen months after the date of its formation or incorporation.



(3) Where a company changes its balance sheet date, it shall be required to have a balance sheet date in a calendar year if—

- (a) the period between any two balance sheet dates does not exceed fifteen months ; and
- (b) the Registrar approves the change of balance sheet date before it is made.

(4) The Registrar may approve a change of balance sheet date for the purposes of subsection (3), with or without conditions.

(5) Where a company changes its balance sheet date, the period between any two balance sheet dates shall not exceed fifteen months.

(6) The adoption or change of a balance sheet date shall have effect upon receipt of a notice by the Registrar to that effect.

(7) The board of a company shall ensure that, unless in the board's opinion there are good reasons against it, the balance sheet date of each subsidiary of the company is the same as the balance sheet date of the company.

(8) Where the balance sheet date of a subsidiary of a company is not the same as that of the company, the balance sheet date of the subsidiary for the purposes of any particular group financial statements, shall be that preceding the balance sheet date of the company.

#### INVESTIGATION OF COMPANY'S AFFAIRS

**172.** (1) The Registrar may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as the Registrar directs—

Investigation of company's affairs on application of shareholders.

- (a) on the application of the company, approved by special resolution ;

- (b) in the case of a company which has issued shares, on the application either of not less than fifty shareholders or of shareholders holding not less than one-fifth of the shares issued ;
- (c) in the case of a company which has not issued shares, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) An application under subsection (1) shall be supported by such evidence as the Registrar may require, for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

(3) The Registrar may before appointing such inspector and from time to time as he considers it necessary, require the applicant or applicants to give security for payment of the costs of the investigation.

(4) Where a person fails to furnish any amount by way of security as and when required so to do under subsection (3), the Registrar may in his absolute discretion direct that any security already paid shall be forfeited, and terminate the investigation.

Investigation  
of  
company's  
affairs in  
other cases.

**173.** (1) Without prejudice to the provisions of section 172, the Registrar—

- (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Registrar directs, where the court by order declares that the company's affairs ought to be investigated by a person appointed by the Registrar ;
- (b) may appoint one or more competent inspectors to investigate the affairs of a company and to report

thereon to the Registrar, if it appears to him that there are circumstances suggesting that—

- (i) its business is being conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to any part of its shareholders ;
- (ii) it was formed for any fraudulent or unlawful purpose ;
- (iii) persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its shareholders ;
- (iv) its shareholders have not been given all the information with respect to its affairs which they might reasonably expect ; or
- (v) it is necessary to do so for any of the purposes of this Act.

(2) An inspector may be appointed under this section on the condition that any report that he makes is not for publication, and in any such case subsection (3) of section 176 shall not apply to such reports.

**174.** Where an inspector appointed under section 172 or section 173 to investigate the affairs of a company, considers it necessary for the purposes of this investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company, he shall with the prior written approval of the Registrar have power to do so, and shall report on the affairs of the other body corporate

Power of inspectors to carry out investigation into affairs of related companies.

so far as he thinks the results of his investigation of its affairs are relevant to the investigation of the affairs of the first-mentioned company.

Production of documents and evidence at investigation.

**175.** (1) Where an inspector is appointed under section 172 or section 173, it shall be the duty of all directors, officers and agents of the company and of all directors, officers and agents of any other body corporate whose affairs are investigated by virtue of section 174 to —

- (a) produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate, which are in their custody or power ;
- (b) attend before the inspector when required to do so ; and
- (c) give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath or affirmation the officers and agents of the company or other body corporate in relation to its business, and may administer an oath to or take the affirmation of any such person.

(3) Where any officer or agent of the company or other body corporate refuses to produce to the inspector any book or document which it is his duty under this section to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company or other body corporate, as the case may be, the inspector may certify the refusal in writing to the court, and the court may inquire into the case and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender as if he had been guilty of contempt of court.

(4) Where an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath or affirmation should be so examined, he may apply to the court and the court may if it thinks fit, order that person to attend and be examined on oath or affirmation before it on any matter relevant to the investigation. On any such examination—

- (a) the inspector may appear either personally or be represented by an attorney-at-law ;
- (b) the court may put such questions to the persons examined as the court thinks fit ;
- (c) the person examined shall answer all such questions as the court may put or allow to be put to him ;
- (d) the person examined may at his own cost be represented by an attorney-at-law who may put questions to him for the purpose of enabling him to explain or qualify any answers given by him ;
- (e) the examination shall be recorded in writing and the person examined shall sign the record ; and
- (f) subject to any directions by the court, the record of an examination under this section shall be admissible in evidence in any proceedings under this Act.

(5) Notwithstanding anything contained in paragraph (d) of subsection (4), the court may allow the person examined such costs as it thinks fit. Any costs so allowed shall be paid as part of the expenses of the investigation.

(6) In this section, any reference to officers or to agents shall include past as well as present officers or agents, as the case may be, and the expression “agents” in relation to a company or other body corporate, shall include its bankers

and attorneys-at-law and any persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

Inspector's  
report.

**176.** (1) An inspector—

- (a) may and if so directed by the Registrar shall, make interim reports to the Registrar in the course of an investigation ;
- (b) shall on the conclusion of an investigation, make a final report in writing to the Registrar.

(2) Where an inspector was appointed under section 173 in pursuance of an order of court, the Registrar shall furnish a copy of any report made by such inspector to the court.

(3) The Registrar may if he thinks fit—

- (a) forward a copy of any report made by the inspector to the registered office of the company ;
- (b) furnish a copy of any report on request and on payment of the prescribed fee to—
  - (i) any shareholder of the company or of any other body corporate dealt with in the report by virtue of section 174 ;
  - (ii) any person whose conduct is referred to in the report ;
  - (iii) the auditors of the company or body corporate ;
  - (iv) the applicants for the investigation ;
  - (v) any other person whose financial interests appear to the Registrar to be affected by the

matters dealt with in the report, whether as a creditor of the company or body corporate or otherwise ;

(c) cause the report to be printed and published.

**177.** (1) Where from any report made under section 176 it appears to the Registrar that any person has in relation to the company or to any other body corporate whose affairs have been investigated under section 174, been guilty of any offence for which he is criminally liable, the Registrar shall, if it appears to him that the case is one in which the prosecution ought to be undertaken by the Attorney-General, refer the matter to the Attorney-General.

Proceedings on  
inspector's  
report.

(2) Where in any matter referred to the Attorney-General under subsection (1) 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 all officers and agents of the company or other body corporate, as the case may be, (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give. The provisions of subsection (6) of section 175 shall apply for the purposes of this subsection as they apply for the purposes of that section.

(3) Where in the case of any body corporate a liquidator of which may be appointed under this Act, it appears to the Registrar from any report made under the provisions of section 176 that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph (b) of subsection (1) of section 173, the Registrar may apply to the court to appoint a liquidator.

(4) Where from any report made under section 176 it appears to the Registrar that proceedings ought in the public interest to be brought by any body corporate, he may bring such proceedings in the name and on behalf of the body corporate.

(5) The Registrar shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought under subsection (4).

Expenses of investigation of company's affairs.

**178.** (1) The expenses of and incidental to an investigation by an inspector appointed by the Registrar under section 172 or section 173 shall be met in the first instance by the Registrar.

(2) The following person shall, to the extent specified, be liable to repay the Registrar—

- (a) any person who is convicted on a prosecution instituted as a result of the investigation by the Attorney-General, or who is ordered to pay the whole or any part of the costs of proceedings brought under subsection (4) of section 177, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order ;
- (b) any body corporate in whose name proceedings are brought under subsection (4) of section 177 shall be liable to the amount or value of any sum or property recovered by it as a result of those proceedings and the amount for which the body corporate is liable shall be a first charge on the sum or property recovered ; and
- (c) unless as a result of the investigation a prosecution is instituted by the Attorney-General—
  - (i) any body corporate dealt with by the report where the inspector was appointed otherwise than of the Registrar's own motion, shall be liable except so far as the Registrar otherwise directs ; and
  - (ii) any person making an application for the investigation where the inspector was



appointed under section 172, shall be liable to such extent, if any, as the Registrar may direct.

(3) The report of an inspector appointed otherwise than of the Registrar's own motion may if he thinks fit, and shall if the Registrar so directs, include a recommendation as to the directions (if any) which the inspector thinks appropriate to be given under the provisions of paragraph (c) of subsection (2).

(4) For the purposes of this section, any costs or expenses incurred by the Registrar in or in connection with proceedings brought under subsection (4) of section 177 (including expenses incurred under subsection (5) of that section) shall be treated as expenses of the investigation giving rise to the proceedings.

(5) Any liability to repay the Registrar imposed by the provisions of paragraphs (a) and (b) of subsection (2) shall, subject to satisfaction of the Registrar's right to repayment, be a liability also to indemnify all persons against liability under the provisions of paragraph (c) of subsection (2), and any such liability imposed by the provisions of paragraph (a) shall, subject to as aforesaid, be a liability also to indemnify all persons against liability under the provisions of paragraph (b).

(6) Any person liable under the provisions of paragraph (a) or paragraph (b) or sub-paragraph (i) or sub-paragraph (ii) of paragraph (c) of subsection (2), shall be entitled to contribution from any other person liable under the same paragraph or sub-paragraph, as the case may be, according to the amount of their respective liabilities under it.

(7) The expenses to be met by the Registrar under this section shall so far as not recovered by him under it, be paid out of moneys provided by Parliament for the purpose.

Inspector's  
report to be  
evidence.

**179.** A copy of any report of an inspector appointed under section 172 or section 173 shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

Appointment  
and powers of  
inspectors to  
investigate  
ownership of  
company.

**180.** (1) Where it appears to the Registrar that there is good reason so to do, he may appoint one or more inspectors to investigate and report on the ownership of the shares of the company and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

(2) The appointment of an inspector under this section may define the scope of his investigation whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(4) Where an application for an investigation under the provisions of this section with respect to particular shares or debentures of a company is made to the Registrar by shareholders of the company, and the number of applicants or the amount of the shares held by them is not less than that which is required for an application for the appointment of an inspector under sub-paragraph (b) or (c) of subsection (1) of section 172, the Registrar shall subject to the provisions of subsections (5) and (6) appoint an inspector to conduct the investigation. Where an inspector is appointed his terms of appointment shall exclude any matter which the Registrar is satisfied it is unreasonable to investigate.

(5) The Registrar shall not appoint an inspector under subsection (4) if he considers that the application is vexatious.

(6) Where on an application under subsection (4) it appears to the Registrar that the powers conferred by section 181 are sufficient for the purpose of investigating the matters which it is sought to have investigated, he may instead conduct the investigation under that section.

(7) For the purposes of an investigation under the provisions of this section, the provisions of sections 174, 175 and 176 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject to the provisions of subsections (8) and (9).

(8) Sections 174, 175 and 176 shall apply in relation to all persons who are or have been or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose ownership is investigated with that of the company, or able to control or materially to influence its policy including persons concerned only on behalf of others, as they apply in relation to the officers and agents of the company or of the other body corporate, as the case may be.

(9) Where the Registrar considers that there is good reason not to divulge any part of a report made under this section, he may disclose the report under section 176 with the omission of that part.

(10) The expenses of an investigation made under this section shall be met by the Registrar out of moneys provided by Parliament for the purpose.

Power to  
require  
information  
as to persons  
interested in  
shares or  
debentures.

**181.** (1) Where it appears to the Registrar that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, the Registrar may require any person whom he has reasonable cause to believe—

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or to have acted in relation to those shares or debentures as the attorney or agent of any person interested in them,

to give the Registrar any information which he has or can reasonably be expected to obtain, as to the present and past interests in those shares or debentures and the names and addresses of the persons interested, and of any person who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section a person shall be deemed to have an interest in shares or debentures, if he has any right to acquire or dispose of them or of any interest in them or to vote in respect of them, or if his consent is necessary for the exercise of any rights of other persons interested in them, or if other persons interested in them can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give information required of him under subsection (1), or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false 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 an imprisonment for a term not exceeding five years or to both such fine and imprisonment.

**182.** (1) Where in connection with an investigation under the provisions of section 180 or section 181, it appears to the Registrar that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by the Registrar, the Registrar may by order direct that the shares shall until further order, be subject to the restrictions imposed by this section.

Power to impose restrictions on shares or debentures.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section —

- (a) any transfer of those shares or in the case of unissued shares any transfer of the right to be issued with them and any issued of them, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or pursuant to any offer made to the holder of them;
- (d) except in a liquidation, no payment shall be made on any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Registrar makes an order directing that shares shall be subject to the restriction set out in subsection (2), or refuses to make an order directing that shares shall cease to be subject to those restrictions, any person aggrieved by the order may appeal to the court against the order under section 472. The court may, if it thinks fit, direct that the shares shall cease to be subject to those restrictions.

(4) Any order made by the Registrar or the court directing that shares shall cease to be subject to the restrictions set out in subsection (2) which is expressed to be made with a view

to permitting a transfer of those shares, may continue the restrictions specified in paragraphs (c) and (d) of subsection (2) either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to the restrictions specified in subsection (2) or of any right to be issued with any such shares;
- (b) votes in respect of any such shares whether as holder or proxy, or appoints a proxy to vote in respect of them; or
- (c) being the holder of any such shares fails to notify of the restrictions to any person whom he does not know to be aware of them but does know to be entitled, apart from the restrictions to vote in respect of those shares, whether as holder or proxy,

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

(6) Where shares in any company are issued in contravention of the restrictions specified in subsection (2)—

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

(7) A prosecution shall not be instituted under this section except by or with the consent of the Registrar.

(8) The provisions of this section shall apply in relation to debentures as it applies in relation to shares.

**183.** The Registrar shall have the power to verify the assets and liabilities of any company.

Registrar's powers to verify assets and liabilities.

#### POWERS OF MANAGEMENT

**184.** Subject to the provisions contained in the articles of a company—

Management of company.

- (a) the business and affairs of a company shall be managed by or under the direction or supervision of the board of the company;
- (b) the board of a company shall have all the powers necessary for managing and for directing and supervising the management of, the business and affairs of the company.

**185.** (1) A company shall not enter into any major transaction, unless such transaction is—

Major transactions.

- (a) approved by special resolution;
- (b) contingent on approval by special resolution;
- (c) consented to in writing by all the shareholders of the company; or
- (d) a transaction which the company is expressly authorised to enter into by a provision in its articles, which was included in it at the time the company was incorporated.

(2) In this section the reference to—

“assets” includes property of any kind, whether corporal or incorporeal;

“major transaction”, means—

- (a) the acquisition of or an agreement to acquire whether contingent or not, assets of a value which is greater than half the value of the assets of the company before the acquisition;
- (b) the disposition of an agreement to dispose of, whether contingent or not, the whole or more than half by value of the assets of the company;
- (c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities of a value which is greater than half the value of the assets before the acquisition; or
- (d) a transaction or series of related transactions which have the purpose or effect of substantially altering the nature of the business carried on by the company.

(3) Nothing in this section shall apply to—

- (a) a transaction under which a company gives or agrees to give a floating charge over all or any part of the property of the company;
- (b) a transaction entered into by a receiver appointed pursuant to an instrument creating a floating charge over all or any part of the property of a company;
- (c) a transaction entered into by an administrator or liquidator of a company.



**186.** (1) Subject to any restrictions contained in the provisions of the articles of the company, the board of a company may delegate to a committee of directors, a director or employee of the company or any other person, any one or more of its powers other than its powers under any of the sections of this Act specified in the Sixth Schedule.

Delegation of powers.

(2) A board that delegates a power under subsection (1) shall be responsible for the exercise of the power by the delegate as if the power had been exercised by the board, where—

- (a) the board had reason to believe before the exercise of the power, that the delegate would not exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's articles; or
- (b) the board has failed to monitor by means of reasonable methods properly used, the exercise of the power by the delegate.

#### DIRECTORS' DUTIES

**187.** (1) A person exercising powers or performing duties as a director of a company shall act in good faith, and subject to subsection (2), in what that person believes to be in the interests of the company.

Duty of directors to act in good faith and in the interests of company.

(2) A director of a company which is a wholly owned subsidiary of another company may, if expressly permitted to do so by the company's articles, act in a manner which he believes is in the interest of that other company even though it may not be in the interests of the company of which he is a director.

**188.** A director of a company shall not act or agree to the company acting, in a manner that contravenes any provisions of this Act, or the provisions contained in the articles of the company.

Directors to comply with Act and company's articles.

Directors  
standard of care.

**189.** A person exercising powers or performing duties as a director of a company—

- (a) shall not act in a manner which is reckless or grossly negligent; and
- (b) shall exercise the degree of skill and care that may reasonably be expected of a person of his knowledge and experience.

Use of  
information and  
advice.

**190.** (1) Subject to the provisions of subsection (2), a director of a company may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given by any of the following persons :—

- (a) an employee of the company;
- (b) a professional adviser or expert in relation to matters which the director believes to be within the person's professional or expert competence;
- (c) any other director or committee of directors in which the director did not serve, in relation to matters within the directors or committee's designated authority.

(2) Provisions of subsection (1) shall apply to a director, if, and only if, the director—

- (a) acts in good faith;
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that such reliance is unwarranted.

(3) The provisions contained in this Act are in addition to and not in derogation of any provisions contained in any other law relating to the duty or liability of directors or officers of a company.

TRANSACTIONS IN WHICH A DIRECTOR IS INTERESTED

**191.** (1) Subject to the provisions of subsection (2), for the purposes of this Act a director of a company is interested in a transaction to which the company is a party if, and only if, the director—

Meaning of  
“interested”.

- (a) is a party to or will or may derive a material financial benefit from the transaction.;
- (b) has a material financial interest in another party to, the transaction;
- (c) is a director, officer or trustee of another party to or person who will or may derive a material financial benefit from the transaction, not being a party or person that is—
  - (i) the company’s holding company being a holding company of which the company is a wholly-owned subsidiary;
  - (ii) a wholly owned subsidiary of the company; or
  - (iii) a wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary;
- (d) is the parent, child, or spouse of another party to or person who will or may derive a material financial benefit from the transaction; or
- (e) is otherwise directly or indirectly materially interested in the transaction.

(2) A director of a company is not deemed to be interested in a transaction to which the company is a party, if the transaction comprises only of the giving by the company of

security to a third party which has no connection with the director at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity or by the deposit of a security.

Disclosure of interest.

**192.** (1) A director of a company shall, forthwith after becoming aware of the fact that he is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register and if the company has more than one director, disclosed to the board of the company, the nature and extent of that interest.

(2) For the purposes of subsection (1), a general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person or is otherwise connected with another named company or other person, and is to be regarded as interested in any transaction which may after the date of the entry or disclosure be entered into with that company or person, shall be a sufficient disclosure of interest in relation to any transaction with that company or person.

(3) A failure by a director to comply with the requirements of subsection (1) shall not affect the validity of a transaction entered into by the company or the director.

(4) Every director who fails to comply with the requirements of subsection (1) shall be guilty of an offence, and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Avoidance of transaction.

**193.** (1) A transaction entered into by the company in which a director of the company is interested, may be avoided by the company at any time before the expiration of six months after the transaction, and the director's interest in it have been disclosed to all the shareholders (whether by means of the company's annual report or otherwise).

(2) A transaction shall not be avoided under this section if the company receives fair value under it.

(3) For the purposes of subsection (2), the question whether a company receives fair value under a transaction shall be determined on the basis of the information known to the company and to the interested director, at the time the transaction is entered into.

(4) If a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company shall be presumed to have received fair value under the transaction.

(5) For the purposes of this section —

- (a) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction was entered into, shall have the burden of establishing fair value; and
- (b) in any other case, the company shall have the burden of establishing that it did not receive fair value.

(6) A transaction in which a director is interested shall not be avoided on the ground of the director's interest, other than pursuant to this section or the company's articles.

**194.** The avoidance of a transaction under section 193 shall not affect the title or interest of a person in or to property which that person has acquired, if the property was acquired—

Effect on third parties.

- (a) from a person other than the company;
- (b) for valuable consideration; and
- (c) in good faith without notice of the circumstances as a consequence of which the transaction becomes voidable.

Non- application  
of sections 192  
and 193 in  
certain cases.

**195.** Nothing contained in sections 192 and 193 shall apply in relation to—

- (a) remuneration or any other benefit given to a director in accordance with section 216; or
- (b) an indemnity given or insurance provided in accordance with section 218.

Interested  
director may  
vote.

**196.** Subject to the provisions contained in the articles of the company, a director of a company who is interested in a transaction entered into or to be entered into by the company, may—

- (a) vote on a matter relating to the transaction;
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum;
- (c) sign a document relating to the transaction on behalf of the company; and
- (d) do any other thing in his capacity as a director in relation to the transaction,

as if the director were not a party interested in that transaction.

Use of company  
information.

**197.** (1) A director of a company who has information in his capacity as a director or employee of the company which would not otherwise be available to him, shall not disclose that information to any person or make use of or act on the information, except—

- (a) for the purposes of the company;
- (b) as required by law;

- (c) in accordance with subsection (2); or
- (d) in any other circumstances in which the company's articles authorise the director to do so.

(2) A director of a company may disclose, make use of or act on information, if—

- (a) the director is first authorised to do so by the board under subsection (3); and
- (b) particulars of the authorisation are entered in the interests register.

(3) The board authorise a director to disclose, make use of or act on information, if it is satisfied that to do so will not be likely to prejudice the company.

#### DISCLOSURE OF DIRECTORS' INTERESTS IN SHARES

**198.** (1) For the purposes of section 200, a director of a company has a relevant interest in a share issued by a company (whether or not the director is registered in the share register as the holder of it) if the director—

Meaning of  
"relevant  
interest".

- (a) is a beneficial owner of the share;
- (b) has the power to exercise any right to vote attached to the share;
- (c) has the power to control the exercise of any right to vote attached to the share;
- (d) has the power to acquire or dispose of the share;
- (e) has the power to control the acquisition or disposition of the share by another person; or

- (f) under or by virtue of any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it) may at any time have the power to—
  - (i) exercise any right to vote attached to the share;
  - (ii) control the exercise of any right to vote attached to the share;
  - (iii) acquire or dispose of the share; or
  - (iv) control the acquisition or disposition of the share by another person.

(2) Where a person (whether or not a director of the company) has a relevant interest in a share by virtue of subsection (1), and—

- (a) that person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directors, instructions, or wishes of a director of the company in relation to—
  - (i) the exercise of the right to vote attached to the share;
  - (ii) the control of the exercise of any right to vote attached to the share;
  - (iii) the acquisition or disposition of the share; or
  - (iv) the exercise of the power to control the acquisition or disposition of the share by another person;



- (b) a director of the company has the power to exercise the right to vote attached to twenty *per centum* or more of the shares of that person;
- (c) a director of the company has the power to control the exercise of the right to vote attached to twenty *per centum* or more of the shares of that person;
- (d) a director of the company has the power to acquire or dispose of twenty *per centum* or more of the shares of that person; or
- (e) a director of the company has the power to control the acquisition or disposition of twenty *per centum* or more of the shares of that person,

that director has a relevant interest in the share.

(3) A person who has or may have a power referred to in paragraphs (b) to (f) of subsection (1), has a relevant interest in a share, regardless of whether the power is—

- (a) expressed or implied;
- (b) direct or indirect ;
- (c) legally enforceable or not ;
- (d) related to a particular share or not;
- (e) subject to restraint or restriction or is capable of being made subject to restraint or restriction ;
- (f) exercisable presently or in the future;
- (g) exercisable only on the fulfillment of a condition;
- (h) exercisable along or jointly with another person or persons.

(4) A power referred to in subsection (1) exercisable jointly with another person or persons, is deemed to be exercisable by either or any of those persons.

(5) A reference to a power in this section includes a reference to a power that arises from or is capable of being exercised as the result of a breach of any trust, agreement, arrangement or understanding or any of them, whether or not it is legally enforceable.

Relevant  
interests to be  
disregarded in  
certain cases.

**199.** (1) For the purposes of section 200, no account shall be taken of a relevant interest of a person in a share, if—

- (a) the ordinary business of the person who has the relevant interest consists of or includes the lending of money or the provision of financial services or both, and that person has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person;
- (b) that person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person;
- (c) that person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members or of a class of members, of the company;
- (d) that person—
  - (i) is a trustee corporation or a nominee company; and
  - (ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or

- (e) the person has the relevant interest by reason only of the fact that the person is a trustee of a trust to which the share is subject.

(2) For the purposes of paragraph (e) of the subsection (1), a person may be a trustee notwithstanding that he is entitled as a trustee to be remunerated out of the income or property of the trust.

**200.** (1) A person who—

Disclosure of  
share dealing by  
directors.

- (a) is a director of a company on the appointed date; or
- (b) becomes a director of a company thereafter,

and who has a relevant interest in any shares issued by the company, shall forthwith—

- (c) disclose to the board the number and class of shares in which the relevant interest is held and the nature of the relevant interest; and
- (d) ensure that the particulars disclosed to the board under paragraph (c) are entered in the interests register.

(2) A director of a company who acquires or disposes of a relevant interest in shares issued by the company shall, forthwith after the acquisition or disposition—

- (a) disclose to the board—
  - (i) the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be;

- (ii) the nature of the relevant interest;
  - (iii) the consideration paid or received; and
  - (iv) the date of the acquisition or disposition; and
- (b) ensure that the particulars disclosed to the board under paragraph (a) are entered in the interests register.

#### APPOINTMENT AND REMOVAL OF DIRECTORS

Number of  
directors.

**201.** A company shall have at least one director, except a public company which should have at least two directors.

Qualification of  
directors.

**202.** (1) Any person who is not disqualified under subsection (2) of this section, may be appointed as a director of a company.

(2) The following persons shall be disqualified from being appointed or holding office as director of a company—

- (a) a person who is under eighteen years of age;
- (b) a person who is an undischarged insolvent;
- (c) a person who is or would be prohibited from being a director of or being concerned or taking part in the promotion, formation or management of a company, under the Companies Act, No. 17 of 1982, but for the repeal of that Act;
- (d) 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 section 214 of this Act;
- (e) a person who has been adjudged to be of unsound mind;

- (f) a person that is not a natural person;
- (g) in relation to any particular company, a person who does not comply with any qualifications for directors contained in the articles of that company.

(3) A person who is disqualified from being a director but who acts as a director, shall be treated as a director for the purposes of any provision of this Act that imposes a duty or any obligation on a director of a company.

**203.** A person shall not be appointed as director of a company unless he has, in the prescribed form—

Director's consent required.

- (a) consented to be a director; and
- (b) certified that he is not disqualified from being appointed or holding office as a director of a company.

**204.** (1) A person named as a director in an application for incorporation or in an amalgamation proposal, shall hold office as a director from the date of incorporation or from the date the amalgamation proposal becomes effective, as the case may be, until that person ceases to hold office as a director in accordance with the provisions of this Act.

Appointment of first and subsequent directors.

(2) All subsequent directors of a company shall, unless the articles of the company otherwise provide, be appointed by ordinary resolution.

**205.** (1) Subject to the provisions contained in the articles of the company, the shareholders of a company that is not a private company may vote on a resolution to appoint a director of the company, only if—

Appointment of directors to be voted on individually.

- (a) the resolution is for the appointment of one director; or

- (b) the resolution is a single resolution for the appointment of two or more persons as directors of the company, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

(2) A resolution moved in contravention of the provisions of subsection (1) shall be void, even if the moving of it was not objected to at the time.

(3) The provisions of subsection (2) shall not limit the operation of the provisions contained in section 209 of this Act.

(4) No provision for the automatic reappointment of retiring directors in default of another appointment, shall apply on the passing of a resolution in contravention of subsection (1).

(5) Nothing in this section shall prevent the election of two or more directors by ballot or poll.

Removal of  
directors.

**206.** (1) Subject to the provisions contained in the articles of a company, a director may be removed from office by ordinary resolution passed at a meeting called for the purpose or for purposes that include the removal of the director.

(2) The notice calling the meeting shall state that the purpose or a purpose of the meeting is the removal of the director.

(3) Where notice is given of an intended resolution to remove a director and the director concerned makes representations within a period of fourteen days of such notice with a request to send copies to all shareholders, the company shall send copies of the said representations to all shareholders. If the representations are not sent due to the company's default, the director concerned may require that the representations be read at the meeting :

Provided that the company may with permission of court obtained on an order for costs to be paid by the director concerned, refrain from either sending such representations to the shareholders or reading the said representations at the meeting, where the company is able to satisfy court that the provisions of this section are being abused by the director concerned to secure unnecessary publicity for a defamatory matter.

**207.** (1) The office of director of a company shall be vacated if the director—

Director ceasing to hold office.

- (a) resigns from his office in accordance with subsection (2);
- (b) is removed from office in accordance with the provisions of this Act or the articles of the company;
- (c) becomes disqualified from being a director in terms of the provisions of section 202;
- (d) dies;
- (e) vacates office pursuant to subsection (2) of section 210; or
- (f) otherwise vacates office in accordance with the articles of the company.

(2) A director of a company may resign by signing a written notice of resignation and delivering it to the registered office of the company. Subject to the provisions of section 208, the notice is effective when it is received at the registered office or at a later time specified in the notice.

**208.** (1) Where a company has only one director, that director may not resign office until that director has called a meeting of shareholders to receive notice of the resignation, and to appoint one or more new directors.

Resignation of last remaining director.

(2) Notwithstanding its terms, a notice of resignation given by the sole director of a company shall not take effect until the date of the meeting of shareholders, called in accordance with subsection (1).

Validity of  
director's  
acts.

**209.** The acts of a person as a director shall be valid notwithstanding the fact that —

- (a) the person's appointment was defective; or
- (b) the person is not qualified for such appointment.

RETIRING AGE OF DIRECTORS.

Age limit for  
directors.

**210.** (1) Subject to the provisions of section 211, no person shall be capable of being appointed a director of a public company or of a private company which is a subsidiary of a public company, if he has attained the age of seventy years.

(2) Subject to the provisions of section 211, a director of a public company or of a private company which is a subsidiary of a public company, shall vacate office —

- (a) at the conclusion of the annual general meeting commencing next after he attains the age of seventy years ;
- (b) if he is reappointed as a director after attaining the age of seventy years, at the annual general meeting following that reappointment.

(3) Where a person retires from office under the provisions of subsection (2), no provision for the automatic reappointment of retiring directors in default of another appointment shall apply and if at the meeting at the conclusions of which he retires the vacancy is not filled, it may be filled as a casual vacancy.

(4) In this section "public company" means a limited company which is not a private company.



**211.** (1) Nothing in section 210 shall prevent the appointment of a director who has attained the age of seventy years, or require a director who has attained that age to retire, if his appointment is or was made or approved by a resolution passed by the company at a general meeting which declares that the age limit referred to in section 210 shall not apply to that director. However, any resolution approved at a general meeting will be valid only for one year from his appointment.

(2) A notice of any resolution referred to in subsection (1) which is given to the company or by the company to its shareholders, shall state the age of the person to whom it relates.

**212.** (1) Any person who is appointed or to his knowledge is proposed to be appointed director of a company at a time when he has attained the age of seventy years or such lower age, if any, as may be specified in the company's articles, shall give notice of his age to the company.

(2) Provisions of subsection (1) shall not apply in relation to a person's reappointment on the termination of a previous appointment as a director of the company, where notice has been given by that person under subsection (1) on any previous occasion.

(3) Any person who—

- (a) fails to give notice of his age as required by the provisions of subsection (1); or
- (b) acts as director under any appointment which is invalid or which has terminated by reason of his age,

shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(4) For the purposes of paragraph (b) of subsection (3), a person who has acted as a director under an appointment which is invalid or has terminated, shall be deemed to have continued so to act throughout the period from the date of the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he acted thereunder.

#### DISQUALIFICATION OF DIRECTORS

Persons  
prohibited from  
managing  
companies.

**213.** (1) Where a person—

- (a) has been convicted of any offence under this Act which is punishable by imprisonment;
- (b) has been convicted of an offence involving dishonest or fraudulent acts;
- (c) is adjudged insolvent under the Insolvency Ordinance (Cap. 97) ; or
- (d) adjudged to be of unsound mind,

such person shall not, during the period of five years after the conviction or adjudication, as the case may be, be a director or promoter of or in any way, whether directly or indirectly, be concerned or take part in the management of a company, unless that person first makes an application to obtain the leave of the court. Leave may be given on such terms and conditions as the court thinks fit.

(2) A person intending to apply for the leave of court under this section, shall give to the Registrar not less than ten days' notice of his intention to apply for such leave.

(3) The Registrar and such other persons as the court thinks fit, may attend and be heard at the hearing of any application under this section.

(4) A person who acts in contravention of this section or of any order made under this section, 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.

(5) In this section, the term “company” includes an overseas company which carries on business in Sri Lanka.

**214.** (1) Where a person—

Court may disqualify directors.

- (a) is prohibited from being a director of company under section 213;
- (b) while a director of a company, has persistently failed to comply with the provisions of this Act;
- (c) has been convicted of an offence of involving dishonest or fraudulent acts in a country other than Sri Lanka; or
- (d) was a director of a company which became insolvent and that person’s conduct as a director of that company or of any other company makes that person unfit to be a director of a company,

the court may make an order that the person shall not, without leave of court, be a director or promoter of or in any way whether directly or indirectly be concerned or take part in the management of a company, for such period not exceeding ten years as may be specified in the order.

(2) A person intending to apply for an order under this section shall give not less than ten working days’ notice of that intention to the person against whom the order is sought. On the hearing of the application the person against whom the order is sought, may appear and give evidence or call witnesses.

(3) An application for an order under this section may be made by the Registrar or by a liquidator or an administrator of a company of which the person against whom the order is sought was a director, or by a person who is or has been a shareholder or creditor of any such company.

(4) An order may be made under this section even though the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(5) The Registrar of the court shall as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar—

- (a) shall cause to be published in the *Gazette* the name of the person against whom the order is made; and
- (b) may give such further notice of the making of the order as he thinks fit.

(6) Every person who acts in contravention of an order made under this section 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.

(7) In this section “company” includes an overseas company which carries on business in Sri Lanka.

#### MISCELLANEOUS PROVISIONS RELATING TO DIRECTORS.

Proceedings  
of board.

**215.** The articles of a company shall govern the proceedings of the board of a company.

Remuneration  
and other  
benefits.

**216.** (1) Subject to the provisions of section 217, the board of a company may, if authorised to do so by the articles or by an ordinary resolution, approve—

- (a) the payment of any remuneration or the provision of other benefits by the company to a director for services as a director or in any other capacity;

- (b) the payment by the company to a director or former director, of compensation for loss of office;
- (c) the entering into of a contract to do any one of the things referred to in paragraphs (a) or (b),

if the board is satisfied that to do so is fair to the company.

(2) The board shall ensure that forthwith after approving the making of the payment or the provision of the benefit or the entering into of the contract, as the case may be, particulars of the payment or benefit or contract are entered in the interests register.

(3) The payment of remuneration or the giving of any other benefit to a director in accordance with a contract authorised under subsection (1), shall not be required to be separately authorised under that subsection.

(4) The directors who vote in favour of approving a payment, benefit, or contract under subsection (1), shall sign a certificate stating that in their opinion, the making of the payment or the provision of the benefit or the entering into of the contract is fair to the company, and the reasons for reaching that opinion.

(5) Where a payment is made or other benefit provided to which subsection (1) applies, and either—

- (a) the provision of subsections (1) and (4) have not been complied with ; or
- (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (4),

the director or former director to whom the payment is made or the benefit is provided, shall be personally liable to the company for the amount of the payment or the monetary

value of the benefit, except to the extent to which he proves that the payment or benefit was fair to the company at the time it was made or provided.

(6) Nothing in this section shall prevent the articles of a company from providing for the authorisation by shareholders of payment of remuneration or the giving of other benefits to directors, and the provisions of subsections (1) to (5) of this section shall not apply to the payment of remuneration or the giving of any other benefit approved by shareholders pursuant to such a provision in the company's articles.

Restrictions on  
loans to  
directors.

**217.** (1) Subject to the provisions of section 31, and subsection (2) of this section, a company shall not—

- (a) give a loan to a director of the company or of a related company; or
- (b) enter into any guarantee or provide any security in connection with a loan made by any person to a director of the company or of a related company.

(2) The provisions of subsection (1) shall not prevent a company from—

- (a) giving a loan to a director, where the aggregate of the amounts advanced to the director by the company does not exceed twenty-five thousand rupees or such higher sum as may be prescribed by the Minister from time to time, on the recommendation of the Advisory Commission constituted under Part XIX of this Act ;
- (b) giving a loan to a related company or entering into a guarantee or providing security in connection with a loan given by any person to a related company;
- (c) providing a director with funds to meet expenditure incurred or to be incurred by him for the purposes of

the company or for the purpose of enabling him to perform his duties as an officer of the company; or

- (d) giving a loan in the ordinary course of the business of lending money, where that business is carried on by the company.

(3) Where any loan is given in contravention of the provisions of subsection (1), the loan shall be voidable at the option of the company and the loan shall be immediately repayable upon being avoided by the company, notwithstanding the terms of any agreement relating to the loan.

(4) Where a transaction other than giving a loan to a director is entered into by a company in contravention of subsection (1)—

- (a) the director shall be liable to indemnify the company for any loss or damage resulting from the transaction; and
- (b) the transaction shall be voidable at the option of the company, unless —
  - (i) the company has been indemnified under paragraph (a) for any loss or damage suffered by it; or
  - (ii) any rights acquired by a person other than the director in good faith and for value, without actual notice of the circumstances giving rise to the breach of this section, would be affected by its avoidance.

(5) Where a company fails to comply with the provisions of subsection (1) —

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

- (b) every director of the company who authorises or permits the company to enter into the relevant transaction, shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Indemnity and insurance.

**218.** (1) Except as provided for in this section, a company shall not indemnify or directly or indirectly effect insurance for a director or employee of the company or a related company, in respect of any—

- (a) liability for any act or omission in his capacity as a director or employee; or
- (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

(2) A company may if expressly authorised by its articles, indemnify a director or employee of the company or a related company, for any costs incurred by him in any proceeding —

- (a) that relates to liability for any act or omission in his capacity as a director or employee; and
- (b) in which judgment is given in his favour or in which he is acquitted or which is discontinued or in which he is granted relief under section 526.

(3) A company may if expressly authorised by its articles, indemnify a director or employee of the company or a related company in respect of—

- (a) liability to any person other than the company or a related company, for any act or omission in his capacity as a director or employee; or
- (b) cost incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,



not being criminal liability or in the case of a director, liability in respect of a breach of the duty specified in section 187.

(4) A company may if expressly authorised by its articles and with the prior approval of the board, effect insurance for a director or employee of the company or a related company in respect of—

- (a) liability not being criminal liability, for any act or omission in his capacity as a director or employee;
- (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that director or employee in defending any criminal proceedings in which he is acquitted.

(5) The board of a company shall ensure that particulars of any indemnity given to or insurance effected for any director or employee of the company or a related company, are forthwith entered in the interests register.

(6) An indemnity given in breach of this section shall be void.

(7) Where insurance is effected for a director or employee of a company or a related company and the provisions of either subsection (4) or subsection (5) have not been complied with, the director or employee shall be personally liable to the company for the cost of effecting the insurance, except to the extent that he proves that it was fair to the company at the time the insurance was effected.

(8) In this section —

“director” includes a former director;

“effect insurance” includes the payment, whether directly or indirectly, the costs of the insurance;

“employee” includes a former employee;

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises and “indemnity” has a corresponding meaning.

Duty of  
directors on  
insolvency.

**219.** (1) A director of a company who believes that the company is unable to pay its debts as they fall due, shall forthwith call a meeting of the board to consider whether the board should apply to court for the winding up of the company and the appointment of a liquidator or an administrator or carry on further the business of the company.

(2) Where a director referred to in subsection (1) fails to comply with the requirement of that subsection and at the time of that failure the company was unable to pay its debts as they fell due, and the company is subsequently placed in liquidation, the court may on the application of the liquidator or of a creditor of the company, make and order that the director shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to carry on its business.

(3) If—

- (a) at a meeting called under subsection (1) the board does not resolve to apply to court for the winding up of the company and for the appointment of a liquidator or an administrator;
- (b) at the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and
- (c) the company is subsequently placed in liquidation,

the court may, on the application of the liquidator or of a creditor of the company, make an order that the directors, other than those directors who attended the meeting and voted in favour of applying to court for the winding up of the company and for the appointment of the liquidator or an administrator, shall be liable for the whole or any part of any loss suffered by creditor of the company as a result of the company continuing to carry on its business.

**220.** (1) If at any time it appears to a director of a company that the net assets of the company are less than half of its stated capital, the board shall within twenty working days of that fact becoming known to the director, call an extraordinary general meeting of shareholders of the company for the purposes of this section, to be held not later than forty working days from that date of calling of such meeting.

Duty of directors  
on serious loss of  
capital.

(2) The notice calling a meeting under this section shall be accompanied by a report prepared by the board, which advises shareholders of—

- (a) the nature and extent of the losses incurred by the company;
- (b) the cause or causes of the losses incurred by the company;
- (c) the steps, if any, which are being taken by the board to prevent further such losses or to recoup the losses incurred.

(3) The business of a meeting called under this section shall be to discuss the report prepared by the directors and the financial position of the company. The chairperson of the meeting shall ensure that shareholders have a reasonable opportunity to ask questions in relation to and to discuss and comment on the report and the management of the company generally.

(4) Where the board of a company fails to comply with subsection (1), every director who knowingly and willfully authorises or permits the failure or permits the failure to continue, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

#### SECRETARIES

Secretary.

**221.** (1) Every company shall have a secretary.

(2) No person shall be appointed as a secretary of a company unless such person has, in the prescribed form—

- (a) consented to be the secretary of such company; and
- (b) certified that such person has such qualifications as may be prescribed in relation that company, under section 222.

(3) A person named as the secretary of a company in an application for incorporation or in an amalgamation proposal, shall hold office as a secretary from the date of the incorporation of the company or the date the amalgamation proposal becomes effective, as the case may be, until that person ceases to hold office under any provisions of this Act or any provisions contained in the articles of the company.

(4) Unless the articles of the company otherwise provides, the board shall have the power to appoint or remove a secretary of the company.

Qualifications of secretary to be prescribed.

**222.** The secretary of every company having a turnover or stated capital of an amount prescribed under this Act, shall have such qualifications as may be prescribed, having regard to the nature of the duties the secretary will be called upon to discharge.

REGISTER OF DIRECTORS AND SECRETARIES

**223.** (1) Every company shall keep at its registered office or at such other place as may be notified to the Registrar under section 116, a register of its directors and secretaries containing with respect to each of them, the following particulars :—

Register of  
directors and  
secretaries.

- (a) in the case of an individual, the present name and surname, any former name or surname, usual residential address and business occupation;
- (b) in the case of a secretary which is a corporation, its corporate name and registered or principal office.

(2) The company shall ensure that notice in the prescribed form of—

- (a) a change in the directors or the secretary of the company; or
- (b) a change in the particulars contained in the register in respect of a director or secretary of the company,

is delivered to the Registrar for registration.

(3) A notice under subsection (2) shall—

- (a) specify the date of the change;
- (b) in the case of the appointment of a new director or secretary, have annexed to the notice the form of consent and certificate required under section 203 or subsection (2) of section 211, as the case may be; and
- (c) be delivered to the Registrar within twenty working days of—
  - (i) the change occurring, in the case of the appointment or resignation of a director or secretary; or

- (ii) the company first becoming aware of the change, in the case of the death of a director or secretary or a change in the particulars contained in the register in respect of a director or secretary.

(4) Where a company fails to comply with 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 fine not exceeding fifty thousand rupees.

#### PREVENTION OF OPPRESSION AND MISMANAGEMENT

Oppression.

**224.** (1) Subject to the provisions of section 226, any shareholder or shareholders of a company who has a complaint against the company that the affairs of such company are being conducted in a manner oppressive to any shareholder or shareholders (including the shareholder or shareholders with such complaint) may make an application to court, for an order under the provisions of this section.

(2) Where on any application made under the provisions of subsection (1), the court is of the opinion that the affairs of a company are being conducted in a manner oppressive to any shareholder or shareholders of the company, the court may with a view to remedying the matters complained of, make such order as it thinks fit.

(3) Pending the making by it of a final order, the court may on the application of a party to the proceedings, make an interim order which it thinks is necessary for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable. The provisions of section 521 shall apply to any interim order made hereunder.

**225.** (1) Subject to the provisions of section 226, any shareholder or shareholders of a company, having a complaint—

Mis-  
management.

- (a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company; or
- (b) that a material change (not being a change brought about by or in the interest of any creditors, including debenture holders or any class of shareholders of the company) has taken place in the management or control of the company, whether by an alteration in its board of directors or of its agent or secretary or in the constitution or control of the firm or body corporate acting as its agent or secretary or in the ownership of the shares of the company or in any other manner whatsoever, and that by reason of such change it is likely that the affairs of the company may be conducted in a manner prejudicial to the interests of the company,

may make an application to court for an order under the provisions of this section.

(2) Where, on any application made under the provisions of subsection (1), the court is of opinion that the affairs of the company are being conducted as referred to in subsection (1) or that by reason of any material change that is referred to in that subsection in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may with a view to remedying or preventing the matters complained of or apprehended, make such order as it thinks fit.

(3) Pending the making by it of a final order, the court may on the application of a party to the proceedings make an interim order which it thinks is necessary, for regulating the

conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable. The provisions of section 521 shall apply to any interim order made hereunder.

Who may make  
an application.

**226.** (1) An application under section 224 or section 225 may only be made by a shareholder or shareholders, who at any time during the six months prior to the making of the application—

- (a) constituted not less than five *per centum* of the total number of shareholders; or
- (b) held shares which together carried not less than five *per centum* of the voting rights at a general meeting of the company.

(2) For the purposes of subsection (1), where any shares are held by two or more persons jointly, such persons shall be counted only as one shareholder.

(3) Where several shareholders of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the remaining shareholders, may make the application on behalf and for the benefit of all of them.

(4) Where at the conclusion of an inquiry under the provisions of section 224 or section 225, the court holds that the shareholder or shareholders of the company making the application has or have done so vexatiously or without reason or probable cause, the court may in addition to any award of costs against such shareholder or shareholders, direct that such shareholder or shareholders be disqualified from being appointed as a director or agent or secretary or manager of the company for a period not exceeding five years from the date of the order to be fixed by court, or direct that the shareholder or shareholders shall not have the right to convene



or requisition any meeting of the company or have the right to be present in person or by proxy at any meeting of the company within the aforesaid period, or to vote upon a show of hands or at a poll by person or by proxy at such meeting.

**227.** Notwithstanding the provisions of Part XII, at any stage of the winding up proceedings in respect of a company, where a court is of the opinion that to wind up the company would be prejudicial to the interests of a shareholder of the company, it shall be lawful for the court to act under the provisions of section 224 or section 225 in like manner, as if an application had been made to the court under the provisions of either of those two sections.

Power of court to act under section 224 or section 225 during winding up proceedings.

**228.** Without prejudice to the generality of the powers conferred on the court by section 224 or section 225, any order made under either of such sections, may provide for—

Powers of court on application under section 224 or section 225.

- (a) the regulation of the conduct of the company's affairs in the future;
- (b) the purchase of the shares or interests of any shareholders of the company by other shareholders thereof or by the company;
- (c) the termination, setting aside or modification of any agreement, however arrived at, between the company on the one hand and any of the following persons on the other, namely—
  - (i) the managing director;
  - (ii) any other director;
  - (iii) the board of directors ;
  - (iv) the agent or secretary ; or
  - (v) the manager ;

upon such terms and conditions as may, in the opinion of the court, be just and equitable in all the circumstances of the case;

- (d) the termination, setting aside or modification of any agreement between the company and any person not referred to in paragraph (c), upon such terms and conditions as may, in the opinion of the court, be just and equitable in all the circumstances of the case, but always so that no such agreement shall be terminated, set aside or modified, except after due notice to the party concerned and after giving such person an opportunity of being heard;
- (e) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within the three months immediately prior to the date of the application or the commencement of winding up proceedings, as the case may be, which would, if made or done by or against an individual, be deemed in a case of his insolvency, to be fraudulent preference; and
- (f) any other matter for which in the opinion of the court it is just and equitable that provision should be made.

Effect of  
alteration of  
articles of  
company by  
order under  
section 224 or  
225.

**229.** (1) Where an order under section 224 or section 225 makes any alteration in the articles of the company, then, notwithstanding anything to the contrary contained in any other provision of this Act, the company shall not have power, except to the extent if any permitted in the order, to make without the leave of the court, any alteration whatsoever in the articles which is inconsistent with the order.

(2) Subject to the provisions of subsection (1), the alteration made by the order shall in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act, and the said provisions shall apply accordingly to the articles so altered.

(3) A certified copy of every order altering or giving leave to alter a company's articles shall, within ten working days after the making of such order, be filed by the company with the Registrar who shall register the same.

(4) Where default is made in complying with the provisions of subsection (3)—

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

**230.** Where the managing director or any other director, the agent or secretary or the manager of a company or any other person who has not been named as a respondent to any application made under the provisions of section 224 or section 225, applies to be added as a respondent to such application, the Court shall where it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

Addition of respondents to application under section 224 or section 225.

**231.** (1) Where an order of a court made under section 224 or section 225 terminates, sets aside or modifies an agreement such as is referred to in paragraph (d) or paragraph (e) of section 228—

Consequences of termination or modification of certain agreements.

- (a) the order shall not give rise to any claim whatsoever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise; and
- (b) no managing director or other director, agent, secretary or manager whose agreement is so terminated or set aside and no person who, at the date of the order terminating or setting aside the agreement was or subsequently becomes an

associate of such agent or secretary shall, for a period of five years from the date of the order terminating the agreement, be appointed or act as the managing director or other director, agent, secretary or manager of the company, unless with the leave of the court.

(2) (a) Any person who knowingly acts as a managing director or other director, agent or secretary or manager of a company in contravention of the provisions of paragraph (b) of section (1), shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees.

(b) Where an offence under the provisions of this section is committed by a body of persons—

- (i) if the body of person is a body corporate, every director and officer of that body corporate; or
- (ii) if the body of person is a firm, every partner of the firm,

shall be deemed to be guilty of such offence:

Provided that no such person shall be deemed to be guilty of such offence, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Extended  
meaning of  
“shareholder”.

**232.** A reference in sections 224 to 228 to a “shareholder”, shall also include a reference to —

- (a) a person on whom shares have devolved through the death of a shareholder;
- (b) the executor or administrator of a deceased shareholder; or
- (c) a person who was a shareholder at any time within six months prior to the making of an application under section 224 or section 225.

## RESTRAINING ORDERS

**233.** (1) The court may on an application made under this section, make an order restraining a company that, or a director of a company who, proposes to engage in a conduct that would contravene the articles of the company or any provision of this Act, from engaging in that conduct.

Restraining orders.

(2) An application may be made by —

(a) the company; or

(b) a director or shareholder of the company.

(3) Where the court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(4) An order may not be made under this section in relation to a conduct or a course of conduct that has been completed.

(5) The court may at any time before the final determination of an application under subsection (1), make as an interim order, any order that it is empowered to make under that subsection. 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.

(6) The provision of section 521 shall not apply to any interim order made under this section.

## DERIVATIVE ACTIONS

**234.** (1) Subject to the provisions of subsections (3) and (4) of this section, the court may, on the application of a shareholder or director of a company, grant leave to that shareholder or director to—

Derivative actions.

(a) bring proceedings in the name and on behalf of the company or any subsidiary of that company; or

- (b) intervene in proceedings to which the company or any subsidiary is a party, for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or subsidiary, as the case may be.

(2) Without limiting the powers given to a court under subsection (1), in determining whether to grant or not grant leave under that subsection, the court shall have regard to—

- (a) the likelihood of the proceedings succeeding;
- (b) the costs of the proceedings in relation to the relief likely to be obtained;
- (c) any action already taken by the company or subsidiary to obtain relief;
- (d) the interests of the company or subsidiary in the proceedings being commenced, continued, defended or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1), only if the court is satisfied that either—

- (a) the company or subsidiary does not intend to bring, diligently continue, defend or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the company or subsidiary, that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

(4) Notice of the application shall be served on the company or subsidiary as the case may be.

(5) The company or subsidiary may appear and be heard and shall inform the court whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

(6) Except as provided for in this section, a shareholder or director of a company is not entitled to bring or intervene in any proceedings in the name of or on behalf of the company or a subsidiary of the company.

**235.** The court may on the application of a shareholder or a director to whom leave is granted under section 234 to bring or intervene in proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceeding, including any costs relating to any settlement, compromise or discontinuance approved under section 237, shall be met by the company.

Costs of  
derivative action  
to be met by  
company.

**236.** The court may at any time, make any order it thinks fit in relation to any proceedings brought by a shareholder or a director or in which a shareholder or director intervenes, as the case may be, with leave of the court under section 234, and without limiting the generality of the powers conferred under this section, may—

Powers of court  
where leave is  
granted.

- (a) make an order authorising the shareholder or any other person to control the conduct of the proceedings;
- (b) give directions for the conduct of the proceedings;
- (c) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings; or
- (d) make an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid, in whole or in part, to the former and present shareholders of the company or subsidiary, instead of to the company or to the subsidiary, as the case may be.

Compromise, settlement or continuance of derivative action.

**237.** No proceedings brought by a shareholder or a director or in which a shareholder or a director intervenes, as the case may be, with leave of the court under section 234, may be settled or compromised or discontinued without the approval of the court.

#### RATIFICATION

Ratification of certain actions of directors.

**238.** (1) The purported exercise by a director or the board of directors of a company or of a power vested in the shareholders or any other person, may be ratified or approved by those shareholders or that person, in the same manner in which the power may be exercised.

(2) The purported exercise of a power that is ratified under subsection (1) is deemed to be and always to have been, a proper and valid exercise of that power.

(3) The ratification or approval under this section of the purported exercise of a power by director or the board of directors does not prevent the court from exercising a power which might, apart from the ratification or approval, be exercised in relation to the action of the director or the board.

#### PART VIII

##### AMALGAMATIONS

Amalgamations.

**239.** Two or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or may be a new company. Public notice of such amalgamation shall be given in accordance with the provisions of this Act.

Amalgamation proposal.

**240.** (1) Every company which proposes to amalgamate shall approve in accordance with the provisions of section