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GOVERNMENT NOTICE No 222

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council

H E BADER,
Acting Clerk of the Legislative Council

A Bill to Regulate Trading Companies and other Associations

BE IT ENACTED by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof, as follows —

PART I

PRELIMINARY

1 This Ordinance may be cited as ‘the Companies Ordinance, 1933’ and shall come into operation upon such date as the Governor may by notice in the Gazette appoint

Short title
and com-
mencement

Interpretation

2 (1) In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say —

Interpreta-
tion

‘annual return’ means the return required to be made, in the case of a company having a share capital, under section 108 and, in the case of a company not having a share capital, under section 109 of this Ordinance

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the company, the regulations contained in Table A in the First Schedule annexed to the Indian Companies Act 1882, as applied to the Colony, or in the First Schedule annexed to the Companies Ordinance, or in Table A in the First Schedule to this Ordinance

Cap 93

“book and paper” and “book or paper” include accounts deeds writings and documents

“company” means a company formed and registered under this Ordinance or an existing company

“existing company” means a company formed and registered under the Indian Companies Act, 1882, as applied to the Colony, or under the Companies Ordinance

Cap 93

"the court" used in relation to a company means the court having jurisdiction under this Ordinance,

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

"director" includes any person occupying the position of director by whatever name called,

"document" includes summons, notice, order, and other legal process, and registers,

"insurance company" means a company which carries on the business of insurance either solely or in common with any other business or businesses,

"manager" includes any person occupying the position of manager by whatever name called and whether under a contract of service or not,

"memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of any enactment,

"officer" includes any director, manager or secretary, but save in sections 266, 270 and 271 does not include an auditor,

"prescribed" means, as respects the provisions of this Ordinance relating to the winding-up of companies, prescribed by rules made by the Supreme Court, and, as respects the other provisions of this Ordinance, prescribed by the Governor in Council,

"prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company,

"the registrar" means the registrar or any assistant registrar performing under this Ordinance the duty of registration of companies

"rules" means rules made under section 285 of this Ordinance, and includes forms,

"share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied,

"Table A" means Table A in the First Schedule to this Ordinance.

(2) A person shall not be deemed to be within the meaning of any provision in this Ordinance a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity

PART II

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Memorandum of Association

3. (1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability

Mode of forming incorporated company

(2) Such a company may be either—

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Ordinance termed ‘‘a company limited by shares’’), or
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance termed ‘‘a company limited by guarantee’’), or
- (c) a company not having any limit on the liability of its members (in this Ordinance termed ‘‘an unlimited company’’)

4 (1) The memorandum of every company must state—

- (a) the name of the company, with ‘‘Limited’’ as the last word of the name in the case of a company limited by shares or by guarantee,
- (b) the place in which the registered office of the company is to be situate,
- (c) the objects of the company

Requirements with respect to memorandum

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount

- (4) In the case of a company having a share capital—
(a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount,
(b) no subscriber of the memorandum may take less than one share,
(c) each subscriber must write opposite to his name the number of shares he takes

Signature of memorandum

5 The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signature

Restriction on alteration of memorandum

6 A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Ordinance

Cases and mode in which and extent to which objects of company may be altered

7 (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it—
(a) to carry on its business more economically or more efficiently, or
(b) to attain its main purpose by new or improved means, or
(c) to enlarge or change the local area of its operations or
(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company, or
(e) to restrict or abandon any of the objects specified in the memorandum or

(f) to sell or dispose of the whole or any part of the undertaking of the company, or

(g) to amalgamate with any other company or body of persons

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court

(3) Before confirming the alteration the court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration, and

(b) that, with respect to every creditor who in the opinion of the court is entitled to object and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement

Provided that no part of the capital of the company shall be expended in any such purchase

(6) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar and he shall register the copy so delivered and shall certify the registration under

his hand, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper

(7) If a company makes default in delivering to the registrar any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which the default continues

Articles of Association

Articles prescribing regulations for companies

8. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company

Regulations required in case of unlimited company or company limited by guarantee

9. (1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar notice of the increase, and the registrar shall record the increase

If default is made in complying with this sub-section, the company and every officer of the company who is in default shall be liable to a default fine

Adoption and application of Table A

10. (1) Articles of association may adopt all or any of the regulations contained in Table A

(2) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in

Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

11 Articles must—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively,
- (c) be signed by each subscriber to the memorandum of association in the presence of at least one witness who must attest the signature and add his occupation and address.

Printing and
signature of
articles

12 (1) Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles

Alteration of
articles by
special
resolution

(2) Any alteration or addition so made to the articles shall, subject to the provisions of this Ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Form of Memorandum and Articles

13 The form of—

- (a) the memorandum of association of a company limited by shares,
- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital,
- (c) the memorandum and articles of association of a company limited by guarantee and having a share capital,
- (d) the memorandum and articles of association of an unlimited company having a share capital,

Statutory
forms of
memorandum
and articles

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule to this Ordinance, or as near thereto as circumstances admit.

Registration

14 The memorandum and the articles, if any, shall be delivered to the registrar and he shall retain and register them

Registration
of memoran-
dum and
articles

Effect of registration

15 (1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, with power to hold land and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance

Conclusiveness of certificate of incorporation

16 (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance

(2) A statutory declaration by an advocate of the Supreme Court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance

Registration of unlimited company as limited

17 (1) Subject to the provisions of this section, a company registered as unlimited may register under this Ordinance as limited, or a company already registered as a limited company may re-register under this Ordinance, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part X of this Ordinance in the case of a company registered in pursuance of that Part

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion

of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Ordinance

Provisions with Respect to Names of Companies

18 (1) No company shall be registered by a name which—

(a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires, or

(b) contains the words "Chamber of Commerce," unless the company is a company which is to be registered under a licence granted in pursuance of the next following section of this Ordinance without the addition of the word "Limited" to its name, or

(c) contains the words "Building Society"

(2) Except with the consent of the Governor in Council, no company shall be registered by a name which—

(a) contains the words "Royal" or "Imperial" or in the opinion of the registrar suggests, or is calculated to suggest, the patronage of His Majesty or of any member of the Royal Family, or connexion with His Majesty's Government or any department thereof, or

(b) contains the words "Municipal" or "Chartered" or in the opinion of the registrar suggests, or is calculated to suggest, connexion with any municipality or other local authority or with any society or body incorporated by Royal Charter, or

(c) contains the word "Co-operative"

19 (1) Where it is proved to the satisfaction of the Governor in Council that an association about to be formed as a limited company is to be formed for promoting commerce, art science, religion, charity or any other useful or social object and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Governor in Council may by

Restriction on registration of companies by certain names.

Power to dispense with "Limited" in name of charitable and other companies

licence under the hand of the Colonial Secretary direct that the association may be registered as a company with limited liability, without the addition of the word 'Limited' to its name, and the association may be registered accordingly.

(2) A licence by the Governor in Council under this section may be granted on such conditions and subject to such regulations as the Governor in Council thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Governor in Council so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the registrar.

(4) A licence under this section may at any time be revoked by the Governor in Council, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this section.

Provided that, before a licence is so revoked, the Governor in Council shall give to the association notice in writing of the intention to revoke and shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "Chamber of Commerce" the notice to be given as aforesaid shall include a statement of the effect of the provisions of sub-section (3) of the next following section of this Ordinance.

**Change of
name**

20 (1) A company may, by special resolution and with the approval of the registrar signified in writing, change its name.

(2) If a company, through inadvertence or otherwise, is, without such consent as is mentioned in paragraph (a) of sub-section (1) of section 18 of this Ordinance, registered by a name which is identical with that by which a company in existence is previously registered, or which so nearly resembles that name as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the registrar.

(3) Where a licence granted in pursuance of the last foregoing section of this Ordinance to a company the name of which contains the words "Chamber of Commerce" is revoked, the company shall, within a period of six weeks from the date of the revocation or such longer period as the Governor in Council may think fit to allow, change its name to a name which does not contain those words.

If a company makes default in complying with the requirements of this sub-section, it shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(4) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(5) The change of name shall not affect any rights or obligation of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

*General Provisions with respect to Memorandum
and Articles*

21 (1) Subject to the provisions of this Ordinance the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

Effect of
memorandum
and articles

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

22 (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Ordinance, every provision in the memorandum or articles or any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

Provision as
to memoran-
dum and
articles of
companies
limited by
guarantee

(2) For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified thereby

**Alterations in
memorandum
or articles
increasing
liability to
contribute to
share capital
not to bind
existing
members
without
consent**

23 Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby

**Copies of
memorandum
and articles to
be given to
members**

24 (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any subject to payment of one shilling or such less sum as the company may prescribe

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding twenty shillings

**Issued copies
of memo-
randum to
embody
alterations**

25 (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration

(2) If where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding twenty shillings for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty

Membership of Company

26 (1) The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company

Private Companies

27 (1) For the purposes of this Ordinance, the expression "private company" means a company which by its articles—

- (a) restricts the right to transfer its shares, and
- (b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be, members of the company, and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member

28 (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the last foregoing section of this Ordinance, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Second Schedule to this Ordinance

(2) If default is made in complying with sub-section (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds

Circumstances
in which
company
ceases to be,
or to enjoy
privileges of,
a private
company

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in sub-section (3) of section 110, sub-section (1) of section 130 and paragraph (d) of section 167 of this Ordinance, and thereupon the said provisions shall apply to the company as if it were not a private company

Provided that the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid

Reduction of Number of Members below Legal Minimum

Prohibition of carrying on business with fewer than seven or, in the case of a private company two members

29 If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor

Contracts, etc

Form of contracts

30 (1) Contracts on behalf of a company may be made as follows—

- (a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under its authority, express or implied,
- (b) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made

31 A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority express or implied

32 (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the Colony

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal

33. (1) A company whose objects require or comprise the transaction of business beyond the limits of the Colony may, if authorized by its articles, have for use in any territory, district or place not situate in the Colony an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any mentioned in the instrument conferring the authority, or if no period is there mentioned then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him

Bills of
exchange and
promissory
notes

Execution of
deeds abroad

Power for
company to
have official
seal for use
abroad

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed

Authentication of Documents

Authentication
of documents

34 A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal

PART III

SHARE CAPITAL AND DEBENTURES

Prospectus

Dating and
registration
of prospectus

35 (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be delivered to the registrar for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered for registration

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed in manner required by this section

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so delivered

Specific
requirements
as to par-
ticulars in
prospectus

36 (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company must state the matters specified in Part I of the Third Schedule to the Ordinance and set out the reports specified in Part II of

that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section

Provided that this sub-section shall not apply if it is shown that the form of application was issued either—

- (a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or
- (b) in relation to shares or debentures which were not offered to the public

If any person acts in contravention of the provisions of this sub-section, he shall be liable to a fine not exceeding five hundred pounds

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part I of the Third Schedule to this Ordinance, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance apart from this section.

Restriction on
alteration of
terms
mentioned in
prospectus or
statement
in lieu of
prospectus

37 (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(2) This section shall not apply to a private company.

Liability for
statements in
prospectus

38 (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

- (a) every person who is a director of the company at the time of the issue of the prospectus, and
- (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and
- (c) every person being a promoter of the company, and
- (d) every person who has authorized the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith, unless it is proved—

- (i) That having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or

- (ii) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor, or
- (iv) that—
 - (a) as regards every untrue statement purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true, and
 - (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and
 - (c) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv) (b) of this subsection was competent to make it

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without

whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation

(4) For the purposes of this section—

the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company,

the expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him

Document
containing
offer of
debentures
for sale to be
deemed
prospectus

39 (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof

(2) For the purposes of this Ordinance, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot, or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received

(3) Section 35 of this Ordinance as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 36 of this Ordinance as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the nett amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing

Allotment

40 (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part I of the Third Schedule to this Ordinance has been subscribed and the sum payable on application for the amount so stated has been paid to and received by the company

Prohibition of allotment unless minimum subscription received

For the purposes of this sub-section, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as "the minimum subscription."

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) The amount paid on application shall be set apart by the directors as a separate fund and shall not be available for the purposes of the company or the satisfaction of its debts until the minimum subscription has been made up.

(5) If the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the one hundred and thirtieth day.

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of
allotment in
certain cases
unless state-
ment in lieu
of prospectus
delivered to
registrar

41 (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the registrar for registration

a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing in the form and containing the particulars set out in the Fourth Schedule to this Ordinance

(2) This section shall not apply to a private company

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding one hundred pounds

42 (1) An allotment made by a company to an applicant in contravention of the provisions of the two last foregoing sections of this Ordinance, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up

Effect of irregular allotment

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment

43 (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within sixty days thereafter deliver to the Registrar for registration—

Return as to allotments

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount, if any, paid or due and payable on each share, and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services

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or other consideration in respect of which that allotment was made, such contracts being duly stamped, together with copies of all such contracts verified in the prescribed manner and a return stating the number and nominal amount of shares so allotted the extent to which they are to be treated as paid up, and the consideration for which they have been allotted

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within sixty days after the allotment deliver to the registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Ordinance, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 33 of that Ordinance

(3) If default is made in complying with this section, every director, manager, secretary or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues

Provided that, in case of default in delivering to the registrar within sixty days after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper

Commissions and Discounts

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts etc

44 (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

(a) the payment of the commission is authorized by the articles, and

- (b) the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less, and
- (c) the amount or rate per cent of the commission paid or agreed to be paid is—
- (i) in the case of shares offered to the public for subscription, disclosed in the prospectus, or
- (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice, and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid
- (2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise
- (3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay
- (4) A vendor to promoter of or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section

(5) If default is made in complying with the provisions of this section relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty-five pounds

Statement in balance sheet as to commissions and discounts

45 (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine

Prohibition of provision of financial assistance by company for purchase of its own shares

46 (1) Subject as provided in this section it shall not be lawful for a company to give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase made or to be made by any person of any shares in the company

Provided that nothing in this section shall be taken to prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business,
- (b) the provision by a company, in accordance with any scheme for the time being in force of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company,
- (c) the making by a company of loans to persons, other than directors bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to sub-section (1) of this section shall be shown as a separate item in every balance sheet of the company

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds

Issue of Redeemable Preference Shares and Shares at Discount

47 (1) Subject to the provisions of this section, a company limited by shares may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption,
- (b) no such shares shall be redeemed unless they are fully paid,
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Ordinance relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company,
- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one hundred pounds.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this sub-section

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares

(5) Where new shares have been issued in pursuance of the last foregoing sub-section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares

**Power to
issue shares at
a discount**

48 (1) Subject as provided in this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued

Provided that—

- (a) the issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the court,
- (b) the resolution must specify the maximum rate of discount at which the shares are to be issued,
- (c) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business,
- (d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow

(2) Where a company has passed a resolution authorizing the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question

If default is made in complying with this sub-section, the company and every officer of the company who is in default shall be liable to a default fine

Miscellaneous Provisions as to Share Capital

- 49** A company, if so authorized by its articles, may do any one or more of the following things—
- (a) make arrangements on the issue of shares for a difference between the share holders in the amounts and times of payment of calls on their shares,
 - (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up,
 - (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others
- Power of company to arrange for different amounts being paid on shares

50 A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid

Reserve liability of limited company

- 51** (1) A company limited by shares or a company limited by guarantee and having a share capital if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—
- (a) increase its share capital by new shares of such amount as it thinks expedient,
- Power of company limited by shares to alter its share capital

- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares,
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination,
- (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived,
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled

(2) The powers conferred by this section must be exercised by the company in general meeting

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance

**Notice to
registrar of
consolidation
of share
capital,
conversion of
shares into
stock, etc**

- 52** (1) If a company having a share capital has—
 - (a) consolidated and divided its share capital into shares of larger amount than its existing shares, or
 - (b) converted any shares into stock, or
 - (c) re-converted stock into shares, or
 - (d) subdivided its shares or any of them, or
 - (e) redeemed any redeemable preference shares, or
 - (f) cancelled any shares, otherwise than in connexion with a reduction of share capital under section 56 of this Ordinance,

it shall within one month after so doing give notice thereof to the registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock re-converted

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine

53. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorizing the increase, give to the registrar notice of the increase, and the registrar shall record the increase

Notice of
increase of
share
capital

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the registrar together with the notice a printed copy of the resolution authorizing the increase

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine

54 An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Ordinance, do either or both of the following things, namely—

Power of
unlimited
company to
provide for
reserve share
capital on re-
registration

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up,
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up

55 (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant

Power of
company to
pay interest
out of capital
in certain
cases

Provided that—

- (a) no such payment shall be made unless it is authorized by the articles or by special resolution,
 - (b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Governor in Council, which sanction shall be conclusive evidence for the purposes of this section that the shares of the company in respect of which such sanction is given have been issued for a purpose specified in this section,
 - (c) before sanctioning any such payment the Governor in Council may, at the expense of the company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry,
 - (d) the payment shall be made only for such period as may be determined by the Governor in Council, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided,
 - (e) the rate of interest shall in no case exceed four per cent per annum or such other rate as the Governor in Council may for the time being by notice in the Gazette prescribe,
 - (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid,
 - (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate
- (2) If default is made in complying with proviso (g) to sub-section (1) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty pounds

Reduction of Share Capital

**Special
resolution for
reduction of
share capital**

56 (1) No company limited by shares and no company limited by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided

(2) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorized by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up, or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets, or
- (c) either with or without extinguishing or reducing liability on any of its shares pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly

(3) A special resolution under this section is in this Ordinance referred to as "a resolution for reducing share capital"

57 (1) Where a company has passed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to the next following sub-section—

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company shall be entitled to object to the reduction,
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature

Application
to court for
confirming
order,
objections by
creditors, and
settlement of
list of object-
ing creditors

and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction,

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim,

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors

Order confirming reduction and powers of court on making such order

58 (1) The court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit

(2) Where the court makes any such order it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced", and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company

59 (1) The registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute

Registration
of order and
minute of
reduction

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect

(3) Notice of the registration shall be published in such manner as the court may direct

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum, and shall be valid and alterable as if it had been originally contained therein

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 25 of this Ordinance

60. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share

Liability of
members in
respect of
reduced
shares

as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be.

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the court to pay the amount of his debt or claim, then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date, and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributors settled on the list as if they were ordinary contributors in a winding up.

(2) Nothing in this section shall affect the rights of the contributors among themselves.

**Penalty on
concealment
of name of
creditor**

61 If any director, manager, secretary or other officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor, or
- (c) aids abets, or is privy to any such concealment or misrepresentation as aforesaid

he shall be punishable with imprisonment for a period not exceeding one year and shall also in lieu of or in addition thereto be liable to a fine.

Variation of Shareholders' Rights

62 (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorizing the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the court

Rights of
holders of
special classes
of shares.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of them number as they may appoint in writing for the purpose

(3) On any such application, the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall, if not so satisfied, confirm the variation

(4) The decision of the court on any such application shall be final

(5) The company shall within fifteen days after the making of an order by the court on any such application forward a certified copy of the order to the registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly

*Transfer of Shares and Debentures, Evidence
of Title, etc*

Nature of shares

63 (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company

(2) Each share in a company having a share capital shall be distinguished by its appropriate number

Transfer not to be registered except on production of instrument of transfer

64 Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law

Transfer by personal representative

65 A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer

Registration of transfer at request of transferor

66 On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee

Notice of refusal to register transfer

67 (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues

Duties of company with respect of issue of certificates

68. (1) Every company shall, within three months after the allotment of any of its shares, debentures, or debenture stock, and within three months after the date on which a transfer of any such shares, debentures or debenture stock is

lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide

The expression "transfer" for the purpose of this sub-section means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of sub-section (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default

69 A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to the shares

Certificate to
be evidence
of title

70 The production to a company of any document which is by law sufficient evidence of—

Evidence of
grant of
probate

(a) probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person, or

(b) the Public Trustee having undertaken administration of an estate under section 4 of the Public Trustee's Ordinance, 1925,

No 7 of 1925

shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of such grant or undertaking

Issue and
effect of share
warrants to
bearer

71 (1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant

(2) Such a warrant as aforesaid is in this Ordinance termed a "share warrant"

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant

Penalty for
personation of
shareholder

72 If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Ordinance, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of a felony, and shall on conviction thereof be liable to imprisonment for any term not exceeding seven years

Offences in
connexion
with share
warrants

73 (1) If any person—

(a) with intent to defraud, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Ordinance, or

(b) by means of any such forged or altered share warrant, coupon or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Ordinance, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon or document to be forged or altered,

he shall be guilty of an offence and shall on conviction thereof be liable to imprisonment for life or for any term not less than three years

- (2) If any person without lawful authority or excuse, proof whereof shall lie on him—
- (a) engraves or makes on any plate, wood, stone or other material any share warrant or coupon purporting to be—
 - (i) a share warrant or coupon issued or made by any particular company in pursuance of this Ordinance, or
 - (ii) a blank share warrant or coupon so issued or made, or
 - (iii) a part of such a share warrant or coupon, or
 - (b) uses any such plate, wood, stone or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or
 - (c) knowingly has in his custody or possession any such plate, wood, stone or other material,

he shall be guilty of an offence, and shall on conviction thereof be liable to imprisonment for any term not exceeding fourteen years and not less than three years

Special Provisions as to Debentures

74 (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection

Right of
debenture-
holders and
shareholders
to inspect
register of
debenture-
holders and
to have copies
of trust deed

For the purposes of this sub-section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debenture or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of fifty cents for every hundred words required to be copied

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of fifty cents for every hundred words required to be copied

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and further shall be liable to a default fine of two pounds

(5) Where a company is in default as aforesaid, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them

**Perpetual
debentures**

75 A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Ordinance, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding

**Power to
re-issue
redeemed
debentures in
certain cases**

76 (1) Where either before or after the commencement of this Ordinance a company has redeemed any debentures previously issued, then—

- (a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company, or
- (b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company

(4) Where a company has either before or after the passing of this Ordinance deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Ordinance, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued

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

(6) Where any debentures which have been redeemed before the date of the commencement of this Ordinance are re-issued subsequently to that date the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before the date of the commencement of this Ordinance, if section 127 of the Companies Ordinance *Cap. 93* had been enacted in this Ordinance instead of this section

77 A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance

Specific performance of contracts to subscribe for debentures

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge

78 (1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part VI of this Ordinance relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures

(2) The periods of time mentioned in the said provisions of Part VI of this Ordinance shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors

PART IV

REGISTRATION OF CHARGES

Registration of Charges with Registrar

Registration of charges

79 (1) Subject to the provisions of this Part of this Ordinance, every charge created after the fixed date by a company registered in the Colony and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidence, or a copy thereof verified in the prescribed manner are delivered to or received by the registrar for registration in manner required by this Ordinance within forty-two days after date of its creation but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable

(2) This section applies to the following charges—

- (a) a charge for the purpose of securing any issue of debentures,
- (b) a charge on uncalled share capital of the company,

- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as an instrument under the Chattels Transfer No 24 of 1930 Ordinance, 1930,
- (d) a charge on immovable property, wherever situate, or any interest therein,
- (e) a charge on book debts of the company,
- (f) a floating charge on the undertaking or property of the company,
- (g) a charge on calls made but not paid,
- (h) a charge on a ship or any share in a ship,
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright

(3) In the case of a charge created out of the Colony comprising solely property situate outside the Colony, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and forty-two days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the Colony, shall be substituted for forty-two days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(4) Where a charge is created in the Colony but comprises property outside the Colony, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(5) Where a charge comprises property situate outside the Colony and registration in the country where the property is situate is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the

country where the property is situate on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on immovable property shall not for the purposes of this section be deemed to be an interest in immovable property.

(8) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the registrar within forty-two days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars—

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders,

together with the deed containing the charge or a copy thereof verified in the prescribed manner, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(9) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any

debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this sub-section be treated as the issue of the debentures at a discount

(10) In this Part of this Ordinance—

- (a) the expression "charge" includes mortgage,
- (b) the expression 'the fixed date' means in relation to the charges specified in paragraphs (a) to (f), both inclusive, of sub-section (2) of this section, the 28th day of December, 1921, and in relation to the charges specified in paragraphs (g) to (i), both inclusive, of the said sub-section, the commencement of this Ordinance

80 (1) It shall be the duty of a company to send to the registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under the last foregoing section, but registration of any such charge may be effected on the application of any person interested therein

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on registration

(3) If any company makes default in sending to the registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every director, manager, secretary or other person who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues

Duty of company to register charges existing on property acquired

81 (1) Where after the commencement of this Ordinance a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Ordinance, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Ordinance within twenty-one days after the date on which the acquisition is completed

Provided that, if the property is situate and the charge was created outside the Colony, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in the Colony, shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine of fifty pounds

Register of charges to be kept by registrar

82 (1) The registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Ordinance, and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in sub-section (8) of section 79 of this Ordinance,
- (b) in the case of any other charge—
 - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property, and
 - (ii) the amount secured by the charge, and
 - (iii) short particulars of the property charged, and
 - (iv) the persons entitled to the charge

(2) The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part of this Ordinance, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part of this Ordinance as to registration have been complied with

After making the entry required by sub-section (1) the registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, delivered in accordance with the provisions of section 79 to the person who delivered the same

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection

(4) The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register

83 (1) The company shall cause a copy of every certificate of registration given under the last foregoing section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered

Endorsement
of certificate
of registration
on debentures

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created

(2) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be liable to a fine not exceeding one hundred pounds

84 The registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Entry of
satisfaction

Rectification
of register of
charges

85 The court, on being satisfied that the omission to register a charge within the time required by this Ordinance, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified, and may make such order as to the costs of the application as it thinks fit

Registration of
enforcement
of security

86 (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of charges

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing give the registrar notice to that effect, and the registrar shall enter the notice in the register of charges

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which the default continues

*Provisions as to Company's Register of Charges and as
to Copies of Instruments creating Charges*

Copies of
instruments
creating
charges to
be kept by
company

87 Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Ordinance to be kept at the registered office of the company

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient

88 (1) Every limited company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto

Company's
register of
charges

(2) If any director manager or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds

89 (1) The copies of instruments creating any charge requiring registration under this Part of this Ordinance with the registrar, and the register of charges kept in pursuance of the last foregoing section, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe

Right to
inspect copies
of instruments
creating
mortgages and
charges and
company's
register of
charges

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues, and the court may by order compel an immediate inspection of the copies or register

Application of Part IV to Companies incorporated outside the Colony

90 The provisions of this Part of this Ordinance shall extend to charges on property in the Colony which are created, and to charges on property in the Colony which is acquired, after the commencement of this Ordinance by a company (whether a company within the meaning of this Ordinance or not) incorporated outside the Colony which has an established place of business in the Colony

Application of
Part IV to
charges
created, and
property sub-
ject to charge
required by
company
incorporated
outside the
Colony

Provision as
to charges
created, and
charges on
property
acquired, by
company
before com-
mencement of
Ordinance

Transitional Provision as to matters required to be registered under this Ordinance, but not under the former Ordinance

91 (1) It shall be the duty of a company within six months after the commencement of this Ordinance to send to the registrar for registration the prescribed particulars of—

- (a) any charge created by the company before the date of the commencement of this Ordinance and remaining unsatisfied at that date which would have been required to be registered under the provisions of paragraphs (g), (h) and (i) of sub-section (2) of section 79 of this Ordinance or under the provisions of section 90 of this Ordinance, if the charge had been created after the commencement of this Ordinance, and
- (b) any charge to which any property acquired by the company before the commencement of this Ordinance is subject and which would have been required to be registered under the provisions of section 81 of this Ordinance or under the provisions of section 90 of this Ordinance, if the property had been acquired after the commencement of this Ordinance

(2) The registrar on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Ordinance

(3) If a company fails to comply with this section, the company and every director, manager, secretary or other officer of the company or other person who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder

(4) For the purposes of this section, the expression 'company' includes a company (whether a company within the meaning of this Ordinance or not) incorporated outside the Colony which has an established place of business in the Colony

PART V

MANAGEMENT AND ADMINISTRATION

Registered Office and Name

92. (1) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation whichever is the earlier, have a registered office to which all communications and notices may be addressed

(2) Notice of the situation of the registered office, and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change as the case may be to the registrar who shall record the same

The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this sub-section

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine

93. (1) Every company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible, and in roman letters,

(b) shall have its name engraven in legible roman letters on its seal,

(c) shall have its name mentioned in legible roman letters in all notices advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company

Publication of
name of
company

(2) If a company does not paint or affix its name in manner directed by this Ordinance, the company and every officer of the company who is in default shall be liable to a fine not exceeding five pounds, and if a company does not keep its

name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine

(3) If a company fails to comply with paragraph (b) or paragraph (c) of sub-section (1) of this section, the company shall be liable to a fine not exceeding fifty pounds

(4) If a director, manager, or officer of a company, or any person on its behalf—

(a) uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or

(b) issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods, wherein its name is not mentioned in manner aforesaid, or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the company

Statement of Amount of Paid-up Capital

**Statement
of amount
of capital
subscribed
and amount
paid up**

94 (1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorized capital of the company, such notice, advertisement, or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up

(2) Any company which makes default in complying with the requirements of this section and every officer who is in default shall be liable to a fine not exceeding fifty pounds

Restrictions on Commencement of Business

95 (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

- (a) shares held subject to the payment of the whole amount thereon in cash have been allotted to an amount not less in the whole than the minimum subscription, and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, and
- (c) there has been delivered to the registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforementioned conditions have been complied with

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

- (a) there has been delivered to the registrar for registration a statement in lieu of prospectus, and
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash, and
- (c) there has been delivered to the registrar for registration a statutory declaration by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with

(3) The registrar shall, on the delivery to him of the said statutory declaration, and in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues

(7) Nothing in this section shall apply to a private company or to a company registered before the 13th day of June, 1903 which does not issue a prospectus inviting the public to subscribe for its shares or in so far as its provisions relate to shares, to a company limited by guarantee and having a share capital

Register of Members

Register of members

96 (1) Every company shall keep in one or more books a register of its members and enter therein the following particulars—

(a) the names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member,

(b) the date at which each person was entered in the register as a member,

(c) the date at which any person ceased to be a member

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar, the registrar shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this sub-section

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine

97 (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index

Index of
members of
company

(2) The index which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine

98 (1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely—

Provisions as
to entries in
register in
relation to
share
warrants

- (a) the fact of the issue of the warrant,
- (b) a statement of the shares included in the warrant, distinguishing each share by its number, and
- (c) the date of the issue of the warrant

(2) The bearer of a share warrant shall, subject to the articles of the company be entitled, on surrendering it for cancellation to have his name entered as a member in the register of members

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled

(4) Until the warrant is surrendered, the particulars specified in sub-section (1) of this section shall be deemed to be the particulars required by this Ordinance to be entered in the register of members and, on the surrender, the date of the surrender must be entered

(5) Subject to the provisions of this Ordinance, the bearer of a share warrant may if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent or for any purposes defined in the articles

Inspection of register of members

99 (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, except when the register is closed under the provisions of this Ordinance, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of one shilling, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding two pounds, and further to a default fine of two pounds.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Power to close register

100 A company may on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of court to rectify register

101 (1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members 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 member,

the person aggrieved or any member of the company or the company, may apply to the court for rectification of the register

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

(3) On an application under this section the court may decide 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 members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register

(4) In the case of a company required by this Ordinance to send a list of its members to the registrar the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar

102. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar

Trusts not
to be entered
on register

103. The register of members shall be prima facie Register to evidence of any matters by this Ordinance directed or authorized to be inserted therein

Branch Register

104. (1) A company having a share capital may, if so authorized by its articles, cause to be kept in the United Kingdom or in any part of His Majesty's dominions a branch register of members resident in the United Kingdom, or in that part of His Majesty's dominions as the case may be (in this Ordinance called a "branch register")

Power for
company to
keep branch
register

(2) The company shall give to the registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be

(3) If default is made in complying with sub-section (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine

(4) For the purposes of this section the expression "His Majesty's dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty

**Regulations
as to branch
register**

105 (1) A branch register shall be deemed to be part of the company's register of members (in this and the next following section called "the principal register")

(2) It shall be kept in the same manner in which the principal register is by this Ordinance required to be kept except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district where the branch register is kept

(3) The company shall transmit to its registered office in the Colony a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register

Every such duplicate shall, for all the purposes of this Ordinance, be deemed to be part of the principal register

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall during the continuance of that registration, be registered in any other register

(5) A company may discontinue to keep a branch register, and thereupon all entries in that register shall be transferred to the principal register

(6) Subject to the provisions of this Ordinance, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers

(7) If default is made in complying with sub-section (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine

106 An instrument of transfer of a share registered in a branch register, shall be deemed to be a transfer of property situate out of the Colony, and unless executed in any part of the Colony shall be exempt from stamp duty chargeable in the Colony

Stamp duties
in case of
shares
registered in
branch
registers

107 (1) If by virtue of the law in force in the United Kingdom or in any part of His Majesty's dominions companies incorporated under that law have power to keep in the Colony branch registers of their members resident in the Colony, the Governor in Council may by order published in the Gazette direct that section 99 and 101 of this Ordinance shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such branch registers kept in the Colony as they apply to and in relation to the registers of companies within the meaning of this Ordinance

Provisions
as to branch
registers kept
in the United
Kingdom
and the
Dominions

(2) For the purposes of this section, the expression "His Majesty's dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty

Annual Return

108 (1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company

Annual
return to be
made by
company
having a
share capital

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar, the list must state the amount of stock held

by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars—

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided,
- (b) the number of shares taken from the commencement of the company up to the date of the return,
- (c) the amount called up on each share
- (d) the total amount of calls received,
- (e) the total amount of calls unpaid,
- (f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures,
- (g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made,
- (h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return,
- (i) the total number of shares forfeited,
- (k) the total amount of shares for which share warrants are outstanding at the date of the return,
- (l) the total amount of share warrants issued and surrendered respectively since the date of the last return,
- (m) the number of shares comprised in each share warrant,
- (n) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company,

(o) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar under this Ordinance

(4) The return shall be in accordance with the form set out in the Fifth Schedule to this Ordinance, or as near thereto as circumstances admit

(5) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company

109 (1) Every company not having a share capital shall once at least in every calendar year make a return stating—

- (a) the address of the registered office of the company,
(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Ordinance required to be contained with respect to directors in the register of directors of a company

Annual
return to be
made by
company
not having
share capital

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the registrar under this Ordinance, or which would have been required so to be registered if created after the twenty-eighth day of December, nineteen hundred and twenty-one

110 (1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the registrar a copy signed by a director or by the manager or by the secretary of the company

General
provisions as
to annual
returns

(2) Section 99 of this Ordinance shall apply to the annual return as it applies to the register of members

(3) Except where the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required

by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon

(4) If a company fails to comply with this section or either of the two last foregoing sections of this Ordinance, the company and every officer of the company who is in default shall be liable to a default fine

(5) For the purposes of sub-section (4) of this section, the expression "officer," and for the purposes of the last two foregoing sections of this Ordinance the expression "director," shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act

Certificates
to be sent
by private
company
with annual
return

111 A private company shall send with the annual return required by section 108 of this Ordinance a certificate signed by a director or the secretary of the company 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, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of sub-section (1) of section 27 of this Ordinance, are not to be included in reckoning the number of fifty

Meetings and Proceedings

Annual general
meeting

112 (1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds

(3) If default is made as aforesaid, the court may, on the application of any member of the company call, or direct the calling of, a general meeting of the company

113 (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting"

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a report (in this Ordinance referred to as "the statutory report") to every member of the company

(3) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and manager, and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid,
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company,

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company, and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification

(4) The statutory report shall so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles either before or subsequently to the former meeting, may be passed and the adjourned meeting shall have the same powers as an original meeting

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding fifty pounds

(10) This section shall not apply to a private company

114 (1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company

Convening of
extraordinary
general
meeting on
requisition

(2) The requisition must state the objects of the meeting and must 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) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly 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 this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to 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 section 117 of this Ordinance

Provisions as
to meetings
and votes

115 (1) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf—

- (a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by fourteen days' notice in writing,
- (b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A and for the purpose of this paragraph the expression "Table A" means that Table as for the time being in force,
- (c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting,
- (d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a quorum,
- (e) any member elected by the members present at a meeting may be chairman thereof,
- (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pound of stock held by him, and in any other case every member shall have one vote

(2) If 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 manner prescribed by the articles or this Ordinance, the court may, either of its own motion or on the application of any director of the company or of any member 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 directions 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

116 (1) A corporation, whether a company within the meaning of this Ordinance or not may—

(a) if it is a member of another corporation being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company,

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Ordinance, by resolution of its directors or other governing body authorize 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 Ordinance or of 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 authorized as aforesaid shall be entitled to exercise the same powers 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

117 (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given

Representation of companies at meetings of other companies and of creditors

Provisions as to extraordinary and special resolutions

(3) At any meeting at which an extraordinary resolution or 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 the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded if demanded—

(a) by such number of members for the time being entitled under the articles to vote at the meeting, as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand, or

(b) if no provision is made by the articles with respect to the right to demand the poll, by three members so entitled or by one member or two members so entitled, if that member holds or those two members together hold not less than fifteen per cent of the paid-up share capital of the company

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Ordinance or of the articles of the company

(6) 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 held in manner provided by this Ordinance or the articles

Registration
and copies
of certain
resolutions
and agree-
ments

118 (1) A printed copy of every resolution or agreement to which this section applies shall, within thirty days after the passing or making thereof, be forwarded to the registrar and recorded by him

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one shilling or such less sum as the company may direct

- (4) This section shall apply to—
(a) special resolutions,
(b) extraordinary resolutions,
(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions,
(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members,
(e) resolutions requiring a company to be wound up voluntarily passed under paragraph (a) of subsection (1) of section 221 of this Ordinance

(5) If a company fails to comply with sub-section (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of forty shillings

(6) If a company fails to comply with sub-section (2) or sub-section (3) of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty shillings for each copy in respect of which default is made

(7) For the purposes of the last two foregoing sub-sections, a liquidator of the company shall be deemed to be an officer of the company

119 Where after the commencement of this Ordinance 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

Resolutions
passed at
adjourned
meetings

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
and directors

120 (1) Every company shall cause minutes of all proceedings of general meetings and where there are director or managers of all proceedings at meetings of the directors, or of its managers, to be entered in books kept for that purpose

(2) Any such minute if 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 the proceedings

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

Inspection
of minute
books

121 (1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Ordinance shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding fifty cents for every hundred words

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding forty shillings and further to a default fine of forty shillings

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them

Accounts and Audit

122 (1) Every company shall cause to be kept proper books of account with respect to—

Keeping of
books of
account

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place,
- (b) all sales and purchases of goods by the company,
- (c) the assets and liabilities of the company

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed wilfully

123 (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or, in the case of a company carrying on business or having interests abroad, by more than twelve months

Profit and
loss account
and balance
sheet

Provided that the Governor in Council, if for any special reason he thinks fit so to do, may, in the case of any company extend the period of eighteen months aforesaid, and in the case of any company and with respect to any year extend the periods of nine and twelve months aforesaid

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account as the case may be, is made up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case the offence was committed wilfully

**Contents of
balance sheet**

124 (1) Every balance sheet of a company shall contain a summary of the authorized share capital and of the issued share capital of the company, its liabilities and its assets together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off—

- (a) the preliminary expenses of the company, and
- (b) any expenses incurred in connexion with any issue of share capital or debentures, and
- (c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such

contract or the conveyance of any such property, the amount of the good will and of any patents and trademarks as so shown or ascertained

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured

(4) The provisions of this section are in addition to other provisions of this Ordinance requiring other matters to be stated in balance sheets

125. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned company, separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities

Assets consisting of shares in subsidiary companies to be set out separately in balance sheet

126 (1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 129 of this Ordinance the balance sheet is signed, stating how the profits and losses of the subsidiary company or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent—

Balance sheet to include particulars as to subsidiary companies

- (a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both, and
- (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner

(2) If in the case of a subsidiary company the auditor's report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement

**Meaning of
subsidiary
company**

127 (1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Ordinance or not, and—

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent of the issued share capital of that other company or such as to entitle the company to more than fifty per cent of the voting power in that other company, or

- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company

that other company shall be deemed to be a subsidiary company within the meaning of this Ordinance and the expression "subsidiary company" in this Ordinance means a company in the case of which the conditions of this section are satisfied

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held

128 (1) The accounts which in pursuance of this Ordinance are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

Accounts to
contain
particulars
as to loans
to, and re-
muneration of,
directors, etc

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period, and
- (b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof, and
- (c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company

(2) The provisions of sub-section (1) of this section with respect to loans shall not apply—

- (a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business, or

(b) to a loan made by the company to any employee of the company if the loan does not exceed two thousand pounds and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees

(3) The provisions of sub-section (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars

(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office

**Signing of
balance sheet**

129 (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member

(2) In the case of a banking company the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors

(3) When the total number of directors of the company for the time being in the Colony is less than the number of directors whose signatures are required by this section, the balance sheet shall be signed by all the directors for the time being in the Colony or, if there is only one director for

the time being in the Colony, by such director, but in such case there shall be subjoined to the balance sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of this section

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated or published without having a copy of the auditors' report attached thereto the company, and every director, manager, secretary or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds

130 (1) In the case of a company not being a private company—

(a) a copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors' report shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company,

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company's balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet

Right to
receive copies
of balance
sheets and
auditor's
report

If default is made in complying with paragraph (a) of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding twenty pounds, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) of this sub-section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding fifty cents for every hundred words

If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine

Banking and
certain other
companies to
publish
periodical
statement

131 (1) Every company, being a limited banking company or an insurance company or a deposit, provident or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in the Sixth Schedule to this Ordinance, or as near thereto as circumstances admit

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding fifty cents

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding five pounds for every day during which the default continues

Appointment
and remunera-
tion of
auditors

132 (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting

(2) If an appointment of auditors is not made at an annual general meeting, the court may, on the application of any member of the company appoint an auditor of the company for the current year

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general

meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this sub-section, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this sub-section, be sent or given at the same time as the notice of the annual general meeting

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting

Provided that—

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting, and

(b) if the directors fail to exercise their powers under this sub-section the company in general meeting may appoint the first auditors and thereupon the said powers of the directors shall cease

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a

casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the court may be fixed by the court

Disqualification for appointment as auditor

133 None of the following persons shall be qualified for appointment as auditor of a company—

- (a) a director or officer of the company,
- (b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company,
- (c) a body corporate

Auditors' report and auditors' right of access to books and right to attend general meetings

134 (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required, and
- (b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors

Provided that, in the case of a banking company which has branch banks beyond the limits of the Colony, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in the Colony

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts

Investigation by the Registrar

135 (1) Where the registrar on perusal of any document which a company is required to submit to him under the provisions of this Ordinance, is of opinion that any information is necessary in order that such document may afford full particulars of the matters to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order

Investigation
by registrar

(2) On receipt of an order under sub-section (1) it shall be the duty of all persons who are to have been officers of the company to furnish such information or explanation to the best of their power

(3) If any such person refuses or neglects to furnish any such information or explanation he shall be liable to a fine not exceeding five pounds in respect of each offence

(4) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate the registrar shall report the circumstances of the case in writing to the court

Inspection

136. (1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as shall be directed—

Investigation
of affairs of
company by
inspectors

- (a) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued,
- (b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued,
- (c) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members,
- (d) in the case of any company, on a report by the registrar under section 135 sub-section (4)

(2) The application shall be supported by such evidence as the court may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the court may, before appointing an inspector, require the applicants to give security, to an amount not exceeding one hundred pounds, for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon 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 in like manner as if he had been guilty of contempt of the court.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the court, and a copy of the report shall be forwarded by the court to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the court directs.

Proceedings
on report by
inspectors.

137. (1) If from any report made under the last foregoing section it appears to the court that any person has been guilty of any offence in relation to the company for which he is criminally liable the court shall refer the matter to the Attorney General.

(2) If where any matter is referred to the Attorney General under this section he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other

than the defendant in the proceedings), to give to him all assistance in connexion with the prosecution which they are reasonably able to give

For the purposes of this sub-section, the expression "agents" in relation to a company shall be deemed to include the bankers and advocates of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company

(3) The expenses of and incidental to an investigation under the last preceding section of this Ordinance (in this sub-section referred to as "the expenses") shall be defrayed as follows—

- (a) where as a result of the investigation a prosecution is instituted by the Attorney General, the expenses shall be defrayed by the Government,
- (b) in any other case the expenses shall be defrayed by the company unless the court directs, as the court is hereby authorized to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants

Provided that—

- (i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this sub-section, the applicants shall make good the deficiency up to the amount by which the security given by them under the last preceding section exceeds the amount, if any, which they have under this sub-section been directed by the court to pay and —
- (ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the Government

138 (1) A company may by special resolution appoint inspectors to investigate its affairs

Power of
company to
appoint
inspectors

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the court, except that instead of reporting to the court, they shall report in such manner and to such persons as the company in general meeting may direct

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the court

**Report of
inspectors to
be evidence**

139 A copy of the report of any inspectors appointed under this Ordinance authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matters contained in the report

**Number of
directors**

140 (1) Every company registered after the commencement of this Ordinance shall have at least two directors

(2) This section shall not apply to a private company

**Restrictions
on appoint-
ment or
advertisement
of director**

141 (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus delivered to the registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

(a) signed and delivered to the registrar for registration a consent in writing to act as such director, and

(b) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any, or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any, or

(iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any, or

(iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name

Directors and Managers

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares

(3) On the application for registration of the memorandum and articles of a company the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds

(4) This section shall not apply to—

(a) a company not having a share capital, or

(b) a private company, or

(c) a company which was a private company before becoming a public company, or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business

142 (1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles

Qualification
of director
or manager

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the share specified in the warrant

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company he shall be liable to a fine not exceeding five pounds for every

day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director

Provisions
as to undis-
charged
bankrupts
acting as
directors
No 32 of 1930

143 (1) If any person being an undischarged bankrupt in this Colony or in any territory which is declared to be a reciprocating territory under section 147 of the Bankruptcy Ordinance, 1930, acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court by which he was adjudged bankrupt, he shall be liable on conviction on information to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was at the date of the coming into force of this Ordinance acting as director of or taking part or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the bankruptcy was prior to that date

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of the opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside the Colony which has an established place of business within the Colony, and the expression "official receiver" means the official receiver in bankruptcy

Validity of
acts of
directors

144 The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification

Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid

145 (1) Every company shall keep at its registered office Register of
directors a register of its directors or managers containing with respect to each of them the following particulars, that it so say—

- (a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality and if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships, and
- (b) in the case of a corporation, its corporate name and registered or principal office

(2) The company shall, within the periods respectively mentioned in this sub-section, send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company may prescribe for each inspection

(4) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine

(5) In the case of any such refusal, the court may by order compel an immediate inspection of the register

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company

Particulars
with respect
to directors
in trade
catalogues,
circulars, &c.

146 (1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of His Majesty's dominions, or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, state in legible roman letters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual the following particulars—

- (a) his present Christian name and present surname,
- (b) any former Christian names and surnames,
- (c) his nationality, if not British,
- (d) his nationality of origin, if his nationality is not the nationality of origin

Provided that, if special circumstances exist which render it in the opinion of the registrar expedient that such an exemption should be granted, the registrar may grant subject to such conditions as he may specify, exemption from the obligations imposed by this sub-section

Any person aggrieved by a refusal to grant an exemption under this sub-section may appeal to the Supreme Court

(2) This section shall apply to—

- (a) every company registered under this Ordinance or the Indian Companies Act, 1882, as applied to the Colony, and the Companies Ordinance, and
- (b) every company incorporated outside the Colony which has an established place of business within the Colony,
- (c) every company licensed under the Money-lenders Ordinance, 1932, whenever it was registered or whenever it established a place of business

(3) If a company makes default in complying with this section, every director of the company shall be liable on summary conviction for each offence to a fine not exceeding five pounds, and, in the case of a director being a corporation,

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No 45 of 1932

every director, secretary and officer of the corporation, who is knowingly a party to the default, shall be liable to a like penalty

Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Attorney General

(4) For the purposes of this section—

- (a) the expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act,
- (b) the expression 'Christian name' includes a forename,
- (c) in the case of a peer or person usually known by a title different from his surname, the expression "surname" means that title,
- (d) references to a former Christian name or surname do not include—
 - (i) in the case of a peer or a person usually known by a British title different from his surname, the name by which he was known previous to the adoption of or succession to the title, or
 - (ii) in the case of natural born British subjects, a former Christian name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or
 - (iii) in the case of a married woman the name or surname by which she was known previous to the marriage,
- (e) the expression "showcard" means cards containing or exhibiting articles dealt with, or samples or representations thereof

147 (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited

Limited
company may
have directors
with unlimited
liability

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary, if any

of the company, or one of them shall, before the person accepts the office or acts therein give him notice in writing that his liability will be unlimited

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default

Special resolution of limited company making liability of directors unlimited

148 (1) A limited company, if so authorized by its articles may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum

Statement as to remuneration of directors to be furnished to shareholders

149 (1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or which such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connexion with the management of the affairs of the company and there shall in respect of any such director who is—

- (a) a director of any other company which is in relation to the first-mentioned company a subsidiary company, or
- (b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connexion with the management of the affairs of, that other company

Provided that—

- (1) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished, and
- (2) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual
- (3) If any director fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty pounds
- (4) In this section the expression ‘emoluments’ includes fees, percentages, and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office

150 (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company

Disclosure by
directors of
interest in
contracts

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the

date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made

(1) Any director who fails to comply with the provisions of this section shall be liable to a fine not exceeding one hundred pounds

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company

Provisions as
to payments
received by
directors for
loss of office
or on retire-
ment

151 (1) It is hereby declared that it is not lawful in connexion with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connexion with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company

(3) Where a payment is to be made as aforesaid to a director of a company in connexion with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be liable to a fine not exceeding twenty-five pounds, and if the requirements of the last foregoing sub-section are not complied with in relation to any such payment as is mentioned in the said sub-section, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made

(5) If in connexion with any such transfer as aforesaid the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connexion with his retirement from office

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company

152 If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company

Avoidance of Provisions in Articles or Contracts relieving Officers from Liability

153 Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void

Provided that—

- (a) in relation to any such provision which is in force at the date of the commencement of this Ordinance, this section shall have effect only on the expiration of a period of six months from that date, and

- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under section 345 of this Ordinance in which relief is granted to him by the court

Arrangements and Reconstructions

Power to compromise with creditors and members

154 (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or the company or class of members as the case may be, to be summoned in such manner as the court directs

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company

(3) An order made under sub-section (2) of this section shall have no effect until a certified copy of the order has been delivered to the registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company

(4) If a company makes default in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one pound for each copy in respect of which default is made

(5) In this section the expression "company" means any company liable to be wound up under this Ordinance, and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods

155 (1) Where an application is made to the court under the last foregoing section of this Ordinance for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,
- (b) the allotting or appropriation by the transferee company of any shares debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person,
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company,
- (d) the dissolution, without winding up, of any transferor company,
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement,

Provisions for
facilitating re-
construction
and amal-
gamation of
companies

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within seven days after the making of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is in default shall be liable to a default fine

(4) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties

(5) Notwithstanding the provisions of sub-section (5) of the last foregoing section, the expression "company" in this section does not include any company other than a company within the meaning of this Ordinance

Power to
acquire shares
of shareholders
dissenting
from scheme
or contract
approved by
majority

156 (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company whether a company within the meaning of this Ordinance or not (in this section referred to as "the transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court

thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Ordinance, the court may by order, on an application made to it by the transferee company within two months after the commencement of this Ordinance, authorize notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court may by the order direct instead of the terms provided by the scheme or contract

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received

(4) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract

PART VI

WINDING UP

(1) PRELIMINARY

*Modes of Winding Up***Modes of winding up**

157 (1) The winding up of a company may be either—

- (a) by the court, or
- (b) voluntary, or
- (c) subject to the supervision of the court

(2) The provisions of this Ordinance with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes

*Contributories***Liability as contributories of present and past members**

158 (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the provisions of sub-section (2) of this section and the following qualifications—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up,
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member,
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance,
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount if any, unpaid on the shares in respect of which he is liable as a present or past member
- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up,

(f) nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract,

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

(2) In the winding up of a limited company, any director or manager whether past or present whose liability is, under the provisions of this Ordinance unlimited, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company

Provided that—

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office,

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him

Definition of contributory

159 The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory

Nature of liability of contributory

160 The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability

Contributories in case of death of member

161 (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due

Contributories in case of bankruptcy of member

162 If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company, and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made

(II) WINDING UP BY THE COURT*Jurisdiction***Jurisdiction to wind up companies registered in the Colony**

163 The Supreme Court shall have jurisdiction to wind up any company registered in the Colony

164 Where the Supreme Court makes an order for winding up a company under this Ordinance, it may, if it thinks fit, direct all subsequent proceedings to be had in a subordinate court of the first class and thereupon such court shall for the purpose of winding up the company be deemed to be the court within the meaning of this Ordinance, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the Supreme Court

165 If during the progress of a winding up in a subordinate court it is made to appeal to the Supreme Court that the same could be more conveniently prosecuted in any other subordinate court, the Supreme Court may transfer the same to such other court, and thereupon the winding up shall proceed in such other subordinate court

166 If any question arise in any winding-up proceedings in a subordinate court which all the parties to the proceeding, or which one of them and the magistrate of the court desire to have determined in the first instance in the Supreme Court, the magistrate shall state the facts in the form of a special case for the opinion of the Supreme Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the Supreme Court for the purposes of determination

Cases in which a Company may be Wound Up by Court

- 167** A company may be wound up by the court if—
- (a) the company has by special resolution resolved that the company be wound up by the court,
 - (b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting,
 - (c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year,
 - (d) the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven,
 - (e) the company is unable to pay its debts,
 - (f) the court is of opinion that it is just and equitable that the company should be wound up

Definition of
inability to
pay debts

168 A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor or
- (b) if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company

Petition for Winding Up and Effects thereof

Provisions as
to applications
for winding
up

169 An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately

Provided that—

- (a) a contributory shall not be entitled to present a winding-up petition unless—
 - (i) either the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven, or
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of winding-up, or have devolved on him through the death of a former holder, and

- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the registrar or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held, and
- (c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court

170 (1) On hearing a winding-up petition the court may dismiss it or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets

Power of court on hearing petition

(2) Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may—

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held, and
- (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default

171 The court may at any time after the presentation of the petition for winding up a company under this Ordinance, and before making an order for winding up the company, upon the application of the company or any creditor or contributory restrain further proceedings in any suit or proceeding against the company upon such terms as the court thinks fit

Power to stay or restrain proceedings against company

172 In a winding up by the court, any disposition of the property of the company, including actionable claims, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void

Avoidance of dispositions of property, etc., after commencement of winding up

Avoidance of attachment, etc

173 Where any company is being wound up by the court, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents

Commencement of winding up by the court

Commencement of Winding Up

174 (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up

Copy of order to be forwarded to registrar

Consequences of Winding-up Order

175 (1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar who shall make a minute thereof in his books relating to the company

(2) Such order shall be deemed to be notice of discharge to the servants of the company except when the business of the company is continued

Actions stayed on winding-up order

176 When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose

Effect of winding-up order

177 An order for winding up a company shall operate in favour of the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory

Official receiver in bankruptcy to be official receiver for winding-up purposes

Official Receiver in Winding Up

178 (1) For the purposes of this Ordinance, so far as it relates to the winding up of companies by the court, the term "official receiver" means the official receiver appointed for bankruptcy purposes

(2) Such officer shall for the purpose of his duties under this Ordinance be styled "the official receiver"

179 If in the case of the winding up of any company by the court it appears to the court desirable with a view to securing the more convenient and economical conduct of the winding up, that some officer, other than the person who would by virtue of the last foregoing section of this Ordinance be the official receiver should be the official receiver for the purposes of that winding up, the court may appoint that other officer to act as official receiver in that winding up, and the person so appointed shall be deemed to be the official receiver in that winding up for all the purposes of this Ordinance

Appointment
of official
receiver by
court in
certain cases

180 (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require

Statement of
company's
affairs to be
submitted
to official
receiver

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been directors or officers of the company,
- (b) who have taken part in the formation of the company at any time within one year before the relevant date,
- (c) who are in the employment of the company, or have been in the employment of the company within the said year and are in the opinion of the official receiver capable of giving the information required,
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was an officer of the company to which the statement relates

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence and shall, on the application of the liquidator or of the official receiver, be liable to a fine not exceeding twenty pounds

(8) In this section the expression "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order

Report by
official
receiver

181 (1) In a case where a winding-up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities, and
- (b) if the company has failed, as to the causes of the failure, and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court

(3) If the official receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in sections 212 and 213 of this Ordinance

Liquidators

182 For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators

Power of court to appoint liquidators

183 (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition, and before the making of a winding-up order, and either the official receiver or any other fit person may be appointed

Appointment and powers of provisional liquidator

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him

184 The following provisions with respect to liquidators shall have effect on a winding-up order being made—

Appointment style, etc., of liquidators

- (a) the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such,
- (b) the official receiver shall summon separate meetings of the creditors and contributors of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver,

- (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit,
- (d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company,
- (e) the court may determine whether any and what security is to be given by a liquidator on his appointment,
- (f) the official receiver shall by virtue of his office be the liquidator during any vacancy,
- (g) a liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator" and where the official receiver is liquidator, by the style of "the official receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name

**Provisions
where person
other than
official
receiver is
appointed
liquidator**

185 Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the registrar and given security in the prescribed manner to the satisfaction of the registrar,
- (b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance

**Provisions as
to liquidators
on an order
for winding
up by court
after order for
winding up
subject to
supervision**

186 Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the court the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person to be liquidator in the winding up by the court

187 (1) A liquidator appointed by the court may resign, or, on cause shown, be removed by the court

General provisions as to liquidators

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if more such persons than one are appointed liquidators, then remuneration shall be distributed among them in such proportions as the court directs

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court

(4) If more than one liquidator is appointed by the court the court shall declare whether any act by this Ordinance required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed

(5) Subject to the provisions of section 272 of this Ordinance, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator or provisional liquidator after his appointment has been shown to be invalid

(6) A receiver shall not be appointed of assets in the hands of a liquidator or provisional liquidator

188 Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be shall take into his custody, or under his control all the property and things in action to which the company is or appears to be entitled

Custody of company's property

189 Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property

Vesting of property of company in liquidator

Powers of liquidator

190 (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company,
 - (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof,
 - (c) to appoint an advocate to assist him in the performance of his duties Provided that where the liquidator is an advocate, he shall not appoint his partner unless the latter consents to act without remuneration,
 - (d) to pay any classes of creditors in full,
 - (e) to make any compromise or arrangement with creditors or person claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable,
 - (f) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof
- (2) The liquidator shall have power—
- (a) to sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels,
 - (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary the company's seal,

- (c) to prove, rank and claim in the bankruptcy of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy in respect of that balance, as a separate debt due from the bankrupt, and rateably with the other separate creditors,
- (d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business,
- (e) to raise on the security of the assets of the company any money requisite,
- (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of the Public Trustee,
- (g) to appoint an agent to do any business which the liquidator is unable to do himself,
- (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers

(4) The court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned in paragraph (a) or paragraph (b) of sub-section (1) of this section without the sanction or intervention of the court

Exercise and
control of
liquidator's
powers.

191. (1) Subject to the provisions of this Ordinance, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(1) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Books to be
kept by
liquidator.

192. Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Audit of
liquidator's
accounts.

193. (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the registrar an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate and shall be verified by a statutory declaration in the prescribed form

(3) The registrar shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the registrar with such vouchers and information as the registrar may require and the registrar may at any time require the production of and inspect any books or accounts kept by the liquidator

(4) When the account has been audited one copy thereof shall be filed and kept by the registrar, and the other copy shall be delivered to the court for filing, and each copy shall be open to the inspection of any creditor or of any person interested

(5) The registrar shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributary

194 (1) The registrar shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules or otherwise with respect to the performance of his duties, or if any complaint is made to the registrar by any creditor or contributary in regard thereto, the registrar shall inquire into the matter and take such action thereon as he may think expedient

Control over liquidators

(2) The registrar may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged and may if the registrar thinks fit, apply to the court to examine him or any other person on oath concerning the winding up

(3) The registrar may also direct a local investigation to be made of the books and vouchers of the liquidator

195 (1) When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend if any, to the creditors, and adjusted the rights of the contributors among themselves, and made a

Release of liquidators

final return, if any, to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty

(3) An order of court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office

Committees of Inspection

Meetings of
creditors and
contributories
to determine
whether
committee of
inspection
shall be
appointed

196 (1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed

(2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit

197 (1) A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court

Constitution
and pro-
ceedings of
committee of
inspection

(2) The committee shall meet at such times as they from time to time appoint and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee

General Powers of Court in Case of Winding Up by Court

198 (1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation

Power to stay
winding up

to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application

**Settlement of
list of contribu-
tories and
application
of assets**

199 (1) As soon as may be after making a winding-up order, the court shall settle a list of contributors, with power to rectify the register of members in all cases where rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributors, the court may dispense with the settlement of a list of contributors

(2) In settling the list of contributors, the court shall distinguish between persons who are contributors in their own right and persons who are contributors as being representatives of or liable for the debts of others

**Delivery of
property to
liquidator**

200 The court may, at any time after making a winding-up order, require any contributor for the time being on the list of contributors, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is prima facie entitled

**Payment of
debts due by
contributory
to company
and extent to
which set off
allowed**

201 (1) The court may at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributors to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance

(2) The court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with

the company, but not any money due to him as a member of the company in respect of any dividend or profit, and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call

202 (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made

Power of court to make calls

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call

203 (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into a specified bank or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator

Payment into bank of moneys due to company

(2) All moneys, bills, notes and other securities paid or delivered into a specified bank or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court

204 (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due

Order on a contributory conclusive evidence

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever

**Appointment
of special
manager**

205 (1) Where in proceedings the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court and the court may on such application appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court

(2) The special manager shall give such security and account in such manner as the court shall direct

(3) The special manager shall receive such remuneration as may be fixed by the court

**Power to
exclude
creditors not
proving in
time**

206 The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved

**Adjustment
of rights of
contributors**

207 The court shall adjust the rights of the contributors among themselves, and distribute any surplus among the persons entitled thereto

**Inspection of
books by
creditors and
contributors**

208 The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributors as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributors accordingly, but not further or otherwise

**Power to
order costs of
winding up to
be paid out
of assets**

209 The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs charges and expenses incurred in the winding up in such order of priority as the court thinks just

**Power to sum-
mon persons
suspected of
having
property of
company**

210 (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company

(2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination

211 In the winding up by the court of a company the court shall have power to require the attendance of any director or other officer of the company at any meeting of creditors or of contributors or of a committee of inspection for the purpose of giving information as to the trade, dealings, affairs or property of the company

Attendance of
director of
company at
meetings of
creditors, etc

212 (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director, or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof

Power to
order public
examination
of promoters,
directors, etc

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorized by the court in that behalf, employ an advocate

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributor, may also take part in the examination either personally or by any person entitled to appear before the court

(4) The court may put such questions to the person examined as the court thinks fit

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report and may at his own cost employ an advocate who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him

Provided that if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times

(8) The court may if it thinks fit, adjourn the examination from time to time

Power to restrain fraudulent persons from managing companies

213 (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance stating that in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may on the application of the official receiver order that that person, director or officer shall not without the leave of the court be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years from the date of the report as may be specified in the order

(2) The official receiver shall, where he intends to make an application under the last foregoing sub-section, give not less than ten days notice of his intention to the person charged with the fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses

(3) It shall be the duty of the official receiver to appear on the hearing of an application by him for an order under this section and on an application for leave under this section and to call the attention of the court to any matters which appear to him to be relevant, and on any such application the official receiver may himself give evidence or call witnesses

(4) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made

214 The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the Colony, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the court may order

Power to arrest
absconding
contributory

215 Any powers by this Ordinance conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums

Powers of
court
cumulative

216 (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly

Dissolution of
company

(2) The order shall within fourteen days from the date thereof be reported by the liquidator to the registrar, who shall make in his books a minute of the dissolution of the company

(3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding five pounds for every day during which he is in default

Enforcements of and Appeal from Orders

Manner of enforcing orders of court

217 All orders made by a court under this Ordinance may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced

Where order of court may be enforced

218 Any order made by a court for or in the course of the winding up of a company shall be enforced in any place in the Colony

Enforcement of order in another court

219 Where any order made by one court is required to be enforced by another court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the same, and the production of a certified copy shall be sufficient evidence of the order and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order in the same manner as if it had been made by that court

Appeals from orders

220 Appeals from any order or decision made or given in the matter of the winding up of a company by the court may be had in the same manner and subject to the same conditions as appeals from any order or decision of the court in cases within its ordinary jurisdiction

(iii) VOLUNTARY WINDING UP

Resolutions for, and Commencement of, Voluntary Winding Up

Circumstances in which company may be wound up voluntarily

221 (1) A company may be wound up voluntarily—
 (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily,
 (b) if the company resolves by special resolution that the company be wound up voluntarily
 (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up

(2) In this Ordinance the expression 'a resolution for voluntary winding up' means a resolution passed under any of the provisions of sub-section (1) of this section

222 (1) When a company has passed a resolution for voluntary winding up, it shall, within ten days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette and also in some newspaper, if any, circulating in the district where the registered office of the company is situate

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this sub-section the liquidator of the company shall be deemed to be an officer of the company

223 A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up

Commencement of voluntary winding up

Consequences of Voluntary Winding Up

224. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof

Effect of voluntary winding up on business and status of company

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved

225 Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void

Avoidance of transfers, etc , after commencement of voluntary winding up

Declaration of Solvency

226 (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up

Statutory declaration of solvency in case of proposal to wind up voluntarily

(2) A declaration made as aforesaid shall have no effect for the purposes of this Ordinance unless it is delivered to the registrar for registration before the date mentioned in sub-section (1) of this section

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Ordinance referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Ordinance referred to as "a creditors' voluntary winding up"

Provisions applicable to a Members' Voluntary Winding Up

Provisions applicable to a members' winding up

Power of company to appoint and fix remuneration of liquidators

227 The provisions contained in the five sections of this Ordinance next following shall apply in relation to a members' voluntary winding up

228 (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof

Power to fill vacancy in office of liquidator

229 (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one by the continuing liquidators

(3) The meeting shall be held in manner provided by this Ordinance or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court

Power of liquidator to accept shares, etc., as consideration for sale of property of company

230 (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Ordinance or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that

company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in accordance with the law relating to arbitration in force in the Colony.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

231. (1) In the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds.

Duty of
liquidator to
call general
meeting at
end of each
year.

**Final meeting
and dissolu-
tion**

232 (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof

(2) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 222 of this Ordinance

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with

(4) The registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues

*Provisions applicable to a Creditors' Voluntary
Winding Up*

233 The provisions contained in the eight sections of this Ordinance next following shall apply in relation to a creditors' voluntary winding up

Provisions
applicable to
a creditors'
winding up

234 (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company

Meeting of
creditors

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in a local newspaper, if any, circulating in the district where the registered office or principal place of business of the company is situate

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid, and

(b) appoint one of their number to preside at the said meeting

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company

(6) If default is made—

(a) by the company in complying with sub-sections (1) and (2) of this section,

(b) by the directors of the company in complying with sub-section (3) of this section

(c) by any director of the company in complying with sub-section (4) of this section,

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one hundred pounds, and in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty

**Appointment
of liquidator**

235 The creditors and the company at their respective meetings mentioned in the last foregoing section of this Ordinance may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator

Provided that in the case of different persons being nominated any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors

**Appointment
of committee
of inspection**

236 (1) The creditors at the meeting to be held in pursuance of section 234 of this Ordinance or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution

(2) Subject to the provisions of this section and to any rules made in this behalf, the provisions of section 197 (except sub-section (1)) of this Ordinance shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court

237 (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators

Fixing of
liquidators'
remuneration
and cesser of
directors'
powers

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof

238 If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of, the court, the creditors may fill the vacancy

Power to fill
vacancy in
office of
liquidator

239 The provisions of section 230 of this Ordinance shall apply in the case of a creditors' voluntary winding up as in the case of a members voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection

Application of
section 230, to
a creditors'
voluntary
winding up

240 (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year

Duty of
liquidator to
call meetings
of company
and of
creditors at
end of each
year

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding ten pounds

241 (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof

Final meeting
and dissolu-
tion

(2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place and object thereof and published one month at least before the meeting

(3) Within one week after the date of the meetings or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding five pounds for every day during which the default continues

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting be deemed to have been complied with

(4) The registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues

Provisions applicable to every Voluntary Winding Up

Provisions
applicable to
every
voluntary
winding up
Distribution
of assets of
company

242 The provisions contained in the nine sections of this Ordinance next following shall apply to every voluntary winding up whether a members' or a creditors' winding up

243 Subject to the provisions of this Ordinance as to preferential payments, the assets of a company shall on its winding up, be applied in satisfaction of its liabilities *pari*

passu, and, subject to such application, shall unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company

244 (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 190 of this Ordinance to a liquidator in a winding up by the court,
- (b) without sanction exercise any of the other powers by this Ordinance given to the liquidator in a winding up by the court,
- (c) exercise the power of the court under this Ordinance of settling a list of contributories and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories,
- (d) exercise the power of the court of making calls,
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves

(3) When several liquidators are appointed, any power given by this Ordinance may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two

245 (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator

246 (1) The liquidator shall, within twenty-one days after his appointment deliver to the registrar for registration a notice of his appointment in the form prescribed

Powers and duties of liquidator in voluntary winding up

Power of court to appoint and remove liquidator in voluntary winding up

Notice by liquidator of his appointment.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues

Arrangement, when binding on creditors

247 (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon as it thinks just, amend, vary or confirm the arrangement

Power to apply to court to have questions determined or powers exercised

248 (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just

Power of court to stay proceedings against company

249 If the court, on the application of the liquidator so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose

Cost of voluntary winding up

250 All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims

Saving of rights of creditors and contributories

251 The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of contributories will be prejudiced by a voluntary winding up

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

Power to order winding up subject to supervision

252 When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such

supervision of the court, and with such liberty for creditors contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just

253 A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions be deemed to be a petition for winding up by the court

Effect of petition for winding up subject to supervision

254 A winding up subject to the supervision of the court shall, for the purposes of section 172 and 173 of this Ordinance, be deemed to be a winding up by the court

Application of sections 172 and 173 to winding up subject to supervision

255 (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order appoint an additional liquidator

Power of court to appoint or remove liquidators

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Ordinance with respect to the appointment of liquidators in a voluntary winding up

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation

256 (1) Where an order is made for a winding up subject to supervision the liquidator may, subject to any restrictions imposed by the court, exercise all his powers without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily

Effect of supervision order

Provided that the powers specified in paragraphs (d) (e) and (f) of sub-section (1) of section 190 of this Ordinance shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the provisions of this Ordinance which are set out in the Seventh Schedule to this Ordinance but subject as aforesaid an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court

Provided that where the order for winding up subject to supervision was made in relation to a creditor's voluntary winding up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section 197 (except subsection (1) thereof) of this Ordinance, except in so far as the operation of those sections is excluded in a voluntary winding up by general rules.

(v) PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and Ranking of Claims

Debts of all descriptions to be proved

257 In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, if the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent companies

258 In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential payments

259 (1) In a winding up there shall be paid in priority to all other debts—

- (a) all taxes and rates whether payable to the crown or to a local authority due from the company at the relevant date and having become due and payable within twelve months next before that date,
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during four months next before the relevant date, not exceeding one hundred pounds,

- (c) all wages of any workman or labourer not exceeding fifty pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months next before the relevant date

Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date,

- (d) all sums of money deposited by natives for safe custody except where such money was deposited, for the purposes of banking, with a company lawfully carrying on the business of banking

(2) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made

(3) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions, and
(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up

order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made

(6) In this section the expression "the relevant date" means—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order, and

(b) in any other case the date of the commencement of the winding up

Effect of Winding Up on antecedent and other Transactions

Fraudulent preference

260 (1) Any transfer, mortgage, delivery of goods payment, execution or other act relating to property which would if made or done by or against an individual, be deemed in the bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents

Effect of floating charge

261 Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for the charge, together with interest on that amount at the rate of five per cent per annum

262 (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property

Disclaimer
of onerous
property

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court

(2) The disclaimer shall operate to determine, as from the date of disclaimer the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it

(5) The court may on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Ordinance in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up, or

(b) if the court thinks fit subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and

either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up

263 (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up

Restriction of rights of creditor as to execution or attachment in case of company being wound up

Provided that—

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up, and

(b) a person who purchases in good faith under a sale by order of the court any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure, and, in the case of an equitable interest, by the appointment of a receiver

(3) In this section the expression "goods" includes all chattels personal

264 (1) Where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, the court is notified that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the court shall, on being so required, deliver the goods and

Duties of court as to goods taken in execution

any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale the court shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on the court of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed as the case may be, for the winding up of the company, the court shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor

(3) In this section the expression "goods" includes all chattels personal, and the expression "court" includes any officer charged with the execution of a writ or other process

Offences Antecedent to or in Course of Winding Up

**Offences by
officers of
companies in
liquidation**

265 (1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property movable and immoveable of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company, or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immoveable property of the company as is in his custody or under his control, and which he is required by law to deliver up, or

- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company, or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards, or
- (f) makes any material omission in any statement relating to the affairs of the company, or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof, or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company, or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company, or
- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company, or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company, or

- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses, or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for, or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for, or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company, or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

he shall be guilty of an offence, and in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this sub-section, be liable on conviction to imprisonment for a term not exceeding five years, and in the case of any other offence shall be liable on conviction to imprisonment for a term not exceeding two years

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o) if the accused proves that he had no intent to defraud, and to a charge under any of the paragraphs (h), (i) and (j) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of sub-section (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of an offence, and on conviction thereof shall be liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a felony under section 295 of the Penal Code

No 10 of 1930

(3) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act

266 If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters or falsifies, any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person, he shall be liable to imprisonment for any term not exceeding seven years, and shall also be liable to a fine

Penalty for
falsification
of books

267 If any person being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

Frauds by
officers of
companies
which have
gone into
liquidation

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company,
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company,
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years

Liability
where proper
accounts not
kept

268. (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction to imprisonment for a term not exceeding one year

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified

Responsibility
of directors
for fraudulent
trading

269. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his

behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section

For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction to imprisonment for a term not exceeding one year

(4) The court may, in the case of any person in respect of whom a declaration has been made under sub-section (1) of this section, or who has been convicted of an offence under sub-section (3) of this section, order that that person shall not, without the leave of the court be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this sub-section he shall, in respect of each offence, be liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine

In this sub-section the expression "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company

(5) For the purposes of this section, the expression "director" shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is made, and where the declaration is made under sub-section (1) of this section, the declaration shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section (1) of section 3 of the Bankruptcy Ordinance, 1930.

No. 32 of 1930

(7) It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application for leave under sub-section (4) of this section, and on the hearing of an application under that sub-section or under sub-section (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses

Power of
court to assess
damages
against
delinquent
directors, etc

270 (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable

(3) The law relating to limitation for the time being in force in the Colony shall apply to an application under this section as if such application were a suit

Prosecution of
delinquent
officers and
members of
company

271 (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the

court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Attorney General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable he shall forthwith report the matter to the Attorney General and shall furnish to the Attorney General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under the last foregoing sub-section to the Attorney General, he may, if he thinks fit, refer the matter to the Governor in Council for further inquiry, and the Governor in Council may if he thinks it expedient, give directions for an application to be addressed to the court for an order conferring on the Attorney General or any person designated by the Attorney General for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Ordinance in the case of a winding up by the court.

(4) If on any report to the Attorney General under sub-section (2) of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney General under sub-section (2) of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2) of this section.

(6) If, where any matter is reported or referred to the Attorney General under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connexion with the prosecution which he is reasonably able to give

For the purposes of this sub-section, the expression 'agent' in relation to a company shall be deemed to include any banker or advocate of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company

(7) If any person fails or neglects to give assistance in manner required by sub-section (6) of this section, the court may, on the application of the Attorney General, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally

(8) The Governor in Council may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed by the Government

Subject to any direction under this sub-section and to any mortgages or charges on the assets of the company and any debts to which priority is given by section 259 of this Ordinance, all such costs and expenses as aforesaid shall be payable out of those assets in priority to all other liabilities payable thereout

Supplementary Provisions as to Winding Up

Disqualifica-
tion for
appointment
as liquidator

272 (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the commencement of this Ordinance, but subject as aforesaid any body corporate which acts as liquidator of a company shall be liable to a fine not exceeding one hundred pounds

273 (1) If any liquidator, who has made any default in filing, delivering or making any return account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may on an application made to the court by any contributory or creditor of the company or by the registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order

Enforcement
of duty of
liquidator
to make
returns, etc

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid

274 (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears shall contain a statement that the company is being wound up

Notification
that a com-
pany is in
liquidation

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be liable to a fine of twenty pounds

275 (1) In the case of a winding up by the court, or of a creditors' voluntary winding up of a company—

(a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any movable or immovable property, which forms

Exemption
of certain
documents
from stamp
duty on
winding up
of companies

part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company, and

- (b) every power of attorney, proxy paper will, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up or to any proceeding under any such winding up,

shall be exempt from duties chargeable under the enactments relating to stamp duties

(2) In this section the expression "assurance" includes deed, transfer, assignment and surrender

**Books of
company to
be evidence**

276 Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributors of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded

**Disposal of
books and
papers of
company**

277 (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say—

(a) in the case of a winding up by, or subject to the supervision of, the court, in such way as the court directs,

(b) in the case of a members voluntary winding up, in such way as the company by extraordinary resolution directs and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct

(2) After three years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed by reason of any book or paper not being forthcoming to any person claiming to be interested therein

(3) The Governor in Council may make rules to prevent, for any period not exceeding five years from the dissolution of the company, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributor of the company to appeal to the court from any direction which may be given in the matter

(4) If any person acts in contravention of any rules made for the purposes of this section he shall be liable to a fine not exceeding one hundred pounds

278 (1) If where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom

(3) If a liquidator fails to comply with this section, he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty pounds

279 Where after the commencement of this Ordinance a resolution is passed at an adjourned meeting of any creditors or contributories 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

Supplementary Powers of Court

280 (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court

(2) In the case of creditors regard shall be had to the value of each creditor's debt

Information
as to pending
liquidations

Resolutions
passed at
adjourned
meetings of
creditors and
contribu-
tories

Meetings to
ascertain
wishes of
creditors or
contribu-
tories

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Ordinance or the articles

Affidavits,
etc., in
Colony and
dominions

281 (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Ordinance may be sworn in the Colony or within the dominions of His Majesty, or within any country which has been declared to be under His Majesty's protection or in respect of which His Majesty has accepted a mandate, before any court, judge or person lawfully authorized to take and receive affidavits or in any place outside His Majesty's dominions or countries under his protection or mandate, before any of His Majesty's consuls or vice-consuls

(2) All courts judges justices, commissioners and persons acting judicially in the Colony shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul or vice-consul attached appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Ordinance

Provisions as to Dissolution

Power of
court to
declare
dissolution
of company
void

282 (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested make an order, upon such terms as the court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved

(2) It shall be the duty of the person on whose application the order was made within seven days after the making of the order or such further time as the court may allow, to deliver to the registrar for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues

Registrar may
strike defunct
company off
register

283 (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company

by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register

(3) If the registrar either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in the last preceding sub-section

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved

Provided that—

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved, and
- (b) nothing in this sub-section shall affect the power of the court to wind up a company the name of which has been struck off the register

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off

carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off, and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum

Property of dissolved company to be *bona vacantia*

284 Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under the two last foregoing sections of this Ordinance, be deemed to be *bona vacantia*

General rules and fees for winding up

Rules and Fees

285 (1) The Supreme Court may, with the approval of the Governor in Council, from time to time, make rules consistent with this Ordinance and with the law for the time being relating to procedure in civil courts concerning the mode of proceedings to be had for winding up a company in such court and in the courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the subdivision of the shares of a company

(2) Without prejudice to the generality of the foregoing power, the Supreme Court may by such rules enable or require all or any of the powers and duties conferred and imposed on

the court by this Ordinance in respect of the matters following, to be exercised or performed by the liquidator, and subject to the control of the court, that is to say, the powers and duties of the court in respect of—

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories,
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets,
- (c) requiring delivery of property or documents to the liquidator,
- (d) making calls,
- (e) fixing a time within which debts and claims must be proved

Provided that the liquidator shall not either make any call, or rectify the register of members, without the special leave of the court

(3) There shall be paid in respect of proceedings under this Ordinance in relation to the winding up of companies such fees as the Supreme Court may, with the approval of the Governor in Council, direct

PART VII

RECEIVERS AND MANAGERS

286. (1) A body corporate shall not be qualified for appointment as a receiver of the property of a company

Disqualification for appointment as receiver

(2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the commencement of this Ordinance but, subject as aforesaid, any body corporate which acts as receiver as aforesaid shall be liable to a fine not exceeding one hundred pounds

287 Where an application is made to the court to appoint a receiver on behalf of the debenture-holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed

Power to appoint official receiver as receiver for debenture-holders or creditors

288 (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the

Notification that receiver or manager appointed

receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed

(2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorizes or permits the default, shall be liable to a fine of twenty pounds

Power of court to fix remuneration on application of liquidator

289 The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made

Delivery to registrar of accounts of receivers and managers

290 (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the registrar for registration an abstract in the prescribed form showing his receipts and payments during that period of six months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relates up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five pounds for every day during which the default continues

Enforcement of duty of receiver to make returns, etc

291 (1) If—

(a) any receiver of the property of a company, who has made default in filing, delivering, or making any return, account or other document or in giving any notice, which a receiver is by law required to file,

deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, or

- (b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order

(2) In the case of any such default as is mentioned in paragraph (a) of the last preceding sub-section an application for the purposes of this section may be made by any member or creditor of the company or by the registrar and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that sub-section the application shall be made by the liquidator

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (a) of sub-section (1) of this section

PART VIII

GENERAL PROVISIONS AS TO REGISTRATION

292 (1) For the purposes of the registration of companies under this Ordinance there shall be offices in the Colony at such places as the Governor shall direct Registration offices

(2) The Governor may appoint such registrars, assistant registrars, clerks and servants as he may think necessary for the registration of companies under this Ordinance, and may make regulations with respect to their duties, and may remove any persons so appointed

(3) Every assistant registrar may, subject to the directions of the registrar, perform any act or discharge any duty which the registrar may lawfully do or is required by this Ordinance to do, and for such purpose shall have all the powers, privileges and authority of the registrar

(4) The Governor may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies

Fees

293 (1) There shall be paid to the registrar in respect of the several matters mentioned in the table set out in the Eighth Schedule to this Ordinance the several fees therein specified

(2) All fees paid to the registrar in pursuance of this Ordinance shall be accounted for to the Government

**Inspection,
production,
and evidence
of documents
kept by
registrar**

294 (1) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Governor in Council, not exceeding one shilling for each inspection, and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy or extract, of such fees as the Governor in Council may appoint, not exceeding five shillings for a certificate of incorporation and not exceeding fifty cents for every hundred words or fractional part thereof required to be copied

(2) No process for compelling the production of any document kept by the registrar shall issue from any court except with the leave of that court and any such process if issued shall bear thereon a statement that it is issued with the leave of the court

(3) A copy of or extract from any document kept and registered at any of the offices for the registration of companies certified to be a true copy under the hand of the registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence is of equal validity with the original document

**Enforcement
of duty of
company to
make returns
to registrar**

295 (1) If a company, having made default in complying with any provision of this Ordinance which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid

PART IX

APPLICATION OF ORDINANCE TO COMPANIES FORMED OR REGISTERED UNDER THE REPEALED COMPANIES ORDINANCE

296. In the application of this Ordinance to existing companies, it shall apply in the same manner—

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by shares,
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Ordinance as a company limited by guarantee, and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance as an unlimited company

Provided that—

- (i) nothing in Table A in the First Schedule shall apply to a company formed and registered under the Indian Companies Act, 1882, as applied to the Colony, or the Companies Ordinance, unless adopted by special resolution, and
- (ii) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Indian Companies Act, 1882, as applied to the Colony, or the Companies Ordinance

Application of
Ordinance to
companies
formed under
the repealed
Companies
Ordinance

Cap 93

Cap 93

297 This Ordinance shall apply to every company registered but not formed under the Indian Companies Act, 1882, as applied to the Colony, or the Companies Ordinance, in the same manner as it is in Part X of this Ordinance declared to apply to companies registered but not formed under this Ordinance

Application
of Ordinance
to companies
registered
under the
repealed
Companies
Ordinance
Cap 93

Cap 93

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Indian Companies Act, 1882, as applied to the Colony, or the Companies Ordinance

Companies
capable of
being
registered

COMPANIES NOT FORMED UNDER THIS ORDINANCE AUTHORIZED TO REGISTER UNDER THIS ORDINANCE

298 (1) With the exceptions and subject to the provisions contained in this section—

- (a) any company consisting of seven or more members, which was in existence on the 13th day of June, 1903, and
- (b) any company formed after the date aforesaid, whether before or after the commencement of this Ordinance, in pursuance of any Act of Parliament other than this Ordinance, or of letters patent, or being otherwise duly constituted according to law, and consisting of seven or more members,

may at any time register under this Ordinance as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up

Cap 93

Provided that—

- (i) a company registered under the Indian Companies Act 1882, as applied to the Colony, or the Companies Ordinance, shall not register in pursuance of this section,
- (ii) a company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section,
- (iii) a company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee,
- (iv) a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares,

- (v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose,
- (vi) where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting,
- (vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company

299 For the purposes of this Part of this Ordinance, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Ordinance shall be deemed to be a company limited by shares

Definition of
joint stock
company

Requirements
for regis-
tra-
tion by joint
stock
companies

300 Before the registration in pursuance of this Part of this Ordinance of a joint stock company, there shall be delivered to the registrar the following documents—

- (a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered each share by its number,
- (b) a copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating the company, and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars—
 - (i) the nominal share capital of the company, and the number of shares into which it is divided, or the amount of stock of which it consists,
 - (ii) the number of shares taken and the amount paid on each share,
 - (iii) the name of the company, with the addition of the word "limited" as the last word thereof, and
 - (iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee

Requirements
for regis-
tra-
tion by other
than joint
stock
companies

301 Before the registration in pursuance of this Part of this Ordinance of any company not being a joint stock company, there shall be delivered to the registrar—

- (a) a list showing the names, addresses and occupations of the directors or other managers, if any, of the company, and
- (b) a copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnery, cost book regulations or other instrument constituting or regulating the company and
- (c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee

302 The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company

Authentication
of statements
of existing
companies

303 The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined

Registrar may
require
evidence
as to nature
of company

304 No fees shall be charged in respect of the registration in pursuance of this Part of this Ordinance of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent

Exemption of
certain
companies
from pay-
ment of fees

305 When a company registers in pursuance of this Part of this Ordinance with limited liability, the word "limited" shall form and be registered as, part of its name

Addition of
"limited"
to name

306 On compliance with the requirements of this Part of this Ordinance with respect to registration, and on payment of such fees, if any, as are payable under the Eighth Schedule to this Ordinance, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Ordinance, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated and shall have perpetual succession and a common seal

Certificate of
registration
of existing
companies

307 All property, movable and immovable, including all interests and rights in, and arising out of, property, movable and immovable, and including obligations and actionable claims belonging to or vested in a company at the date of its registration in pursuance of this Part of this Ordinance, shall on registration pass to and vest in the company as incorporated under this Ordinance for all the estate and interest of the company therein

Vesting of
property on
registration

308 Registration of a company in pursuance of this Part of this Ordinance shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, the company before registration

Saving for
existing
liabilities

Continuation
of existing
actions

309. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Ordinance are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place

Provided that execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company

Effect of regis-
tration under
Ordinance

310 (1) When a company is registered in pursuance of this part of this Ordinance the following provisions of this section shall have effect

(2) All provisions contained in any Act of Parliament or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Ordinance, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles

(3) All the provisions of this Ordinance shall apply to the company, and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Ordinance, subject as follows—

- (a) Table A shall not apply unless adopted by special resolution,
- (b) the provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered,
- (c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament relating to the company,

- (d) subject to the provisions of this section, the company shall not have power to alter any provisions contained in any letters patent relating to the company,
 - (e) the company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company,
 - (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid,
 - (g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid, and, in the event of the death, bankruptcy or insolvency, of any contributory, the provisions of this Ordinance with respect to the legal representatives and heirs of deceased contributors, to the trustees of bankrupt or insolvent contributors, shall apply
- (4) The provisions of this Ordinance with respect to—
- (a) the registration of an unlimited company as limited,
 - (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up,
 - (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up,

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter or other instrument constituting or regulating the company

(5) Nothing in this section shall authorize the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had been originally formed under this Ordinance, have been required to be contained in the memorandum and are not authorized to be altered by this Ordinance

(6) Nothing in this Ordinance shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act of Parliament or other instrument constituting or regulating the company, be vested in the company

(7) In this section the expression "instrument" includes deed of settlement, contract of co-partnership, cost book regulations and letters patent

Power to substitute memorandum and articles for deed of settlement

311 (1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Ordinance may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement

(2) The provisions of this Ordinance with respect to confirmation by the court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications—

(a) there shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar a printed copy of the substituted memorandum and articles, and

(b) on the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Ordinance with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Ordinance

(4) In this section the expression "deed of settlement" includes any contract of co-partnership, or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter or letters patent

312 The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall in the case of a company registered in pursuance of this Part of this Ordinance, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company

Power of
court to stay
or restrain
proceedings

313 Where an order has been made for winding up a company registered in pursuance of this Part of this Ordinance, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose

Actions
stayed on
winding-up
order

PART XI

WINDING UP OF UNREGISTERED COMPANIES

314 For the purposes of this Part of this Ordinance, the expression "unregistered company" shall include any partnership, whether limited or not, any association and any company, with the following exceptions—

Meaning of
unregistered
company

- (a) a railway company incorporated by Act of Parliament, or under the Indian Companies Act, 1882, as applied to the Colony, or the Companies Ordinance, Cap 93
- (b) a partnership, association or company which consists of less than eight members, and is not a partnership, association or company formed outside the Colony

315 (1) Subject to the provisions of this Part of this Ordinance any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions—

Winding up of
unregistered
companies

- (a) no unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision,
- (b) the circumstances in which an unregistered company may be wound up are as follows—
 - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs,

- (ii) if the company is unable to pay its debts,
 - (iii) if the court is of opinion that it is just and equitable that the company should be wound up,
- (c) an unregistered company shall, for the purposes of this Ordinance be deemed to be unable to pay its debts—
- (i) if a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor,
 - (ii) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same,
 - (iii) if execution or other process issued on a decree or order obtained in any court in favour of a creditor against the company, or any member

thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied,

(iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts

(2) Where a company incorporated outside the Colony which has been carrying on business in the Colony ceases to carry on business in the Colony, it may be wound up as an unregistered company under this Part of this Ordinance, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated

(3) Nothing in this Part of this Ordinance shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Ordinance, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provisions, if any, of this Ordinance

316 (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid

(2) In the event of the death, bankruptcy, or insolvency of any contributory, the provisions of this Ordinance with respect to the legal representatives and heirs of deceased contributaries, to the trustees of bankrupt or insolvent contributaries, shall apply

317 The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for

Contributories
in winding up
of unregistered
company

Power of
court to stay
or restrain
proceedings

winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company

Actions stayed on winding-up order

318 Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose

Provisions of Part XI cumulative

319 The provisions of this Part of this Ordinance with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Ordinance contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part of this Ordinance

PART XII

COMPANIES INCORPORATED OUTSIDE THE COLONY CARRYING ON BUSINESS WITHIN THE COLONY

Companies to which Part XII applies

320 This Part of this Ordinance shall apply to all companies incorporated outside the Colony which, after the commencement of this Ordinance, establish a place of business within the Colony, and to all companies incorporated outside the Colony which have, before the commencement of this Ordinance, established a place of business within the Colony and continue to have an established place of business within the Colony at the commencement of this Ordinance

Documents, etc., to be delivered to registrar by companies carrying on business in the Colony

321 Every company incorporated outside the Colony which at the commencement of this Ordinance has a place of business in the Colony and every such company which, after the commencement of this Ordinance establishes a place of business within the Colony, shall, within six months from the

commencement of this Ordinance or within one month from the establishment of the place of business, deliver to the registrar for registration—

- (a) a certified copy of the charter statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company and, if the instrument is not written in the English language, a certified translation thereof,
- (b) the full address of the registered or principal office of the company,
- (c) a list of the directors of the company, containing such particulars with respect to the directors as are by this Ordinance required to be contained with respect to directors in the register of the directors of a company,
- (d) the names and addresses of some one or more persons resident in the Colony authorized to accept on behalf of the company service of process and any notices required to be served on the company,

and in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such person as aforesaid, the company shall within three months of such alteration deliver to the registrar a notice of the alteration

322 A company incorporated outside the Colony which has delivered to the registrar the documents and particulars specified in paragraphs (a), (b), (c) and (d) of the last foregoing section shall have the same power to hold lands in the Colony as if it were a company incorporated under this Ordinance

Power of companies incorporated outside the Colony to hold lands

323 (1) Every company to which this Part of this Ordinance applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Ordinance it would, if it had been a company within the meaning of this Ordinance, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the registrar for registration

Balance sheet of company carrying on business in the Colony

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof

Obligation to
state name of
company,
whether
limited, and
country where
incorporated

324 Every company to which this Part of this Ordinance applies shall—

- (a) in every prospectus inviting subscription for its shares or debentures in the Colony state the country in which the company is incorporated, and
- (b) conspicuously exhibit on every place where it carries on business in the Colony the name of the company and the country in which the company is incorporated, and
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible Roman letters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company, and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible Roman letters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in the Colony and to be affixed on every place where it carries on its business

Service on
company to
which Part
XII applies

325 Any process or notice required to be served on a company to which this Part of this Ordinance applies shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under this Part of this Ordinance and left at or sent by post to the address which has been so delivered

Provided that—

- (a) where any such company makes default in delivering to the registrar the name and address of a person resident in the Colony who is authorized to accept on behalf of the company service of process or notices, or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

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

326 If any company to which this Part of this Ordinance applies ceases to have a place of business in the Colony it shall forthwith give notice of the fact to the registrar, and as from the date on which notice is so given the obligation of the company to deliver any document to the registrar shall cease

327 If any company to which this Part of this Ordinance applies fails to comply with any of the foregoing provisions of this Part of this Ordinance the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence five pounds for every day during which the default continues

328 For the purposes of this Part of this Ordinance—
the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation,

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

the expression "place of business" includes a share transfer or share registration office,

the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Ordinance

PART XIII

RESTRICTIONS ON SALE OF SHARES AND OFFERS OF SHARES FOR SALE

- 329** (1) It shall not be lawful for any person—
 (a) to issue, circulate or distribute in the Colony any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the Colony, whether the company has or has not established, or when formed will or will not establish, a place of business in the Colony, unless—
 (i) before the issue, circulation or distribution of the prospectus in the Colony a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar,

Registrar to
be notified
when com-
pany ceases to
have place of
business in
the Colony

Penalties
Interpreta-
tion of
Part XII

Provisions
with respect to
prospectuses
of foreign
companies
inviting
subscriptions
for shares or
offering shares
for sale

- (ii) the prospectus states on the face of it that the copy has been so delivered,
 - (iii) the prospectus is dated,
 - (iv) the prospectus otherwise complies with this Part of this Ordinance, or
- (b) to issue to any person in the Colony a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part of this Ordinance,

Provided that this provision shall not apply if it is shown that the form of application was issued in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently

(3) Where any document by which any shares in or debentures of a company incorporated outside the Colony are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 39 of this Ordinance to be a prospectus issued by the company that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company

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

(5) Section 38 of this Ordinance shall extend to every prospectus to which this section applies

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five hundred pounds

(7) In this and the next following section the expression "prospectus," "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Ordinance

330 (1) In order to comply with this Part of this **Requirements as to prospectus** Ordinance a prospectus in addition to complying with the provisions of sub-paragraphs (ii) and (iii) of paragraph (a) of sub-section (1) of the last foregoing section must—

(a) contain particulars with respect to the following matters—

- (i) the objects of the company,
- (ii) the instrument constituting or defining the constitution of the company,
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected,
- (iv) an address in the Colony where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected,
- (v) the date on which and the country in which the company was incorporated,
- (vi) whether the company has established a place of business in the Colony, and, if so, the address of its principal office in the Colony

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business,

(b) subject to the provisions of this section state the matters specified in Part I of the Third Schedule to this Ordinance (other than those specified in paragraph 1 of the said Part I) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of the said Schedule

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus

must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and

- (ii) in paragraph 3 of Part I of the said Third Schedule a reference to the constitution of the company shall be substituted for the reference to the articles, and
- (iii) paragraph 1 of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part I of the Third Schedule to this Ordinance, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance, apart from this section

331 (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public

Restrictions
on offering of
shares for
subscription
or sale

In this sub-section the expression "house" shall not include an office used for business purposes

(2) Subject as hereinafter provided in this sub-section, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside the Colony, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Ordinance

Provided that the provisions of this sub-section shall not apply—

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognized stock exchange in the Colony and the offer states and specifies the stock exchange, or

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public, or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith

(4) The said statement shall contain particulars with respect to the following matters—

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in the Colony where that principal can be served with process,

- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in the Colony,
- (c) the authorized share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting,
- (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect,
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon,
- (f) the names and addresses of the directors of the company,
- (g) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up,
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by any recognized stock exchange in the Colony or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted,
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in the Colony where that document or a copy thereof can be inspected

In this sub-section the expression "company" means the company by which the shares to which the statement relates were or are to be issued

(5) If any person acts, or incites, causes or procures any person to act in contravention of this section, he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both

such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds or to both such imprisonment and fine

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Ordinance or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent

(7) In this section, unless the context otherwise requires, the expression "shares" means the shares of a company, whether a company within the meaning of this Ordinance or not, and includes debentures and units, and the expression "unit" means any right or interest (by whatever name called) in a share, and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company

(8) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares

Where a court inferior to the Supreme Court makes an order under this sub-section (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Supreme Court

PART XIV MISCELLANEOUS

Prohibition of Partnerships with more than Twenty Members

332 No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some Act of Parliament, or of letters patent

Prohibition of
partnerships
with more
than twenty
members

Prohibition of banking partnerships with more than ten members

On registration of banking company with limited liability, notice to be given to customers

Penalty for false statement

Penalty on perjury

Penalty for improper use of word "limited"

Provisions relating to Banks

333 No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Ordinance, or is formed in pursuance of some Act of Parliament, or of letters patent

334 (1) Where a banking company proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address

(2) If the company omits to give the notice required by this section, then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise the certificate of registration with limited liability shall have no operation

Miscellaneous Offences

335 If any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Ordinance specified in the Ninth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years, and shall also be liable to a fine in lieu of or in addition to such imprisonment as aforesaid

336 If any person, on examination on oath authorized under this Ordinance or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Ordinance, wilfully and corruptly gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to a fine

337 If any person or persons trade or carry on business under any name or title of which "Limited," or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used

General Provisions as to Offences

338 No court inferior to that of a subordinate court of Cognizance of offences the first class shall try any offence against this Ordinance

339 (1) Where by any enactment in this Ordinance it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds

(2) For the purpose of any enactment in this Ordinance which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the enactment

340 The court imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information the fine is recovered

341 Nothing in this Ordinance relating to the institution of criminal proceedings by the Attorney General shall be taken to preclude any person from instituting or carrying on any such proceedings

342 Where proceedings are instituted under this Ordinance against any person by the Attorney General nothing in this Ordinance shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity

Service of Documents and Legal Proceedings

343. (1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company in the Colony

(2) A document may be served on the registrar by leaving it at or sending it by post to his office

Cognizance of offences
Provision with respect to default fines and meaning of "officer in default"

Application of fines

Saving as to private prosecutors

Saving for privileged communications

Costs in
actions by
certain
limited
companies

344 Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given

Power of
court to grant
relief in
certain cases

345 (1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly from his liability on such terms as the court may think fit

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

(3) The persons to whom this section applies are the following—

- (a) directors of a company,
- (b) managers of a company,
- (c) officers of a company,
- (d) persons employed by a company as auditors whether they are or are not officers of the company

Power to
enforce
orders

346 Orders made by the Supreme Court under this Ordinance may be enforced in the same manner as orders made in an action pending therein

Power to
alter tables
and forms

347 (1) The Governor in Council may alter Table A, the form in the Sixth Schedule and the table of fees in the Eighth Schedule to this Ordinance, so that the amount of fees payable to the registrar under the said Eighth Schedule

is not thereby increased and may alter or add to Tables B C D and E in the First Schedule, and the forms in the Fifth Schedule to this Ordinance

(2) Any such table or form, when altered, shall be published in the Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Ordinance, but no alteration made by the Governor in Council in Table A shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table

(3) In addition to the powers hereinbefore conferred by this section, the Governor in Council may make rules providing for all or any matters which by this Ordinance are to be prescribed by his authority

Saving for Companies (Winding Up) Rules

348 (1) Unless and until the Supreme Court shall make rules under the powers conferred by section 285 of this Ordinance, the rules made by the Supreme Court pursuant to section 246 of the Companies Ordinance and dated the 21st February, 1930, are declared to be in force in the Colony and shall be read with and considered part of this Ordinance

Provided always that it shall be lawful for Supreme Court by rule to amend or revoke any of the said rules and,

Provided further that it shall be lawful for any court to construe the said rules with such verbal alteration not affecting the substance as may be deemed expedient to render the same applicable to any matters before the court, provided always that any such construction or alteration shall not be inconsistent with the provisions of this Ordinance

(2) In any proceedings taken in this Colony for the winding up of companies the decision of the Court on the construction to be placed on any of the provisions of the said rules, with respect to practice and procedure shall be final and no action, suit or other legal proceedings or process shall be brought, taken, issued or allowed in the Colony against any person in respect of any act or thing done or purporting to be done in pursuance of any order or direction of the Court under the aforesaid rules

Saving for
Companies
(Winding Up)
Rules

Construction
of the court
to be final

Repeal and Savings

349 (1) The Companies Ordinance (Chapter 93 of the Revised Edition) as amended by the Companies (Amendment) No 4 of 1927 Ordinance, 1927, is hereby repealed

Cap 1. (2) Without prejudice to the provisions of section 7 of the Interpretation and General Clauses Ordinance—

Cap 93

- (a) nothing in this repeal shall affect—
 - (i) the incorporation of any company registered under the Ordinance hereby repealed, nor
 - (ii) Table A in the First Schedule annexed to the Indian Companies Act, 1882, as applied to the Colony or in the First Schedule annexed to the Companies Ordinance or any part thereof so far as the same applies to any company existing at the commencement of this Ordinance,
- (b) any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Ordinance,
- (c) any person appointed to any office under or by virtue of the former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Ordinance,
- (d) any register kept under the former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Ordinance,
- (e) all funds and accounts constituted under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies

(3) All fees directed, resolutions passed and other things duly done under the enactments hereby repealed shall be deemed to have been directed, passed or done under this Ordinance

(4) In this section the expression "former enactment relating to companies" means any enactment repealed by this Ordinance

Saving of pending proceedings for winding up

Cap 93

350 The provisions of this Ordinance with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Ordinance, but every such company shall be wound up in the same manner and with the same incidents as if this Ordinance had not passed, and, for the purposes of the winding up, the Companies Ordinance shall be deemed to remain in full force

SCHEDULES

FIRST SCHEDULE

(SECTIONS 2, 10, 115, 310, 347)

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES
Preliminary

1 In these regulations—

“the Ordinance” means the Companies Ordinance, 1933

When any provision of the Ordinance is referred to, the reference is to that provision as modified by any law for the time being in force

Unless the context otherwise requires, expressions defined in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined

Shares

2 Subject to the provisions, if any in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting return of share capital or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed

3 If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll

4 Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all

5 If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity, as the directors think fit

6 No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 46 (1) of the Ordinance

Lien

7 The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon

8 The company may sell, in such manner as the directors think fit, any share, on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy

9 For giving effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale

10 The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale

Calls on Shares

11 The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call, and each member shall (subject to receiving at least fourteen days notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares

12 The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof

13 If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of eight per centum per annum from the day appointed for the payment thereof to the time of the actual payment but the directors shall be at liberty to waive payment of that interest wholly or in part

14 The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified

15 The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment

16 The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors

Transfer and Transmission of Shares

17 The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof

18 Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve—

I A B , of
of Sh , in consideration of the sum
paid to me by C D , of
, (hereinafter called ‘the said transferee’) do
hereby transfer to the said transferee the share (or shares) numbered
in the undertaking called the
Company, Limited, to hold unto the said transferee subject to the
several conditions on which I hold the same and I, the said transferee,
do hereby agree to take the said share (or shares) subject to the con-
ditions aforesaid As witness our hands the
day of , 19

Witness to the signatures of, etc

19 The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless—

- (a) a fee not exceeding two shillings is paid to the company in respect thereof, and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20 The legal personal representative of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

21 Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22 A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares

23 If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24 The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited

25 If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect

26 A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit

27 A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares

28 A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share

29 The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified

Conversion of Shares into Stock

30 The company may by ordinary resolution convert any paid up shares into stock, and reconvert any stock into paid up shares of any denomination

31 The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose

32 The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage

33 Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder"

Alteration of Capital

34 The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe

35 Subject to any direction to the contrary that may be given by the company in general meeting all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time, within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article

36 The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital

37 The company may by ordinary resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares,
- (b) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 51 (1) (d) of the Ordinance,
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person

38 The company may by special resolution, reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorized, and consent required, by law

General Meetings

39 A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possibly as that in which meetings are to be convened by the directors.

40 The above mentioned general meetings shall be called ordinary general meetings, all other general meetings shall be called extraordinary general meetings.

41 The directors may whenever they think fit convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the Ordinance. If at any time there are not within the Colony sufficient directors capable of acting to form a quorum any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings

42 Subject to the provisions of section 117 (2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company, but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings

44 All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, save as herein otherwise provided, three members personally present shall be a quorum

46 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same time and place and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum

47 The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company

48 If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman

49 The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting

50 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen per cent of the paid-up capital of the company and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against, that resolution

51 If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded

52 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote

53 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

54 On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55 In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56 A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian appointed by that court, and any such committee or other legal guardian may, on a poll, vote by proxy.

57 No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58 On a poll votes may be given either personally or by proxy. Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 116 of the Ordinance is in force.

59 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

60 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61 An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve —

Company, Limited

I, , of , in the
district of , being a member of the
Company, Limited, hereby appoint ,
of , as my proxy, to vote for me and on my behalf
at the (ordinary or extraordinary, as the case may be) general meeting
of the company to be held on the day of 19 ,
and at any adjournment thereof

Signed this day of , 19 .

62 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll

Corporations acting by Representatives at Meetings

63 Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company

Directors

64 The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association

65 The remuneration of the directors shall from time to time be determined by the company in general meeting

66 The qualification of a director shall be the holding of at least one share in the company

Powers and Duties of Directors

67 The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Ordinance, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

68 The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined

69 The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting

70 The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors,
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors,
- (c) of all resolutions and proceedings at all meetings of the company, of the directors, and of committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose

The Seal

71 The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose, and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence

Disqualification of Directors

72 The office of director shall be vacated, if the director—

- (a) ceases to be a director by virtue of section 142 of the Ordinance, or
- (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager, or
- (c) becomes bankrupt in this Colony or in any other territory which is declared to be a reciprocating territory under section 147 of the Bankruptcy Ordinance, 1930, or
- (d) becomes prohibited from being a director by reason of any order made under sections 213 or 269 of the Ordinance, or
- (e) is found lunatic or becomes of unsound mind, or
- (f) resigns his office by notice in writing to the company, or
- (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company, or
- (h) is punished with imprisonment for a term exceeding six months without the option of a fine

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 150 of the Ordinance, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted

Rotation of Directors

73 At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being or, if then number is not three or a multiple of three, then the number nearest one-third shall retire from office

74 The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot

75 A retiring director shall be eligible for re-election

76 The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office

77 The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office

78 Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

79 The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director

80 The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

Proceedings of Directors

81 The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors

82 The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two

83 The continuing directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose

84 The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting

85 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors

86 A committee may elect a chairman of its meetings, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting

87 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote

88 All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director

Dividends and Reserve

89 The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors

90 The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company

91 No dividend shall be paid otherwise than out of profits

92 Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purpose of this article as paid on the share

93 The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit

94 If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share

95 Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct

96 No dividend shall bear interest against the company

Accounts

97 The directors shall cause proper books of account to be kept with respect to—

- All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place,
- All sales and purchases of goods by the company, and
- The assets and liabilities of the company

98 The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors

99 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorized by the directors or by the company in general meeting

100 The directors shall from time to time in accordance with section 123 of the Ordinance, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts balance sheets and reports as are referred to in that section

101 The profit and loss account shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

102 A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit

103 Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Ordinance.

Notices

104 A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the Colony) to the address, if any, within the Colony supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

105 If a member has no registered address within the Colony and has not supplied to the company an address within the Colony for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating the neighbourhood of the registered office of the company shall be deemed to be duly given to him at noon on the day on which the advertisement appears.

106 A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

107 A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or receiver of the bankrupt, or by any like description, at the address, if any, within the Colony supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

108 Notice of every general meeting shall be given in some manner hereinbefore authorized to (a) every member except those members who (having no registered address within the Colony) have not supplied to the company an address within the Colony for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy would be entitled to receive notice of the meeting No other person shall be entitled to receive notices of general meetings

TABLE B
SECTIONS 13 AND 347

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st The name of the company is "The Eastern Steam Packet Company Ltd."

2nd The registered office of the company will be situate in Nairobi

3rd The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th The liability of the members is limited

5th The share capital of the company is ten thousand pounds divided into one thousand shares of ten pounds each

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

Name, Addresses, and Descriptions of Subscribers			Number of shares taken by each Subscriber
1 John Jones, of		, merchant	200
2 John Smith, of		, "	25
3 Thomas Green, of		, "	30
4 John Thompson, of		, "	40
5 Caleb White, of		, "	15
6 Andrew Brown, of		, "	5
7 Cæsar White, of		, "	10
Total shares taken			325

Dated the _____ day of _____, 19____

Witness to the above signatures,

A B,

Sixth Avenue, Nairobi

TABLE C

SECTIONS 13 AND 347

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED
BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL*Memorandum of Association*

1st The name of the company is "The Mombasa School Association, Limited"

2nd The registered office of the company will be situate in Mombasa

3rd The objects for which the company is established are the carrying on a school for boys in the District of Mombasa and the doing all such other things as are incidental or conducive to the attainment of the above object

4th The liability of the members is limited

5th Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributors among themselves, such amount as may be required not exceeding ten pounds

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association

Names, Addresses and Description of Subscribers

1	John Jones, of	, Schoolmaster
2	John Smith, of	, "
3	Thomas Green, of	, "
4	John Thompson, of	, "
5	Caleb White, of	, "
6	Andrew Brown, of	, "
7	Cæsar White, of	, "

Dated the day of 19

Witness to the above signatures,

A B ,

Salim Road, Mombasa

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF
ASSOCIATION
Preliminary

1 In these regulations—

"the Ordinance" means the Companies Ordinance, 1933

When any provision of the Ordinance is referred to the reference is to such provision as modified by any law for the time being in force

Unless the context otherwise requires, expressions defined in the Ordinance or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined

Members

2 The number of members with which the company proposes to be registered is five hundred, but the directors may from time to time register an increase of members

3 The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company

General Meetings

4 The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company and at such place, as the directors may determine

5 A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting or in default at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors

6 The above mentioned general meetings shall be called ordinary general meetings all other general meetings shall be called extraordinary general meetings

7 The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition or, in default, may be convened by such requisitionists, as provided by section 114 of the Ordinance. If at any time there are not within the Colony sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors

Notice of General Meetings

8 Subject to the provisions of section 117 (2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned,

or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company, but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit

9 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting

Proceedings at General Meetings

10 All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors

11 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business, save as herein otherwise provided three members personally present shall be a quorum

12 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum

13 The chairman if any, of the board of directors shall preside as chairman at every general meeting of the company

14 If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of them number to be chairman

15 The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting

16 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two

members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution

17 If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded

18 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote

19 A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs

Votes of Members

20 Every member shall have one vote

21 A member of unsound mind, or in respect of whom an order has been made, by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, or other legal guardian appointed by that court, and any such committee or other legal guardian or other person may, on a poll, vote by proxy

22 No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid

23 On a poll votes may be given either personally or by proxy. Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 116 of the Ordinance is in force

24 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorized. A proxy need not be a member of the company

25 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power of authority shall be deposited at the registered office of the company not less than seventy two hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid

26 An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve—

Company, Limited

I , of , in the
District of , being a member of
the Company, Limited, hereby
appoint , of , as
my proxy to vote for me and on my behalf at the (*ordinary or extraordinary, as the case may be*) general meeting of the company to be held on the day of , 19 , and at any adjournment thereof

Signed this day of , 19

27 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll

Corporations acting by Representatives at Meetings

28 Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company

Directors

29 The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum

30 The remuneration of the directors shall from time to time be determined by the company in general meeting

Powers and Duties of Directors

31 The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Ordinance, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

32 The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors,
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors,

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors, and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose

The Seal

33 The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose, and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence

Disqualifications of Directors

- 34 The office of director shall be vacated, if the director—
(a) without the consent of the company in general meeting holds any other office of profit under the company, or
(b) becomes bankrupt, or
(c) becomes prohibited from being a director by reason of any order made under sections 213 or 269 of the Ordinance,
(d) is found lunatic or becomes of unsound mind, or
(e) resigns his office by notice in writing to the company,
(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 150 of the Ordinance,
(g) is punished with imprisonment for a term exceeding six months without the option of a fine

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted

Rotation of Directors

35 At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office

36 The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot

37 A retiring director shall be eligible for re-election

38 The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office

39 The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office

40 Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

41 The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting but shall be eligible for election by the company at that meeting as an additional director

42 The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director

Proceedings of Directors

43 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors

44 The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two

45 The continuing directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose

46 The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting

47 The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors

48 A committee may elect a chairman of its meetings, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

50 All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Accounts

51 The directors shall cause proper books of account to be kept with respect to—

all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the company, and the assets and liabilities of the company.

52 The books of account shall be kept at the registered office of the company or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

54 The directors shall from time to time in accordance with section 123 of the Ordinance, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55 The profit and loss account shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

56 A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company

Audit

57 Auditors shall be appointed and their duties regulated in accordance with sections 132, 133 and 134 of the Ordinance

Notices

58 A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the Colony) to the address, if any, within the Colony supplied by him to the company for the giving of notices to him

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

59 If a member has no registered address within the Colony and has not supplied to the company an address within the Colony for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears

60 Notice of every general meeting shall be given in some manner hereinbefore authorized to every member except those members who (having no registered address within the Colony) have not supplied to the company an address within the Colony for the giving of notices to them No other persons shall be entitled to receive notices of general meetings

Names, Addresses and Description of Subscribers

1	John Jones, of		Schoolmaster
2	John Smith, of	,	"
3	Thomas Green, of	,	"
4	John Thompson, of	,	"
5	Caleb White, of	,	"
6	Andrew Brown, of	,	"
7	Cæsar White, of	,	"

Dated the _____ day of _____ 19____

Witness to the above signatures

A B

Sixth Avenue, Nairobi

TABLE D

(SECTIONS 13 AND 347)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE, AND HAVING A SHARE CAPITAL*Memorandum of Association*

1st The name of the company is "The Highland Hotel Company, Limited"

2nd The registered office of the company will be situate in Nakuru

3rd The objects for which the company is established are 'the facilitating travelling in the Highlands of Kenya, by providing hotels and conveying by sea and by land for the accommodation of travellers and the doing of all such other things as are incidental or conducive to the attainment of the above object'

4th The liability of the members is limited

5th Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required, not exceeding twenty pounds

6th The share capital of the company shall consist of twenty-five thousand pounds, divided into five thousand shares of five pounds each

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

Names, Addresses and Description of Subscribers		Number of shares taken by each Subscriber
1	John Jones, of	, merchant 200
2	John Smith, of	, , 25
3	Thomas Green, of	, , 30
4	John Thompson, of	, , 40
5	Caleb White, of	, , 15
6	Andrew Brown, of	, , 5
7	Cæsar White, of	, , 10
		—
		Total shares taken 325
		—

Dated the day of 19

Witness to the above signatures,

A B ,

Donald Avenue, Nakuru

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF
ASSOCIATION

1 The Articles of Tables A set out in the First Schedule to the Companies Ordinance, 1933, shall be the articles of association of the company and apply to the company

Names, Addresses and Description of Subscribers

1	John Jones, of	, merchant
2	John Smith, of	, "
3	Thomas Green, of	, ,
4	John Thompson, of	, "
5	Caleb White, of	, "
6	Andrew Brown, of	, "
7	Cæsar White, of	, "

Dated the _____ day of _____ 19____

Witness to the above signatures,

A B ,

Donald Avenue, Nakuru

TABLE E

SECTIONS 13 AND 347

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY

HAVING A SHARE CAPITAL

Memorandum of Association

- 1st The name of the company is "The Patent Stereotype Company"
 2nd The registered office of the company will be situate in Kisumu
 3rd The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Koru, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects"

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names

Names, Addresses and Description of Subscribers		Number of shares taken by each Subscriber
1	John Jones, of	, merchant 3
2	John Smith, of	, " 2
3	Thomas Green, of	, " 1
4	John Thompson, of	, " 2
5	Caleb White, of	, " 2
6	Andrew Brown, of	, " 1
7	Abel Brown, of	, " 1
		—
		Total shares taken 12
		—

Dated the

-day of 19

Witness to the above signatures,

A B ,

Corporation Street, Kisumu

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING MEMORANDUM OF ASSOCIATION

- 1 The share capital of the company is one thousand pounds divided into twenty shares of fifty pounds each
- 2 The company may by special resolution—
 - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe,
 - (b) consolidate its shares into shares of a larger amount than its existing shares,
 - (c) sub-divide its shares into shares of a smaller amount than its existing shares,
 - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person,
 - (e) reduce its share capital in any way

3 The Articles of Table A set out in the First Schedule to the Companies Ordinance, 1931 (other than Articles 30, 31, 32, 33, 34, 37 and 38), company, deemed to be incorporated with these articles and shall apply to the company

Names, Addresses and Descriptions of Subscribers

1	John Jones, of	, merchant
2	John Smith, of	, ,
3	Thomas Green, of	, ,
4	John Thompson, of	, ,
5	Caleb White, of	, ,
6	Andrew Brown, of	, ,
7	Abel Brown, of	, ,

Dated the day of 19

A B,
Corporation Street, Kisumu

SECOND SCHEDULE

(SECTION 28)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR
BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY

THE COMPANIES ORDINANCE, 1933

Statement in lieu of Prospectus delivered for registration by
(Insert the name of the Company)

Pursuant to section 28 of the Companies Ordinance, 1933

Delivered for registration by

The nominal share capital of the Company

Divided into

Amount (if any) of above capital which consists of redeemable preference shares

The date on or before which these shares are, or are liable, to be redeemed

Names, descriptions and addresses of directors or proposed directors

Amount of shares issued

Amount of commissions paid in connexion therewith

Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement

Sh		
Shares of Sh	each	

Shares

Unless more than one year has elapsed since the date on which the Company was entitled to commence business—

Amount of preliminary expenses
Amount paid to any promoter

Consideration for the payment

If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively

Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement

Consideration for the issue of those shares or debentures

Names and addresses of Vendors of Property

(1) purchased or acquired by the Company within the two years preceding the date of this statement, or (2) agreed or proposed to be purchased or acquired by the Company

Amount (in cash, shares or debentures) paid or payable to each separate vendor

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement)

Time and place at which the contracts or copies thereof may be inspected

Names and addresses of the auditors of the Company

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding that the date of this statement or proposed to be purchased or acquired by the Company, or,

Sh	
Name of promoter	
Amount	Sh
Consideration	
1	shares of Sh fully paid
2	shares upon which Sh per share credited as paid
3	debenture Sh
4	Consideration

Total purchase price	
	Sh
Cash	Sh
Shares	Sh
Debentures	Sh
Goodwill	Sh

where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm

Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company, whichever period is the shorter

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing)

Date , 19

NOTE — In this Form the expression "vendor" includes a vendor as defined in Part III of the Third Schedule to this Ordinance, and the expression "financial year" has the meaning assigned to it in that part of the said Schedule

THIRD SCHEDULE
(SECTIONS 36 AND 330)

PART I

MATTERS REQUIRED TO BE STATED IN PROSPECTUS

1 Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively

2 The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company

3 The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors

4 The names, description and addresses of the directors or proposed directors and of the managers or proposed managers (if any)

5 Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company,

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters,

(d) working capital, and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided

6 The amount payable on application and allotment on each share and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted

7 The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent

to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued

8 The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash shares or debentures, to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor

9 The amount, if any, paid or payable as purchase money in cash, shares or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill

10 The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission

11 The amount or estimated amount of preliminary expenses

12 The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment

13 The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected

14 The names and addresses of the auditors, if any, of the company

15 Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or, otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company

16 If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively

17 In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be has been carried on

PART II

REPORTS TO BE SET OUT IN PROSPECTUS

1 A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact

2 If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

1 The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business

2 Every person shall for the purpose of this Schedule be deemed to be a vendor who has entered into any contract absolute or conditional, for the sale or purchase, or for any option of purchase, of any property, to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus,
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus,
- (c) the contract depends for its validity or fulfilment on the result of that issue

3 Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4 For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors

5 If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years

6 The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year

FOURTH SCHEDULE

(SECTION 41)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED

THE COMPANIES ORDINANCE 1933

Statement in lieu of Prospectus delivered for registration by

(Insert the name of the company)

Pursuant to section 41 of the Companies Ordinance, 1933

Delivered for registration by

The nominal share capital of the Company
Divided into

Sh	
Shares of Sh	each
Shares of Sh	each
Shares of Sh	each

Shares of Sh each

Amount (if any) of above capital which consists
of redeemable preference shares

The date on or before which these shares are
or are liable, to be redeemed

Names, descriptions and addresses of directors,
or proposed directors

If the share capital of the Company is divided
into different classes of shares, the right
of voting at meetings of the Company con-
ferred by, and the rights in respect of
capital and dividends attached to, the
several classes of shares respectively

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash	1 shares of Sh fully paid
The consideration for the intended issue of those shares and debentures	2 shares upon which Sh per share credited as paid
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company	3 debenture
Amount (in cash, shares or debentures) payable to each separate vendor	4 Consideration
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill	Total purchase price Sh Cash Sh Shares Sh Debentures Sh Goodwill Sh
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company, or	Amount paid Amount payable
Rate of the commission	Rate per cent
The number of shares (if any) which persons have agreed for a commission to subscribe absolutely	Sh Name of promoter Amount Sh Consideration
Estimated amount of preliminary expenses	
Amount paid or intended to be paid to any promoter	
Consideration for the payment	
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement)	
Time and place at which the contracts or copies thereof may be inspected	
Names and addresses of the auditors of the Company (if any)	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent	

of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the Company

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirement shall have effect as if references to two years or one year, as the case may be were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing)

Date , 19

NOTE — In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Third Schedule to this Ordinance, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule

FIFTH SCHEDULE
(SECTIONS 108 AND 347)

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

Annual Return of the Company, Limited, made up to
the day of , 19 (being the fourteenth day
after the date of the first or only ordinary general meeting in 19)

The address of the registered office of the company is as follows —

<i>Summary of Share Capital and Shares</i>		
Nominal Share Capital into*	Sh	divided by Shares of Sh each
Total number of shares taken up* to the day of , 19 being the date of the return (which number must agree with the total shown in the list as held by existing members)		Shares of Sh each
Number of shares issued subject to payment wholly in cash		Shares of Sh each
Number of shares issued as fully paid up otherwise than in cash		
Number of shares issued as partly paid up to the extent of per share otherwise than in cash		
† Number of shares (if any) issued at a discount		
Total amount of discount on the issue of shares which has not been written off at the date of this Return	Sh	
‡ There has been called up on each of shares	Sh	
‡ There has been called up on each of shares	Sh	
‡ There has been called up on each of shares	Sh	
§ Total amount of calls received, including payments on application and allotment	Sh	
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	Sh	
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash	Sh	
Total amount of calls unpaid	Sh	

* Where there are shares of different kinds or amounts (e.g. Preference and Ordinary, or Sh 20 and Sh 1) state the number and nominal values separately

† If the shares are of different kinds, state them separately

‡ Where various amounts have been called, or there are shares of different kinds state them separately

§ Include what has been received on forfeited as well as on existing shares

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return	Sh
Total number of shares forfeited	
Total amount paid (if any) on shares forfeited	Sh
Total amount of shares for which share warrants to bearer are outstanding	Sh
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return	Issued Sh Surrendered Sh
Number of shares comprised in each share warrant to bearer	
Total amount of the indebtedness of the Company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Ordinance, 1933	Sh

Copy of last audited Balance Sheet of the Company

NOTE.—Except where the Company is a "Private Company" within the meaning of section 27 of the Companies Ordinance, 1933, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance sheet which has been audited by the Company's auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

Private Company

Certificates to be given by a Private Company

(a) I certify that the Company has not since the date of the *last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the Company

(Signature)
(State whether Director or Secretary)

(b) Should the number of members of the Company exceed fifty the following certificate is also required—

I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company

(Signature),

(State whether Director or Secretary)

NOTE—Banking companies must add a list of all their places of business

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company

Delivered for filing by

Particulars of the †Directors of the
Company, Limited, at the date of the Annual Return

‡The present Christian name or names and surname	Any former Christian name or names or surname	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	§Other business occupation, if any If none, state so

*In the case of the first Annual Return strike out the words "last Annual Return" and substitute therefor the words "Incorporation of the Company"

†"Director" includes any person who occupies the position of a Director by whatever name called and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act

‡In the case of a Corporation its corporate name and registered or principal office should be shown

§In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered

List of Persons holding Shares in the Company, Limited, on the day of 19 . . . , and of Persons who have held Shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an Account of the Shares so held

N.B.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list

Folio in Register Ledger, containing particulars	Names, Addresses and Occupations				Account of Shares				Remarks
	Surname	Christian name	Address	Occupation	*Number of Shares held by existing Members at date of Return†	‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who are still Members	‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company by persons who have ceased to be Members		

(Signature) - - - - -

(State whether Director or Manager or Secretary)

*The aggregate Number of Shares held, and not the Distinctive Numbers, must be stated and the column must be added up throughout so as to make one total to agree with that stated in the Summary to have been taken up

†When the Shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately Where any Shares have been converted into Stock the amount of Stock held by each member must be shown

‡The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date The Particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "Remarks" column immediately opposite the particulars of each Transfer

SIXTH SCHEDULE
(SECTION 131)

**FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES,
AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES**

*The share capital of the company is , divided
into shares of each

The number of shares issued is

Calls to the amount of shillings per share have been made,
under which the sum of shillings has been received

The liabilities of the company on the first day of January (or July)
were—

Debts owing to sundry persons by the company

On judgment, Sh

On specialty, Sh

On notes or bills, Sh

On simple contracts, Sh

On estimated liabilities, Sh

The assets of the company on that day were—

Government securities (stating them)

Bills of exchange and promissory notes, Sh

Cash at the bankers, Sh

Other securities, Sh

SEVENTH SCHEDULE
(SECTION 256)

**PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP SUBJECT TO
SUPERVISION OF THE COURT**

Section 180 —Statement of Companies' affairs to be submitted to Official Receiver

Section 181 —Report by Official Receiver

Section 182 —Power of Court to appoint Liquidator

Section 183 —Appointment and powers of provisional Liquidator

Section 184 —Appointment, style, etc., of Liquidators

Section 185 —Provisions where person other than Official Receiver is appointed Liquidator

Section 186 —Provisions as to Liquidators

Section 187 (except sub-section (5)) —General provisions as to Liquidators

Section 191 —Exercise and control of Liquidators' powers

Section 192 —Books to be kept by Liquidator

* If the company has no share capital, the portion of the statement relating to capital and shares must be omitted

- Section 193 — Audit of Liquidators' accounts in winding up
 Section 194 — Control of Registrar over Liquidators
 Section 195 — Release of Liquidators
 Section 196 — Meeting of creditors and contributories to determine whether committee of inspection shall be appointed
 Section 197 — Constitution and proceedings of committee of inspection
 Section 205 — Appointment of special manager
 Section 212 — Power to order public examination of promoters, directors, etc.
 Section 213 — Power to restrain fraudulent persons from managing companies
 Section 285 (2) — Delegation to Liquidator of certain powers of court
 Section 287 — Power to appoint Official Receiver as receiver for debenture holders or creditors

EIGHTH SCHEDULE

(SECTIONS 293, 306 AND 347)

TABLE OF FEES TO BE PAID TO THE REGISTRAR

I—BY A COMPANY HAVING A SHARE CAPITAL

	Sh Cts
For registration of a company whose nominal share capital does not exceed Sh 40,000	40 00
For registration of a company whose nominal share capital exceeds Sh 40,000, the following fees, regulated according to the amount of nominal share capital (that is to say)—	Sh Cts
For every Sh 20,000 of nominal share capital, or part of Sh 20,000, up to Sh 100,000	20 00
For every Sh 20,000 of nominal share capital, or part of Sh 20,000, after the first Sh 100,000, up to Sh 2,000,000	5 00
For every Sh 20,000 of nominal share capital, or part of Sh 20,000, after the first Sh 2,000,000	1 00
For registration of any increase of share capital made after the first registration of the company, the same fees per Sh 20,000, or part of Sh 20,000, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration	
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than Sh 1,000, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration	
For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.	

For registering any document by this Ordinance required or authorized to be registered or required to be delivered, sent or forwarded to the registrar other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in the Colony	5 00
For making a record of any fact by this Ordinance required or authorized to be recorded by the registrar	5 00
II —BY A COMPANY NOT HAVING A SHARE CAPITAL	
For registration of a company whose number of members as stated in the articles does not exceed 25	40 00
For registration of a company whose number of members as stated in the articles exceeds 25, but does not exceed 100, the above fee of Sh 40 with an additional Sh 20 for every additional 25 members or less after the first 25	
For registration of a company whose number of members as stated in the articles exceeds 100 but is not stated to be unlimited, a fee of Sh 100 with an additional Sh 5 for every additional 50 members or less after the first 100	
For registration of a company in which the number of members is stated in the articles to be unlimited	400 00
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase	5 00
Provided that no company shall be liable to pay on the whole a greater fee than Sh 400 in respect of its number of members, taking into account the fee paid on the first registration of the company	
For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company	
For registering any document by this Ordinance required or authorized to be registered or required to be delivered, sent or forwarded to the registrar, other than the memorandum or the abstract required to be delivered to the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding up in the Colony	5 00
For making a record of any fact by this Ordinance required or authorized to be recorded by the registrar	5 00

III —BY A COMPANY TO WHICH PART XII OF THIS ORDINANCE APPLIES

For registering a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company	100 00
For registering any other document required to be delivered to the registrar under Part XII of this Ordinance	5 00

NINTH SCHEDULE

(SECTION 335)

PROVISION REFERRED TO IN SECTION 335 OF THE ORDINANCE

Provisions relating to—

- Section 16 —Conclusiveness of certificate of incorporation
- Section 36 —Specific requirements as to particulars in prospectus
- Section 41 —Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to registrar
- Section 43 —Return as to allotments
- Section 79 —Registration of charges created by company
- Section 80 (1) —Duty of company to register charges created by company
- Section 81 —Duty of company to register charges existing on property acquired
- Section 90 —Application of Part IV to companies incorporated outside the Colony
- Section 95 —Restriction on commencement of business
- Section 108 (3) (n) (o) —The particulars as to directors and indebtedness of the company
- Section 113 —Statutory meeting and statutory report
- Section 134 (1) (2) —Auditors' report and right to information and explanations
- Section 141 —Restrictions on appointment or advertisement of director
- Section 246 —Notice by liquidator of his appointment
- Section 290 —Delivery to registrar of accounts of receivers and managers
- Section 321 —Documents, etc., to be delivered to registrar by companies carrying on business in the Colony
- Section 321 —Return to be delivered to registrar where documents, etc., altered
- Section 323 —Balance sheet of company carrying on business in the Colony
- Section 324 —Obligation to state name of company, etc

OBJECTS AND REASONS

The law in the Colony relating to companies dates back to 1921, and is based almost entirely on the English Act of 1908.

In 1925, a Company Law Amendment Committee reported in London and recommended substantial amendment of the law.

In 1928, a Companies Act was passed which clearly followed the recommendations of that Committee, and in 1929 a Companies Consolidation Act was passed.

This Bill brings the law in the Colony closely into line with modern English law on the subject. It is also a step forward in the direction of the unification of commercial legislation in East Africa, Tanganyika Territory having enacted a similar measure in 1930.

The main changes introduced by this Bill are --

(1) A company is restricted in its choice of names by clause 18.

(2) Clause 145 provides that a company must keep a register of directors or managers which must be open for inspection. As regards each director or manager, the register must show his Christian name and surname, his usual address, his nationality of origin, his business occupation, or, if he has no business occupation but holds other directorships, particulars of such directorships. If a corporation is a director the register must show its complete name and its registered or principal address.

(3) The register of shareholders required by clause 96 must, under clause 97 of the Bill be indexed, and the index must be kept up-to-date and open to inspection as if it were part of the register.

(4) Every company (unless a private company) must have at least two directors (clause 140).

(5) Clause 120 provides that every company must keep at its registered office a minute book of the proceedings of its general meetings, which shall be open to the inspection of any member without charge. Copies of such minutes (on payment) shall be supplied to members on request (clause 121).

(6) The Bill gives wide effect to the principle that an officer of a company is to be personally liable for breaches of the company's statutory duties

Among the new statutory duties of a company is the duty, under clause 123, of keeping accounts and bringing out an annual profit and loss account, balance sheet and director's report

(7) Another section under which a heavy penalty might be incurred is clause 48, relating to circumstances in which a company ceases to be, or to enjoy the privileges of, a private company

This clause provides a penalty of £50 for omitting to file with the registrar a prospectus, or statement in lieu of prospectus, within fourteen days after a private company has so altered its articles of association as no longer to comply with the statutory definition of a private company

(8) Clause 331 proposes to make it unlawful for any person to go from house to house offering shares for subscription or purchase to the public or any members of the public. This clause also provides that no offer of shares may be made in writing unless it is accompanied by a statement in writing containing particulars analogous to those required in a prospectus

(9) Clause 46 prohibits a company from giving financial assistance for the purpose of or in connexion with a purchase of its own shares

(10) Clauses 47 and 48 of the Bill give power to issue redeemable shares and to issue shares at a discount

In addition, opportunity has been taken to include a considerable number of drafting amendments

No expenditure of public moneys will be involved if the provisions of this Bill become law